

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

In the Matter of	:	Case No. 95-2271-WH
	:	Chapter 7
ROBERT A. DELAUGHTER,	:	
d/b/a River City Pets and	:	
4 Paws Grooming,	:	
	:	
Debtor.	:	

ORDER--MOTION FOR SANCTIONS

On July 31, 1995, Debtor, Robert A. DeLaughter, filed a Voluntary Petition for Chapter 13 relief under the U.S. Bankruptcy Code. On February 7, 1996, a hearing was held on the Creditor's Motion for Sanctions and Debtor's resistance thereto. Debtor Robert A. DeLaughter was represented by attorney Forrest E. Ebersold. Creditor, Nichola K. DeLaughter, was represented by attorney James E. Bachman. At the conclusion of the hearing, the court took the matter under advisement.

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. §§ 157 (b)(2)(A), 157 (b)(2)(I), 157 (b)(2)(L), 157 (b)(2)(O). The court, upon review of the file, pleadings, and arguments, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FACTS

1. Debtor, Robert A. DeLaughter (“Robert”), filed a Chapter 13 Petition on July 31, 1995. Nichola K. DeLaughter (“Nichola”) had filed a petition for dissolution of marriage in the Iowa District Court of Pottawattamie County a few days prior to this date.

2. Robert scheduled his wife, Nichola, as an unsecured nonpriority creditor. The consideration for this claim was scheduled as a property settlement of an undetermined amount. Nichola was shown as being represented by counsel, Christopher J. Tinley, Esq.

3. Robert scheduled himself as being “[m]arried and living apart” on schedule I.

4. Robert’s Statement of Financial Affairs Paragraph 4(a), listed Nichola K. DeLaughter as a party to a lawsuit in which Robert was also a party. The lawsuit was listed as “In re the Marriage of Nichola K. DeLaughter and concerning Robert DeLaughter” and described as pending.

5. Robert filed his Chapter 13 plan on August 14, 1995. Paragraph (3) of the plan provides as follows:

(3) Creditors holding unsecured claims shall be divided into three classes.
11 U.S.C. section 1322(a)(3).

Class A. Class A shall consist of creditors holding allowed unsecured claims who timely filed their claims. The claims of such creditors shall be paid pro rata over the period of the plan.

Class B. Class B shall consist of unsecured creditors who fail to file their claim on or before the last date established by the court to file a claim. Claims in this class shall be classified as untimely and be paid zero percent.

Class C. Class C shall consist of the debt to Nichola K. DeLaughter. On or about July 25, 1995 she filed for Dissolution of Marriage after two years of marriage and any property settlement is subject to discharge. Under existing [law] any award made during the dissolution case in [sic] not in the form of support. Failure to object to this plan will result in a order confirming the same.

6. Paragraph (8) of the plan provides, as relevant herein, as follows:

The debtor proposes no payment to Boatman's National Mortgage (a scheduled secured creditor) as he has agreed to surrender his interest in the real estate to Nichola K. DeLaughter. In addition, the Peoples National Bank/SBA loan is to be treated as unsecured.

7. Nichola did not file an objection to the plan. Objections to confirmation of the plan were filed by Peoples National Bank, a secured creditor, the United States of America on behalf of the Internal Revenue Service, and the Chapter 13 Trustee.

8. The Chapter 13 Trustee objected to the plan treatment of "the debt of Nichola K. DeLaughter arising from a dissolution of marriage action" and the surrender of real estate to Nichola with no payment to Boatman's National Mortgage, Peoples National Bank, or the SBA, all secured creditors. The Chapter 13 Trustee also objected on the basis that he could not determine Robert's obligation regarding the real estate, since there was no dissolution of marriage decree; therefore, there was no way to determine if 11 U.S.C. § 1325(a)(5) was satisfied.

9. The hearing on the confirmation of the plan was held on October 5, 1995, in Council Bluffs. Robert, through his attorney, orally withdrew the plan and the objections were overruled as being moot. Robert was given fourteen (14) days within which to file a motion to amend the plan and an amended plan if he wished to remain in Chapter 13.

10. Robert filed a Motion to Amend Chapter 13 Plan and the Amended Chapter 13 Plan on October 16, 1995. These documents were signed by Forrest E. Ebersold as attorney for the debtor.

11. In the amended plan, the treatment of the debt to Nichola was essentially the same as in the original plan. However, the treatment of the secured creditors' claims was different.

12. The Chapter 13 Trustee objected to the amended plan, in part, on the basis that the dissolution of marriage proceeding was pending. The objection raised the issue of whether the dischargeability of any obligation stemming from a dissolution of marriage could be determined through a Chapter 13 plan.

13. Nichola also objected to the confirmation of the amended plan, in part, in that the plan attempted to classify her claim prior to a decree of dissolution of marriage.

14. On October 23, 1995, Nichola, with the assistance of counsel, James E. Bachman, Omaha, Nebraska, filed her Motion for Relief From Stay. In this motion she prayed for relief from the automatic stay provisions of 11 U.S.C. § 362 to pursue the dissolution of marriage proceeding which she had filed in the Iowa District Court, Pottawattamie County, Equity No. 5549. She prayed that this relief be granted so that the marital rights of the parties could be resolved in the proper forum.

15. Robert objected to Nichola's Motion for Relief From Stay on October 30, 1995. He alleged that 11 U.S.C. § 362(d) sets forth the only grounds for relief from the automatic stay and that 11 U.S.C. §§ 523(a)(5) and (a)(15) governed cases involving dissolution of marriages and none of the "debt" of the parties fell within the provisions of either section.

16. On November 9, 1995, upon a telephonic hearing, Nichola's Motion for Relief From Stay was sustained and the automatic stay was terminated to permit Nichola to proceed with the dissolution of marriage proceeding pending in the Iowa District Court.

17. By notice and order of November 30, 1995, Robert's Motion to File an Amended plan, the Amended Plan, and objections thereto, were set for hearing in the Bankruptcy Court, Council Bluffs, Iowa, on December 14, 1995, at 9:45 a.m. Notice was given to the debtor, counsel for Robert, and counsel for Nichola.

18. On December 13, 1995, counsel for Robert called the scheduling clerk for this court and advised her that he was going to withdraw the Motion to File an Amended Plan and Amended Plan and would be filing a Motion to Convert to Chapter 7.

19. Counsel for Robert, Forrest E. Ebersold, was advised that, pursuant to the policy of this court and because this notice was received at such a late time and without notice to opposing counsel, the hearing would proceed as scheduled.

20. Mr. Ebersold did not call counsel for Nichola, James E. Bachman, or any of the opposing entities or their counsel, and advise them that he was withdrawing the Motion to Amend Plan and the Amended Plan and would be converting to Chapter 7.

21. On December 14, 1995, Nichola's counsel traveled from Omaha to Council Bluffs to represent Nichola at the plan confirmation hearing. At this time, while at the courtroom, he learned for the first time that Robert was converting the case from Chapter 13 to Chapter 7.

22. Robert did withdraw the Motion to File an Amended Plan and Amended Plan on December 14, 1995.

23. On January 16, 1996, counsel for Nichola filed a Motion for Sanctions on the grounds that the amended plan was filed by Robert for the purpose of needlessly increasing litigation costs and without a good faith argument for extending existing law.

24. Counsel for Robert objects to the Motion for Sanctions.

DISCUSSION

Robert A. DeLaughter is trying to get a fresh start through the bankruptcy courts. Nichola is trying to get a fresh start by divorcing herself from Robert and his creditors. Nichola asks the court to impose sanctions for violations of Fed.R.Bankr.P. 9011. She alleges the amended plan was filed for the purpose of needlessly increasing the costs of litigation and that Debtor or his counsel did not have a good faith argument for extending the existing law. “Bankruptcy courts are generally advised to tread carefully when asked to impose sanctions where the underlying actions involved marital disputes.” In Re Ogden Modulars, Inc., 184 B.R. 575, 579 (Bankr. E.D.Mo. 1995).

Sanctions Under Fed.R.Bankr.P. 9011

The bankruptcy court’s authority to impose sanctions for actions that violate Fed.R.Bankr.P. 9011 is well established. See Jensen v. Federal Land Bank of Omaha, 882 F.2d 340 (8th Cir. 1989). Rule 9011 in pertinent part provides:

The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney’s or party’s knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case....If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney’s fee.

An amended plan, captioned “CHAPTER 13 PLAN” was filed with the Clerk, U.S. Bankruptcy Court in Des Moines, Iowa on October 16, 1995 in this case. It is signed by Forrest E. Ebersold as attorney for Debtor.

Rule 9011 imposes an affirmative duty on attorneys to conduct a reasonable inquiry before signing and filing documents with the court. Mr. Ebersold asserts, in his Objection to Motion for Sanctions, that he believed any debt that might be owing to Nichola would not be in the form of support and concludes any award made during the dissolution case would be dischargeable. There is no evidence that counsel made any investigation into the propriety of his pleading. Only after filing the amended plan did Mr. Ebersold inquire of other practitioners. Mr. Ebersold has not presented this court a basis for believing his pleading was well grounded in fact or supported by a good faith argument.

Robert contends that any debt to Nichola will be dischargeable in bankruptcy. Whether any debt Robert owes to Nichola is in the form of support or otherwise will be determined in state court, and cannot be determined without a factual analysis. See Iowa Code § 598.21 (1995). Although the facts may appear to counsel to indicate that no support should be awarded by the state court, until the matter is properly decided by the appropriate forum, facts can change. The statutory factors considered in arriving at a dissolution are fluid and subject to change (i.e. health). The granting or modification of dissolution decrees is outside the jurisdiction of this court. See Ankenbrandt v. Richards, 504 U.S. 689, 693-704 (1992)(exception to federal jurisdiction for domestic relations cases).

Without determining the dischargeability of any debts, this court reads 11 U.S.C. §523(a)(5) and (a)(15) to provide that all debts incurred in the course of divorce or separation are nondischargeable, subject to exceptions. The Code clearly requires a factual inquiry into the substantive nature of the debt before dischargeability can be determined; that factual inquiry cannot be made without the requisite separation agreement, divorce decree or other court order. Neither this court nor counsel can predict the (non)dischargeability of unknown debts involved in a pending dissolution action.

Additionally, the amended plan's treatment of the debt to Nichola is not supported by current law and counsel has not presented any argument for extending existing law. Mr. Ebersold was aware that his statement of the law might be unsubstantiated. The Plan's treatment was objected to as being prematurely conclusive without a dissolution of marriage decree, creating an inability to determine if the Plan was confirmable. Those objections to the original plan served to notify him that his treatment of the debt to Nichola was not warranted by existing law. Although Mr. Ebersold was afforded opportunity to present arguments supporting his position, his stance throughout these proceedings has been to state and re-state that "[u]nder existing law any award made during the dissolution case in [sic] not in the form of support. As a result this debt is not non-dischargeable pursuant to 11 U.S.C. section 523." (Amended Plan, para. 3; Objection, para. 11). However, Mr. Ebersold withdrew the plans before arguments against the plans were heard.

Bankruptcy Rule 9011 is also violated when a document is filed for an "improper purpose." Examples of "improper purpose" include filing papers for purposes of harassment, intimidation, to cause delays, or to increase litigation costs. See In Re

General Homes Corp., 181 B.R. 870 (Bankr. S.D.Tex. 1994); In Re Narowetz Mechanical Contractors, Inc., 99 B.R. 850 (N.D.Ill. 1989) aff'd 898 F.2d 1306 (7th Cir. 1990). The document's purpose can be objectively evaluated; "[t]hat is, if the filed document does, in fact, lead to needless delay or cost or is in some other way "improper," it violates Rule 9011 regardless of the attorney's subjective belief in the need to file the document." In Re Slaughter, 191 B.R. 135, 141 (Bankr. W.D.Wis. 1995). Filing the amended plan and, at the plan confirmation hearing, orally filing a Motion to Convert to Chapter 7 had several adverse effects. The entire bankruptcy case was delayed two additional months. Nichola was forced to continue in a marriage she sought to dissolve and incur legal fees to obtain relief from the automatic stay in order to pursue a dissolution. Robert's creditors had a window of opportunity wedged open for two additional months in which to pursue Nichola for the collection of her husband's debts.

Nichola asserts the amended plan was filed for the improper purpose of trying to have the pending dissolution of marriage resolved in bankruptcy court. Robert's counsel states he hoped to avoid litigating the issue of a property settlement in state court, not to turn this bankruptcy court into a divorce court. He wrote the plan to put Nichola on notice of how her claim should be handled. Robert asserts he sought to have this court determine the issue of whether the debt could be discharged; no motion to determine dischargeability of a debt was filed in this case. However stated, the planned treatment of the debt to Nichola was intended to defeat any right she might have in a nondischargeable claim that might be awarded to her under the divorce proceedings. Accordingly, such conduct is unworthy of bankruptcy protection. See In Re Huckfeldt, 39 F.3d 829 (8th Cir. 1994); In Re Brown, 21 F.Supp. 935, 939 (S.D.Iowa 1938).

The timing of filings, resistance to allowing the dissolution case to proceed in state court, and lack of serious research into the subject matter of the objections filed to the Plan's treatment of the debt to Nichola lead this court to conclude the amended plan was indeed filed for improper purposes. Robert's actions resulted in needlessly delaying the state court action, increasing the costs of litigation, and provided Robert with leverage in the dissolution case. Any benefit to the estate attributable to Robert's actions eludes this court.

Sanctions Under Rule 11

Because sanctions are imposed under Bankruptcy Rule 9011, Nicholas' Motion for Sanctions under Fed.R.Civ.P. 11 is not considered.

Sanctions Under 11 U.S.C. § 105

Although not pled in Nichola's Motion for Sanctions, the actions of counsel on December 13 and 14, 1995, compel this court to impose sanctions that are appropriate to prevent an abuse of the judicial process. This court is acting sua sponte and counsel has been afforded due process notice and opportunity to be heard. See Jensen v. Federal Land Bank of Omaha, 882 F.2d 340 (8th Cir. 1989)(sua sponte Rule 9011 sanctions). Through Nichola's Motion for Sanctions, counsel for Robert was given general notice of, and at the hearing was given particular notice of, his actions that this court considered for sanctions. At the hearing on the Motion for Sanctions, Robert's counsel was challenged on the propriety of his actions of December 13 and 14 and given an opportunity to respond.

The portion of 11 U.S.C. § 105(a) applicable to this case provides:

No provision of this title providing for the raising of an issue by a party I interest shall be construed to preclude the court from, sua sponte, taking any action or

making any determination necessary or appropriate to enforce or implement court orders or rules, *or to prevent an abuse of process*. [emphasis added]

An abuse of process generally occurs when the legal process is used for improper purposes or to achieve an end not lawfully attainable. A federal judge is responsible for each case before him, for seeing it to completion with the efficient use of the court's and parties' time and resources in a timely manner. See In re Amica, Inc., 135 B.R. 534, 556 (Bankr. N.D.Ill. 1992).

There is ample evidence this entire case has been used for improper purposes to compromise the efficacy of opposing counsel and the bankruptcy and state court systems. After being served with dissolution papers, Robert filed a Chapter 13 Bankruptcy petition. At the confirmation hearing on his first plan, he filed a Motion to Amend. Robert resisted Nichola's Motion for Relief From Stay even though he insisted any debt to Nichola from the divorce would be dischargeable. On the eve of the hearing on Robert's amended plan and objections thereto, Mr. Ebersold notified the Chapter 13 Trustee's counsel and this court's scheduling clerk of his intention to file a Motion to Convert. Opposing counsel was not notified. They prepared for the hearing, traveled to Council Bluffs, and attended the scheduled hearing on the then-pending Motion to Amend, Amended Plan, and Objections. At the hearing, Mr. Ebersold withdrew his motion and amended plan, thereby making opposing counsel's objection moot.

During the entirety of this case, more than four months' time and resources of counsel and this court were expended as the Debtor filed unconfirmable plans, withdrew them at the confirmation hearings for which opposing counsel prepared and appeared, and

attempted to summarily decide domestic relations issues that are for a state court to resolve and are outside the jurisdiction of this court.

Appropriate Sanctions

Having found the actions of the Debtor violated Rule 9011, this court is mandated to impose appropriate sanctions. Additionally, pursuant to 11 U.S.C. § 105(a), this court finds the issuance of sanctions necessary to curtail Debtor's counsel's prior, and to prevent any further, abuse of process. The movant seeks \$1,575.00 in sanctions; 12.6 hours were expended in response to the amended plan. This court finds the calculations to be reasonable. See Matter of Pothoven, 84 B.R. 579 (Bankr. S.D.Iowa 1988).

ORDER

IT IS THEREFORE ORDERED that Nichola A. DeLaughter's Motion for Sanctions is sustained.

IT IS FURTHER ORDERED that Forrest E. Ebersold, as counsel for the Debtor, Robert A. DeLaughter, shall be assessed sanctions in the amount of \$1,575.00.

Dated this _____ day of March 1997.

RUSSELL J. HILL, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT