

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CASE NO. 03-92191-JB
: :
LEONARDO SCOTT BURTON : CHAPTER 13
: :
Debtor(s) : JUDGE BIHARY

ORDER

On October 16, 2006, the Court held a hearing on the Chapter 13 Trustee's motion to modify the confirmed plan. At the conclusion of the hearing, Blanche Burton, the debtor's ex-wife who herself is now a debtor in a Chapter 13 proceeding, Case No. 05-95740, stated that she had a motion to file. She then presented the Court with a 15-page pleading styled as a "Motion to Find Ford Motor Company in Contempt for Intentional Violations of the Automatic Stay Pursuant to 11 U.S.C. § 362(h)." The motion is signed "Blanche Burton, pro se."

Ms. Burton has filed a number of motions in this bankruptcy of her ex-husband, and the Court has held a number of hearings and entered several orders pertaining to Ms. Burton's claims against Mr. Burton for alimony and child support and to Ms. Burton's claims against debtor's employer, Ford Motor Company ("Ford"). See Orders entered on April 22, 2005, August 1, 2005, September 22, 2005, and May 22, 2006. The second paragraph of the Order entered on September 22, 2005 on Ford's motion for sanctions against Ms. Burton provided as follows:

2. Counsel for Ms. Burton stated at the hearing that he did not oppose the pre-filing requirement requested by Ford Motor Company in the motion for sanctions. Accordingly, the portion of Ford Motor Company's

motion for sanctions seeking a pre-filing requirement for future filings by Ms. Burton is GRANTED. The Court hereby orders that Ms. Burton is prohibited from filing any document seeking affirmative relief against Ford Motor Company with the Clerk without first obtaining pre-approval from the Court that the filing is meritorious and advances legal issues appropriate for resolution in this Court. Further, Ford Motor Company is hereby relieved of any requirement to respond to any document filed by Ms. Burton with the Clerk until the Court has pre-approved the document for filing in accordance with this Order.

The recent motion proffered by Ms. Burton on October 16, 2006 seeks affirmative relief against Ford and thus requires pre-approval under the terms of the September 22, 2005 Order before Ford is required to file a response.

The first problem with this motion is that it appears to have been prepared by someone other than Ms. Burton, but the identity of the preparer is not disclosed. At the October 16, 2006 hearing, the Court asked Ms. Burton who helped her write this recent motion to hold Ford in contempt. She indicated that she received assistance from a friend who is not an attorney and that the friend was somehow related to a neighbor. However, she was extremely reluctant to provide the name of the person who assisted her in preparing this pleading. Ms. Burton initially appeared in this case *pro se* and was represented by Marilyn Bright until Ms. Bright withdrew as counsel. Ms. Burton's own Chapter 13 case was filed through counsel Stanley Kakol. Considering the history of this case and the Court's September 22, 2005 Order on Ford's sanction motion against Ms. Burton, the Court cannot consider the motion and Ford cannot be required to respond until and unless Ms. Burton identifies all persons assisting her with the preparation of this motion. There may be ethical considerations with respect to this matter, as under Georgia law, the unauthorized practice of law is forbidden. O.C.G.A. § 15-19-51 (2005). If the person helping Ms. Burton turns out to be an attorney, then there is the problem that a licensed attorney should not be preparing

and not signing, or “ghostwriting,” pleadings without fully disclosing his or her identity. *See Duran v. Carris*, 238 F.3d 1268, 1271-72 (10th Cir. 2001); *see also Fitzhugh v. Topetzes*, Civil Action No. 1:04-CV-3258-RWS, 2006 WL 2557921, at *1 n.1 (N.D.Ga. Sept. 1, 2006). An attorney ghostwriting pleadings may also be violating the duty of candor toward the court required by Georgia Rule of Professional Conduct 3.3 and committing professional misconduct involving a misrepresentation under Georgia Rule of Professional Conduct 8.4(a)(4). *Duran*, 238 F.3d at 1272 (citing John C. Rothermich, *Ethical and Procedural Implications of “Ghostwriting” for Pro Se Litigants: Toward Increased Access to Civil Justice*, 67 *Fordham L. Rev.* 2687, 2697 (1999)).

The second problem with the motion is its lack of specificity. Ms. Burton’s recent motion against Ford alleges willful and intentional violations of the automatic stay. She alleges that Ford knew that debtor had been receiving bonuses and that these bonuses were not disclosed to the Chapter 13 Trustee, but she fails to specify any dates or amounts of such bonuses. In order to determine if Ford should be required to respond, Ms. Burton must identify the amounts and dates of any bonuses at issue.

Ms. Burton also states that Ford was repeatedly warned by the Trustee and counsel that Ford’s deductions of union dues, garnishments and other payments violated the automatic stay. She has failed to state who gave such warnings, when those warnings were made, and what deductions were taken that she specifically contends violated the automatic stay under 11 U.S.C. §362(a). She also states that Ford has repeatedly provided the Court with inaccurate earning statements, but fails to identify the date of any such inaccurate earning statements. In order to proceed, Ms. Burton must set forth specifically the dates and amounts of any deductions taken by Ford which she contends violated the automatic stay, she

must set forth with specificity who it is that allegedly warned Ford that these deductions violated the automatic stay, and she must identify by date any alleged inaccurate earnings statement provided by Ford.

Ms. Burton's recent motion also argues that the Settlement Agreement which she entered into with Ford in December of 2004, at which time she was represented by competent counsel, Marilyn Bright, is unconscionable and should be unenforceable. The Court addressed similar contentions in previous orders. See Orders entered on April 22, 2005 and August 1, 2005. Now Ms. Burton alleges on page 10 of her recent motion that her former attorney Ms. Bright, the former Chapter 13 Trustee Mr. Bone, the former Trustee's attorney Ms. Carperos, the debtor's attorney Mr. Johnson, and Ford's attorney Mr. Burgoon would all testify that they had an oral agreement regarding Ms. Burton and her father's credit. She argues that the oral agreement should have been in a recording of the meeting held in Mr. Bone's office, but that the recording and the transcript of the meeting are incomplete as they omit all evidence of the oral agreements made which served as the inducement to sign the settlement agreement. She states that the meeting lasted approximately two and a half hours and yet the audio version provided lasted only 70 minutes. She also states that the written transcript was not a verbatim transcript of the audio provided to her. For this matter to proceed, Ms. Burton must submit affidavits of these individuals to support her contentions and must identify how the transcript provided by the United States Trustee differs from the audio tape provided to her.

The problems in this case stem from the debtor's obligations arising from his divorce from Ms. Burton and the child support provisions in a January 9, 2002 Settlement Agreement between the debtor and Ms. Burton in the divorce proceeding in the Superior

Court of Clayton County. The terms of the Superior Court Agreement tie the debtor's obligations to his income. The Bankruptcy Court has repeatedly advised the parties to go back to Superior Court to resolve any disputes they have with respect to the amounts of the claim and with respect to any post-petition obligations. In fact, in the Court's April 22, 2005 Order, the Bankruptcy Court lifted the automatic stay with respect to any and all claims asserted by Ms. Burton against the debtor. In the Court's August 1, 2005 Order, the Bankruptcy Court again repeated that Ms. Burton is free to return to the Superior Court where the parties obtained their divorce to obtain relief, particularly if she believes there should be some increase in debtor's child support obligations. To put matters simply, Mr. Burton's obligations are what they are as a result of the proceedings in Clayton County, and those obligations are not dischargeable under § 523(a)(5) of the Bankruptcy Code. The Chapter 13 Trustee has distributed funds to Ms. Burton on her claim, the amount and timing of which can be provided by the Chapter 13 Trustee. If Ms. Burton believes that Mr. Burton has not made all the payments as required by their divorce agreement, she would be well-advised to return to the Superior Court of Clayton County and obtain appropriate relief.

In conclusion, before the Court will consider this recent motion by Ms. Burton against Ford, Ms. Burton must supplement her motion with the following information:

1. The name, address and telephone number of the individual(s) who helped Ms. Burton prepare the motion and a statement with respect to whether such individuals are attorneys admitted to practice law in Georgia or any other state;

2. An identification of the amounts and dates of any bonuses received by the debtor from Ford which Ms. Burton believes Ford failed to disclose to the Chapter 13 Trustee;
3. The dates, amounts, and payees of any deductions which Ms. Burton contends were taken by Ford and which Ms. Burton contends violate the automatic stay;
4. The identification of any individuals who allegedly warned Ford that any particular deductions from debtor's paychecks violated the automatic stay;
5. The specific dates of any earning statements provided by Ford which Ms. Burton contends are inaccurate;
6. Affidavits from the individuals which Ms. Burton alleges would testify in support of her motion to hold Ford in contempt; and
7. A clear identification of how the transcript of a meeting provided by the United States Trustee differs in any respect from the audio tape provided to Ms. Burton by the Chapter 13 Trustee.

Ms. Burton has until **December 29, 2006** to file this supplement and she must serve the supplement on counsel for Ford, counsel for the debtor, the debtor, the United States Trustee, and Mary Ida Townson, the Chapter 13 Trustee. The Court will review the filing by Ms. Burton after this deadline to determine whether Ford should be required to respond to the motion.

IT IS SO ORDERED, this 27th day of November, 2006.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I hereby certify that the foregoing Order and Notice of Hearing was mailed to the following:

Leonardo Scott Burton
6434 Abercorn Street
Union City, GA 30291

Dwight R. Johnson, Esq.
Dwight R. Johnson, P.C.
P O Box 1407
Pine Lake, GA 30072

Mary Ida Townson, Esq.
Chapter 13 Trustee
Suite 2700 - Equitable Bldg.
100 Peachtree Street, NW
Atlanta, GA 30303

Blanche Burton
25 Courtney's Lane
Fayetteville, GA 30215

Brian D. Burgoon, Esq.
Sutherland Asbill & Brennan
999 Peachtree Street, NE
Ste. 2300
Atlanta, GA 30309

Guy Gebhardt, Esq.
Office of the United States Trustee
362 Richard Russell Building
75 Spring Street
Atlanta, GA 30303

Kathy Harmon
Judicial Assistant to Judge Bihary

Date: November 27, 2006