

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

JOHN D. QUARLES III,

Debtor.

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CASE NUMBER 04-44152

CHAPTER 7

HONORABLE KAY WOODS

O R D E R

This cause is before the Court on the motion of John D. Quarles III ("Debtor") for an order to enforce the automatic stay against creditor Doris A. Quarles ("Ms. Quarles"), Debtor's ex-wife. No response was filed. A hearing was held on September 30, 2004 in which Debtor appeared *pro se* and Christine Blair Legow, Esq. appeared on behalf of Ms. Quarles. This is a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

Debtor made a Two Thousand Dollar (\$2,000.00) post-petition payment ("Payment") to Ms. Quarles for overdue spousal support pursuant to a domestic relations court order, issued post-petition, that instructed Debtor to pay Two Thousand Dollars (\$2,000.00) to Ms. Quarles within 24 hours or be sent to jail. The Payment consisted of several money orders which were obtained by taking out small loans and one small payment from Debtor's

checking account.

Debtor argued that requiring him to make this Payment post-petition, with jail as the only alternative, violated the automatic stay. Ms. Quarles' counsel stated that she was not provided with notice of Debtor's bankruptcy filing prior to the court date and that Debtor's domestic court counsel indicated the bankruptcy filing was irrelevant because spousal support debt is nondischargeable. In addition, the hearing in domestic relations court was initially scheduled to occur pre-petition, but Debtor requested a continuance.

It is unclear if the automatic stay is applicable to Debtor's Payment. Debtor borrowed the majority of funds used to make the Payment subsequent to filing bankruptcy. Accordingly, it is not clear whether the Payment was made using property of the estate. Section 362(b)(2)(B) provides that filing a voluntary bankruptcy petition does not stay "the collection of alimony, maintenance, or support from property that is not property of the estate." 11 U.S.C. § 362(b)(2)(B). Thus, if the several small loans taken out by Debtor post-petition do not constitute property of the estate, the automatic stay is not applicable and Debtor's motion is moot.

Ms. Quarles' counsel testified that if the automatic stay had been violated, it was not done willfully. She had no

knowledge of the bankruptcy filing prior to the domestic court hearing and reasonably relied on the statements of opposing counsel in which he indicated Debtor's bankruptcy filing was irrelevant because spousal support is nondischargeable. Thus, even if the automatic stay were applicable, the facts demonstrate that a violation of the stay was not willful and Debtor is not entitled to any damages.

Finally, the post-petition Payment did not impair Debtor's estate. The Bankruptcy Code excepts from discharge "any debt . . . to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record[.]" 11 U.S.C. § 523(a)(5). Accordingly, the spousal support debt satisfied by the Payment would have remained an obligation of Debtor despite his bankruptcy petition and subsequent to any discharge that may be obtained. In addition, the Chapter 7 Trustee proffered that, to the extent the Payment was property of the estate, the Trustee has no interest in pursuing the Payment on behalf of the estate and would not attempt to recover the property under 11 U.S.C. § 549.

Based upon the undisputed facts, Debtor's motion is denied. It is unclear whether the automatic stay is applicable, but even if it were, there was no willful violation of the stay

and the Payment did not harm the estate.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was placed in the United States Mail this _____ day of October, 2004, addressed to:

JOHN D. QUARLES III, 5744 Market Street,
Apart-ment 210, Boardman, OH 44512.

CHRISTINE BLAIR LEGOW, ESQ., 11 Federal Plaza
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Youngstown, OH 44503.

ANDREW W. SUHAR, ESQ., 1101 Metropolitan
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SAUL EISEN, United States Trustee, BP America
Building, 200 Public Square, 20th Floor,
Suite 3300, Cleveland, OH 44114.

JOANNA M. ARMSTRONG