BANKRUPTCY

DEBTOR CAN CLAIM VEHICLE EXPENSE IN BANKRUPTCY EVEN IF HE OWNS IT OUTRIGHT

In re Washburn, 579 F.3d 934 (8th Cir. 2009).

FACTS: As an above median debtor, Robert Earl Washburn's Chapter 13 reorganization plan required him to include payment of his "projected disposable income" in his reorganization plan to pay unsecured creditors over a sixty month period. Washburn sought to exclude from his projected disposable income $471 per month vehicle-ownership expense for a vehicle he owned outright. With this amount excluded, Washburn's projected disposable income was insufficient to pay the claims of his unsecured creditors. According to the Trustee's calculations, denial of the vehicle-ownership expense and inclusion of this amount in his monthly payments to creditors would have completely satisfied the unsecured creditors' claims. The bankruptcy court approved Washburn's reorganization plan including the $471 exclusion from his projected disposable income as an expense related to ownership of his vehicle. Creditor eCast Settlement Corporation and the Trustee appealed.
HOLDING: Affirmed.
REASONING: The Eighth Circuit Court of Appeals stated that the term "projected disposable income" is not defined by the Bankruptcy Code, so the court applied Chapter 7 of the Bankruptcy Code's "means test" to determine the meaning of "disposable income." Looking to Chapter 7, the court noted that disposable income is defined as current monthly income less amounts reasonably necessary to be expended for several purposes. The court stated that these purposes are referenced to the IRS Local Standards to define "applicable monthly expense amounts." The court held that the vehicle ownership expense at issue is one of the "applicable monthly expense amounts" listed in the IRS's Local Standards.

The court then addressed whether the "applicable monthly expense amount" refers to an expense that the debtor actually incurs. The court adopted the Seventh Circuit's plain language interpretations. The court held that because Congress had not employed similar language expressly conditioning "applicable monthly expense amounts" on the existence of a corresponding debt, it was appropriate to treat "applicable monthly expense amounts" in a categorical fashion based on a debtor's geographic location and number of vehicles rather than making such expense amounts available only on condition of a vehicle-related debt.

The court found that conditioning the vehicle ownership expense based only on pre-bankruptcy related debt would punish debtors who elect to drive more modest vehicles or fully pay off their vehicles and reward debtors who incurred vehicle debt right before declaring bankruptcy. The court found that this result would be unfair in light of the fact that one of the purposes of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was to make it more difficult to discharge consumer debts. Based on the adoption of the Seventh Circuit's findings, the court concluded that Washburn's expenses relating to the ownership of a fully paid vehicle were appropriate to include in his projected disposable income.

SPOUSES' DEBT TREATED SEPARATELY UNDER CHAPTER 13

In re Werts, 410 B.R. 677 (Bankr. D. Kan. 2009).

FACTS: Debtors Dana and Troy Werts filed for relief under Chapter 7 of the Bankruptcy Code on June 16, 2008. On the date they filed their petition, Mr. Werts had accrued general unsecured debts totaling $161,977.71, and Ms. Werts had accumulated general unsecured debts totaling $100,913.37. In addition to those amounts, Debtors were jointly liable on a second mortgage on their home. The debt secured by that second mortgage exceeded the value of the house by $134,760. Both Debtors have regular income.

One or both Debtors first met with an attorney, Sarah Newell, eight or nine months prior to filing. Ms. Newell provided some pre-bankruptcy planning advice during that first meeting. In preparation for filing their bankruptcy petition, one or both Debtors again met with counsel and provided her with the information necessary to prepare their bankruptcy schedules and Statement of Financial Affairs ("SOFA"). Notwithstanding the information Debtors had provided to their counsel, Debtors' schedules and SOFA contained numerous omissions and errors.

Debtors filed a Motion to Convert to Chapter 13 and a Motion for Intra-District Change of Venue seeking to transfer this case to Wichita, Kansas. The United States Trustee ("UST") objected to the Motion to Convert, arguing that Debtors are not eligible for Chapter 13 relief.
HOLDING: Granted.
REASONING: The court noted that eligibility to be a debtor under Chapter 13 of the Bankruptcy Code is governed by §109(e). According to that section, only an individual with "noncontingent, liquidated, unsecured debts that aggregate less than $336,900" is eligible to be a Chapter 13 debtor.

The Debtors argued that because each of them has unsecured debt less than $336,900, because not all of their unsecured debt is joint debt, they should be allowed to proceed as debtors in a Chapter 13 case. The UST objected to this argument, claiming §109(e) requires both spouse's debts to be considered together when determining whether they fall under the unsecured debt limit.

If each spouse has regular income, and each spouse separately qualifies under the debt limits of §109(e), then each spouse should be entitled to file his or her own Chapter 13 case.

The UST focused on the portion of §109(e) that reads "an individual with regular income and such individual's spouse . . . that owe . . . unsecured debts that aggregate less than $336,900" to support its claim that all debts of both spouses must be combined for purposes of §109(e). The court found that a more reasonable reading of the statute, and one that furthers the goal of encouraging Chapter 13 filings, is that the provision dealing with "an individual with regular income and such individual's spouse" is intended to apply in those cases where the spouse could not otherwise be a Chapter 13 debtor, because he or she is not "an individual with regular income." The court stated that if each spouse has regular income, and each spouse separately qualifies under the debt limits of §109(e), then each spouse should be entitled to file his or her own Chapter 13 case--even if the debts of both spouses together would exceed the debt limits. The court held that if a husband and wife can each file separate Chapter 13 proceedings, where their own individual debt is within the §109(e) limits, the court could think of no reason why a husband and wife could not file a joint petition, as authorized by §302(b). Because both spouses were eligible under §109(e) to be Chapter 13 debtors and because each had debt that fell below the unsecured debt limit and each had regular income, the court found that the Debtors could proceed under Chapter 13.

OBJECTION TO DISCHARGE WAS TIMELY

In Re: Smith, 582 F.3d 767 (7th Cir. 2009).

FACTS: When Smith filed for Chapter 7 bankruptcy he failed to include Tidwell and Sterling-Ahlla ("Plaintiffs") on his schedule of creditors holding unsecured, nonpriority claims. Plaintiffs had sued Smith in state court for sexual assault, but because Smith had failed to include them as creditors Plaintiffs failed to receive notice of Smith's bankruptcy petition. Smith made no attempt to invoke the automatic stay in the state court suits filed by Tidwell and Sterling-Ahlla, and he did not otherwise notify the state court, Tidwell, or Sterling-Ahlla of the stay. After the bankruptcy proceedings culminated in discharge, Plaintiffs filed motions asking the bankruptcy court for leave to proceed with their lawsuits against Smith and to declare their claims against Smith as non-dischargeable. Plaintiffs were granted leave to proceed with their suits in state court against Smith and to return to the bankruptcy court to determine dischargeability if they prevailed in the state court litigation. Smith appealed, contending that the evidence did not support the bankruptcy court's findings that he deliberately omitted Plaintiffs from his schedule of unsecured creditors. Smith further contends that Plaintiffs became aware of his bankruptcy in time to seek a declaration of non-dischargeability before the bankruptcy proceeding was closed. Smith argued that despite his failure to include Plaintiffs in his bankruptcy petition, Plaintiffs were on notice and should have been limited to seeking relief from the bankruptcy court before he was granted discharge. Smith relied on the facts that he sent Plaintiffs' attorney a fax for a motion to transfer the state court proceeding to bankruptcy court and that Plaintiffs were listed as creditors on a previous bankruptcy proceeding.

HOLDING: Affirmed.

REASONING: The court agreed with the lower court that the "eleventh-hour" notice of the bankruptcy that Plaintiffs received did not afford them sufficient time to protect their rights before Smith was discharged. For a creditor to establish right to relief under the §523(a)(3)(B) of the Bankruptcy Code, the creditor must show that the debt in question was unscheduled and the creditor did not have notice or actual knowledge of the bankruptcy in time to file a claim and request for a determination that the debt was non-dischargeable. Whether or not the debtor's failure to schedule the debt was deliberate is irrelevant. As a result, Plaintiffs' lack of timely notice of Smith's bankruptcy was, by itself, sufficient to sustain the decision to allow Plaintiffs' state-court suits to go forward.

The court rejected the notion that Plaintiffs should have been aware of Smith's bankruptcy proceedings because they had been listed as creditors on a separate earlier bankruptcy proceeding. Although Plaintiffs did become aware of Smith's bankruptcy before the bankruptcy proceeding was closed, this alone does not establish that the notice was adequate. Due process requires the notice to reasonably convey the required information and afford a reasonable time for those interested to make their appearance. A key function of the notice provided to a creditor in a bankruptcy proceeding is to give the creditor the chance to file a proof of claim and to request a determination of non-dischargeability. According to the court, the motion to transfer by fax to Plaintiffs' attorney did not serve the aforementioned interests. The fax failed to include any impending dates of importance and revealed little more than the pendency of Smith's bankruptcy. There was little time left at that point for Plaintiffs' attorney to investigate the bankruptcy, ascertain the relevant deadlines, and take appropriate action. On these facts, the faxed motion did not give the Plaintiffs a reasonable opportunity to take action before the deadline for objecting to dischargeability passed and before Smith was discharged. Because of Smith's actions, Plaintiffs' post-discharge complaints were therefore timely, and the bankruptcy court's decision was affirmed without reaching the question of whether Smith omitted Plaintiffs from his list of unsecured creditors with fraudulent intent.

HOMESTEAD DESIGNATION DOES NOT ESTABLISH ACQUISITION OF INTEREST FOR PURPOSES OF BANKRUPTCY CODE EXEMPTIONS

In re Scott K. Greene, 583 F.3d 614 (9th Cir. 2009).

FACTS: Scott K. Greene ("Greene") purchased a parcel of undeveloped land in Sparks, Nevada, (the "Property"). Greene moved a trailer onto the Property and recorded a declaration of homestead with the Washoe County Recorder's Office for the trailer and the Property. Sixteen days later, Greene filed a Chapter 13 bankruptcy petition. Rena Wells ("Wells"), a creditor, filed an objection to Greene's claim of a homestead exemption, asserting that Greene's homestead was not his bona fide residence. Greene voluntarily dismissed the petition on February 17, 2005.

On October 15, 2005, Greene filed a Chapter 7 bankruptcy petition claiming the market value of the Property, $240,000, as exempt pursuant to the Nevada homestead statute. Wells again filed an objection to the claim of exemption, challenging the validity of the homestead exemption and also contending that, even if the homestead was valid, it should be reduced to $125,000 pursuant to 11U.S.C. §522(p)(1), because the homestead was acquired within 1215 days of the filing of the petition. The Bankruptcy Court for the District of Nevada concluded that Greene's homestead was a property interest acquired within 1215 days of his bankruptcy petition filing. Therefore, it held, that Greene's homestead exemption was limited to $125,000 under Section 522(p). Greene appealed.

Subsequently, the trustee filed a motion for an order authorizing sale of the Property free and clear of liens and encumbrances. Greene filed an opposition to this motion. The bankruptcy court rejected Greene's motion, and found that there was no increase in the value of the Property from the time Greene acquired it until the time he filed his petition, and that any increase in value after that was available to the trustee as post-petition appreciation. Greene appealed both orders of the bankruptcy court to the district court. The district court affirmed the bankruptcy court in all respects. Greene filed a timely notice of appeal to this Court.

HOLDING: Affirmed in part, reversed in part, and remanded.

REASONING: The appellate court reviewed the case *de novo*. The court explained that Section 522(p)(1) limits a debtor's ability to take advantage of the state homestead exemptions, providing that a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $136,875.

The court concluded that perfection of a homestead exemption does not constitute acquisition of a property interest for purposes of Section 522(p)(1). The court explained that acquiring by gaining possession or control of a property interest usually occurs through a properly executed deed or other instrument of conveyance. Therefore, the term "acquire" would not be used to refer to classification of the property as a homestead. To come to this conclusion, the court reviewed the intent of the drafters of Section 522(p)(1). The court held that the drafters intended to close a "mansion loophole" where a party would purchase a large home, file a homestead exemption, and then file for bankruptcy protection. Accordingly, the court reversed the district court's order affirming the bankruptcy court's decision that, where a debtor initiates his residency on the property and records a homestead during the 1215-day period prior to filing his bankruptcy petition, Section 522(p) places a monetary cap on the state law homestead even though the debtor purchased the property before the commencement of the 1215-day period.

Perfection of a homestead exemption does not constitute acquisition of a property interest for purposes of Section 522(p)(1).

TAX LIABILITY NOT DISCHARGED IN BANKRUPTCY

Severo v. Comm'r, 586 F.3d 1213 (9th Cir. 2009).

FACTS: Michael and Georgina Severo's 1990 joint tax return, after extensions, was due October 15, 1991. They filed their tax return three days late without paying most of their taxes. On November 18, 1991, the IRS assessed income tax liability of $63,499.00, plus $4,180 for failure to pay estimated taxes and $2,339 for failure to pay tax.

On September 28, 1994, the Severos filed for relief under Chapter 11 of the Bankruptcy Code, which was converted into Chapter 7 liquidation on September 12, 1995. Their first post-conversion meeting of creditors occurred on November 9, 1995, and the Severos received their Chapter 7 discharge on March 17, 1998.

The IRS first attempted to collect the 1990 tax liability on November 28, 2004, when it levied against a $196 tax refund claimed by the Severos on their 2003 California state income tax return. By that time, the petitioners owed income taxes for each year between 1994 and 2002, in addition to the tax liability for 1990. On August 18, 2005, the Severos paid $142,479.82 toward their tax delinquency, but at least some part of their 1990 tax liability remained outstanding. On September 7, 2005, the IRS mailed to the Severos a notice of intent to make a second levy on their property relating to their outstanding 1990 federal income taxes, and on September 8, 2005 the IRS filed a notice of federal tax lien on all of the Severos' property and property rights.

Upon receiving notice of the federal tax lien, the Severos requested a collection due process hearing. See 26 U.S.C. §6320(a)(3)(B). At the time they filed their petition, the Severos resided in Arcadia, California. During the hearing with a Settlement Officer, the taxpayers argued that (a) the IRS was precluded from placing a lien against the Severos' property because the ten-year statute of limitations had expired; and (b) the Severos' 1998 bankruptcy discharge discharged the petitioners' tax debt to the IRS.

The Appeals Office of the IRS rejected the Severos' arguments and issued a notice of adverse determination on March 3, 2006. The taxpayers appealed to the United States Tax Court, which granted summary judgment in favor of the Commissioner on November 15, 2007. The taxpayers unsuccessfully moved for reconsideration and then timely appealed to the Ninth Circuit Court of Appeals.

Holding: Affirmed.

Reasoning: The court discussed whether the tax debt should have been discharged by the Severos' bankruptcy. The court quoted the Supreme Court: "[i]f the IRS has a claim for taxes for which the return was due within three years before the bankruptcy petition was filed, the claim enjoys eighth priority under § 507(a)(8)(A)(i) and is nondischargeable in bankruptcy under § 523(a)(1)(A)." *Young v. United States*, 535 U.S. 43, 46, 122 S. Ct. 1036, 152 L. Ed. 2d 79 (2002). Because the Severos filed their bankruptcy petition on September 28, 1994, less than three years after their 1990 taxes were due on October 15, 1991, the court held that their 1990 tax liability was not discharged.

The Severos argued that their 1990 tax liability indeed was discharged because it does not fall within a separate exception for bankruptcy discharges under section 523(a)(1)(B)(ii). Under that provision, late-filed taxes are not exempt from discharge orders if the return was filed within two years of the bankruptcy petition filing. Because they filed their 1990 tax returns on October 18, 1991 (three days late), and more than two years before filing for bankruptcy, the court held that they do not fall within that exception to discharge. However, the court noted that just because they do not fall within the section 523(a)(1)(B)(ii) exception does not preclude falling within the section 523(a)(1)(A) exception. But because Section 523(a)(1)'s exceptions are phrased in the disjunctive, the court held that the Tax Court was correct in holding that the Severos' 1990 tax liability was not discharged.

PROPERTY ACQUIRED UPON PARENT'S DEATH IS NOT PART OF BANKRUPTCY ESTATE

Williamson v. Hall, ___F.3d ___ (10th Cir. 2009).

FACTS: D. Hall and L. Hall ("Debtors") filed a voluntary Chapter 7 petition on September 6, 2006. As of that date Debtors owned 1.33 acres of land in the city limits of Centralia, Kansas. On that property were both a home and a mobile home, each bearing a different physical address. In early 2004 D. Hall moved out of the home and into the mobile home pursuant to a court order. At the time the petition was filed, D. Hall still resided in the mobile home, and L. Hall and the couple's children resided in the home.

L. Hall's father passed away eighteen days after the petition was filed. As a result, L. Hall became entitled to receive (a) certificates of deposit in the amount of $38,947.86; (b) one-fifth interest in land located in Topeka, Kansas; (c) U.S. bonds in the amount of $3,731.33; (d) life insurance policy proceeds in the amounts of $6,651.19 and $4,005.75; (e) individual retirement account worth $2,858.54; (f) a pro rata share of personal property proceeds; and (g) a pro rata share of decedent's checking account. With the exception of the proceeds from the personal property and checking account, L. Hall received all of the property as a payable on death beneficiary or similar beneficiary designation.

The chapter 7 Trustee sought to compel turnover of various assets that passed to the debtor-wife. The Bankruptcy Court ruled that the property acquired upon the death of L. Hall's father is not included in the debtor's estate because the property was not acquired by "bequest, devise, or inheritance."

HOLDING: Affirmed.

REASONING: The court reasoned that the property in a debtor's bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case," "wherever located and by whomever held." The court noted that it agreed with the Bankruptcy Court that whatever "rights" L. Hall had in the property she acquired upon the death of her father at the time of filing the petition were not legal or equitable interests, but rather a mere expectancy because any rights she had during the lifetime of her father would subject to divestiture at any time. Because this is a mere contingent interest, and not a present legal or equitable interest, the property is not included in the bankruptcy estate.

ARBITRATION

CLAIMS BASED ON ALLEGED RAPE NOT SUBJECT TO ARBITRATION CLAUSE

Jones v. Halliburton Co., 583 F.3d 228 (5th Cir. 2009).

FACTS: Jamie Leigh Jones ("Jones") began working for Halliburton/KBR ("Halliburton") in 2004 as an administrative assistant in Houston, Texas. In 2005, Jones was reassigned to Baghdad as a clerical worker. As part of this relocation, Jones signed a contract which provided that all claims "arising in the workplace" would be subject to arbitration. When Jones arrived in Baghdad, Halliburton provided housing. Although Jones had requested to be housed only with women, she was instead housed in a predominantly male-occupied barracks.

Jones alleges that on July 28, 2005, she was drugged, beaten, and gang-raped by several Halliburton employees in her barrack's bedroom. When she awoke the next morning, naked, bruised and suffering from severe injuries requiring surgery, she discovered one of the alleged perpetrators lying in the lower bunk in her bedroom. Jones confronted the perpetrator who admitted to the rape. Jones reported the rape to another employee and was taken to see Halliburton's medical personnel. A rape kit was administered at a United States Army-run hospital. After her rape-kit procedure was performed, Jones was placed under armed guard in a cell and was not permitted to leave. She was denied access to food, water, and a telephone to contact her family, until she convinced one of her guards to allow her to use his cell phone to telephone her father. Jones' father was eventually able to enlist Congressional assistance to secure Jones' return to the United States.

Jones filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). The EEOC conducted an investigation and determined that Jones had been sexually assaulted by one or more employees, that physical trauma was apparent, and that Halliburton's investigation had been inadequate. Jones filed a demand for arbitration against Halliburton for negligence, negligent undertaking, and gross negligence in relation to the sexual assault. Jones also filed for and received workers' compensation benefits. Upon retaining new counsel, Jones filed the instant action in district court based on the same above claims against Halliburton. Halliburton moved to compel arbitration of Jones' claims and stay the proceedings. The district court granted Halliburton's motion to arbitrate all claims with the exception of: (1) assault and battery; (2) intentional infliction of emotional distress arising out of the alleged assault; (3) negligent hiring, retention, and supervision of employees involved in the alleged assault; and (4) false imprisonment, finding that while the arbitration provision was valid, the four claims mentioned above fell outside the scope of the agreement. Halliburton appealed.

HOLDING: Affirmed and remanded.

REASONING: The court reviewed the case de novo and employed a two-step analysis to determine whether a party may be compelled to arbitrate, by first considering whether the party has agreed to arbitrate the dispute. To determine whether the party agreed to arbitrate a dispute, the court asked (1) whether there was a valid agreement to arbitrate the claims and (2) whether the dispute in question fell within the scope of that arbitration agreement. The court recognized that there is a strong federal policy in favor of arbitration.

Halliburton argued that the dispute was covered by the arbitration agreement because it was related to Jones' employment. While the court agreed that the arbitration agreement was broad, it did not agree that it was unbounded. The court noted that the alleged sexual assault occurred after hours, while Jones