

MAR 25 2009

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
ROBERT ANTHONY KELLY,	)	CASE NO. 08-85727 - MHM
	)	
Debtor.	)	
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	)	
ROBERT ANTHONY KELLY,	)	
	)	
Movant,	)	
v.	)	<b>CONTESTED MATTER</b>
	)	
CHILD SUPPORT SERVICES for the	)	
OFFICE OF THE DISTRICT	)	
ATTORNEY FIRST JUDICIAL	)	
DISTRICT OF GEORGIA,	)	
EASTERN JUDICIAL CIRCUIT,	)	
	)	
Respondent.	)	

**ORDER GRANTING DEBTOR'S MOTION  
 REGARDING REINSTATEMENT OF DRIVING PRIVILEGES**

On January 28, 2009, Debtor filed his *Motion For Order Requiring Child Support Services to File Appropriate Documents to Reinstate Debtor's Driving Privileges*. [Doc. No. 15]. Hearing was held March 12, 2009. Present at the hearing were Debtor, Debtor's attorney, and attorney for the Chapter 13 Trustee, Mandy Campbell. No attorney appeared on behalf of the office of Child Support Services. As a consequence, the court deems the motion unopposed.

At the hearing, Debtor testified regarding the events that led to the suspension of his driver's license; his need for reinstatement; and the provisions in his Chapter 13 plan for payment of his child support arrearage and ongoing payment of his child support obligation. Specifically, Debtor's driver's license was revoked when Debtor became \$7,800 in arrears on payment of child support. Debtor testified that he got behind when he was between jobs in 2008. Debtor is a commercial truck driver and if he is unable to drive, his ability to earn income is significantly limited – so limited that it interferes with his ability to perform under his Chapter 13 plan. Debtor's Chapter 13 plan provides for cure of the arrearage in child support within a very reasonable time.

Pursuant to 11 U.S.C. §362(b)(2)(D), the suspension of Debtor's driver's license is not subject to the automatic stay. Under 11 U.S.C. §105(a), the bankruptcy court has authority to enjoin collection activities when warranted by circumstances. *In re Cobb*, Case No. 05-15204-WHD (Bankr. N.D. Ga. 2006), and cases cited therein. *See also In re Fletcher*, Case No. 11814-WHD (Bankr. N.D.Ga. 2007). Debtor's Chapter 13 plan provides for payment of the \$7,800 arrearage at \$1,000 per month, before payment of any other priority or unsecured claims. Reinstatement of Debtor's driver's license is inextricably intertwined with and critical to the feasibility of his Chapter 13 plan. Debtor's confirmation hearing is scheduled for May 7, 2009. Accordingly, it is hereby

**ORDERED** that Debtor's motion is *granted*: **The Office of Child Support Services is directed to file within five (5) days of the date of entry of this order the appropriate documents to cause reinstatement of Debtor's driver's license.** It is further

ORDERED that if, following confirmation, Debtor defaults on any payment to the Chapter 13 Trustee or to the Office of Child Support Services, then the Chapter 13 Trustee or the Office of Child Support Services may seek dismissal of this case using the following procedure:

(A) Upon delinquency in any payment required of Debtor, either the Chapter 13 Trustee or the Office of Child Support Services shall serve both Debtor and Debtor's counsel of record with written notice of the specific facts of the delinquency (the "Delinquency Notice"); said notice may be contained in a letter but shall

- (1) state that Debtor may cure the delinquency within ten (10) calendar days of receipt of said notice, and
- (2) specifically provide the correct street address for mailing or delivering such payment;

Pursuant to this Order, Debtor shall be presumed to have received the Delinquency Notice on the fifth (5th) calendar day following the mailing of said notice by Counsel for Movant; provided, however, that

- (a) the Delinquency Notice is properly addressed to Debtor at the address of record in this case unless Chapter 13 Trustee or the Office of Child Support Services has received notice in writing of a change in Debtor's address within a reasonable time prior to mailing of the Delinquency Notice; and

(b) the Delinquency Notice is not returned to Chapter 13 Trustee or the Office of Child Support Services by the U.S. Postal Service as undeliverable by reason of improper address.

(B) If Debtor fails to cure the delinquency within ten (10) days of receipt of said written notice, then the Chapter 13 Trustee or the Office of Child Support Services may present to the Court, after service on both Debtor and Debtor's counsel:

- (1) a **motion**, which must contain allegations of the specific facts of the delinquency; provided, however, that, instead of alleging the facts of the delinquency in the motion (the averments of which are subject to Rule 9011), the motion may be accompanied by an affidavit setting forth the specific facts of the delinquency;
- (2) a copy of the **Delinquency Notice**, together with
- (3) a **proposed dismissal order** (the motion, copy of the Delinquency Notice and the proposed order are herein collectively referred to as the "**Delinquency Motion**").

Upon presentation of said Delinquency Motion, the Court **may** enter an order dismissing this case without further notice or hearing.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, and the Chapter 13 Trustee.**

IT IS SO ORDERED, this the 24<sup>th</sup> day of March, 2009.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE