

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBER
	:	
TONY JASON COBB,	:	05-15204-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Debtor's "Motion for Child Support Recovery to File Appropriate Paperwork to Reinstate Debtor's Driving Privileges." At issue here is whether the Court has the authority, and if so, whether it should exercise that authority, to require the Office of Child Support Services (hereinafter "OCSS") to cause the Debtor's driver's license to be reinstated, notwithstanding the fact that the continued suspension of the license does not violate the automatic stay. Having heard the Debtor's Motion on May 11, 2006, the Court took the matter under advisement.

FINDINGS OF FACT

On December 20, 2005, the Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code and timely filed all schedules, documents, and a proposed Chapter 13 plan. The Debtor owes unsecured debts in the approximate amount of \$16,200. Much of this amount consists of priority debt for child support and federal taxes. The pre-petition child support arrearage owed is approximately \$9,000. The Debtor also has an ongoing

post-petition child support obligation.

The Debtor's Chapter 13 plan was confirmed by this Court on March 3, 2006. The Plan provides for payments of \$280 per month, which are deducted directly from the Debtor's wages pursuant to an employer deduction order entered in this case on December 21, 2005. The Debtor's post-petition child support payments are also automatically deducted from the Debtor's wages. The Plan provides for payment of the pre-petition child support arrearage in full, prior to the payment of the priority tax claim and the remaining general unsecured claims. At the time of the hearing, the Debtor had tendered funds to OCSS and was prepared to tender funds to the Chapter 13 Trustee that would bring the Debtor substantially current on his plan payments and on his post-petition child support obligation.¹ Prior to filing his Chapter 13 petition, the Debtor fell behind on his child support payments. Consequently, the Debtor was incarcerated in a work-release program and his driver's license was suspended pursuant to section 466(a)(16) of the Social Security Act. Subsequent to the petition date, OCSS caused the Debtor to be released from the work-release program, but has refused to file the necessary documents to cause the Debtor's driver's license to be reinstated. On April 12, 2006 the Debtor filed the instant motion, in

¹ The Debtor became delinquent on both payments because, although the Debtor's employer was deducting the funds from the Debtor's wages, the employer was not submitting the funds to the Chapter 13 Trustee or to OCSS.

which he moves the Court to compel OCSS to do so.² CSR opposes the Motion.

The Debtor works as a cabinet maker. The Debtor's position generally requires that the Debtor deliver cabinets to job sites. Since having his driver's license suspended, the Debtor has been unable to fulfill this part of his job duties. Although the Debtor's employer has been permitting him to perform other duties that do not require him to drive, the Debtor believes that his employer will not continue to do so in the future. The Debtor submits that he could lose his job and that he will not be promoted unless he is able to drive.

Following the amendments made to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,³ section 362(b)(2)(D) provides that the "filing of a petition . . . does not operate as a stay . . . under [section 362(a)] . . . of the withholding, suspension, or restriction of a driver's license . . . , under State law, as specified in section 466(a)(16) of the Social Security Act." 11 U.S.C. § 362(b)(2)(D). Accordingly, OCSS's failure to cause the reinstatement of the Debtor's driver's license upon the filing of

² OCSS has not argued that the Debtor was required by Rule 7001(9) to proceed by way of an adversary proceeding. The Court need not determine whether the Debtor is required to file a complaint to obtain the requested relief because, even if OCSS is entitled to be sued by complaint, the Court hereby concludes that OCSS waived this right by appearing before the Court to argue the merits of the Motion without raising the issue. *See In re Wlodarski*, 115 B.R. 53 (Bankr. S.D.N.Y. 1990) (recognizing that action to determine priority, validity, or extent of a lien requires the filing of an adversary proceeding, but concluding that the matter could be resolved on motion because "no objection to the form of the proceeding" had been made); *In re Szostek*, 93 B.R. 399 (Bankr. E.D. Pa. 1988) (overlooking procedural defect of proceeding by motion because the opposing party had not objected).

³ *See* S. 256, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23 (2005). Most provisions of the BAPCPA apply to cases filed on or after October 17, 2005.

the petition was not a violation of the automatic stay.

Notwithstanding the absence of an automatic stay, the Court has the authority, pursuant to section 105(a), to enjoin collection activities when warranted by the situation. *See Browning v. Navarro*, 743 F.2d 1069, 1084 (5th Cir. 1984) (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 342); *In re Smith*, 301 B.R. 96 (Bankr. M.D. 2003); *In re First Alliance Mortgage Co.*, 264 B.R. 634, 651-52 (C.D. Cal. 2001). The Court finds that this situation warrants doing so. The purpose of the section 362(b)(2)(D) exception to the automatic stay appears to be to protect the rights of support creditors to continue collection efforts, notwithstanding the filing of a bankruptcy petition commencing a bankruptcy case, without being required to obtain relief from the automatic stay. In a Chapter 13 case, a support creditor is therefore protected from the possibility that the debtor's case may not succeed and that the filing of the petition may, whether intended by the debtor or not, unduly prejudice the right to payment of a pre-petition child support arrearage. Under the new exception, the child support creditor is not required to release the suspension of the driver's license upon the filing of a petition, only to have to reinstate the suspension if the debtor's case fails.

Under the facts of this case, the exception to the automatic stay has served its purpose. OCSS has been permitted to continue its collection efforts, such as the continued suspension of the Debtor's driver's license, up until the time the Debtor's Chapter 13 plan was confirmed. OCSS's right to payment of pre-petition child support arrears is protected

by the Debtor's confirmed plan, which requires the Debtor to pay these arrears in full prior to payment of his priority tax debt and unsecured claims.⁴ At the time of the hearing, the Debtor tendered funds to bring current both his Chapter 13 plan payments and his post-petition child support obligation. It appears that payments for both the Chapter 13 plan payment and the post-petition child support obligation are being directly deducted from the Debtor's wages.⁵ This should ensure that, as long as the Debtor remains employed, these obligations will be paid. Under these circumstances, the support creditor's interest is adequately protected without the suspension of the driver's license. In fact, the continued suspension is likely to harm OCSS, as well as the Debtor's other creditors. Accordingly, in this particular case, employing section 105(a) to stay the continued suspension of the Debtor's license would not subvert the purpose of section 362(b)(2)(D) and would further the goal of Chapter 13, which is to assist the debtor's rehabilitation and to repay creditors. In short, an order directing OCSS to cause the reinstatement of the Debtor's driver's license is "necessary" and "appropriate" to carry out the provisions of the Bankruptcy Code and to

⁴ It could be argued that OCSS, which did not object to confirmation of the Debtor's Chapter 13 plan, is bound by the terms of the confirmed plan, which provides for payments of the pre-petition arrearage, and that the plan extinguished any other collection remedies that may be available to OCSS under State law. In *In re Coulter*, 305 B.R. 748 (Bankr. D.S.C. 2003), the bankruptcy court enjoined the continuation of a probation revocation hearing to the extent that the hearing was based on the debtor's failure to pay restitution in accordance with a state court order, as opposed to the terms of the debtor's confirmed plan. The court noted that it had inherent authority, as well as authority under section 105, to enforce confirmation orders. The court further stated that the creditor was bound by the terms of the confirmed plan, pursuant to section 1127.

⁵ The Court also notes that, should the Debtor fail to maintain the post-petition payments, OCSS may also move for the dismissal of the Debtor's case. See 11 U.S.C. § 1307(c)(11).

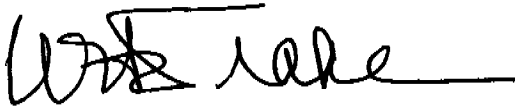
further the implementation of the Debtor's confirmed plan.

For the above-stated reasons, the Debtor's Motion for Child Support Recovery to File Appropriate Paperwork to Reinstate Debtor's Driving Privileges" is **GRANTED**. The Office of Child Support Services is hereby **DIRECTED** to file within 5 days of the entry of this Order the appropriate documents to cause the reinstatement of the Debtor's driver's license.

IT IS FURTHER ORDERED that, if the Debtor defaults on any payment to the Chapter 13 Trustee or to OCSS, upon notice of default sent to the Debtor and the Debtor's attorney, and upon the failure by the Debtor to cure the default within ten (10) days from the service of the notice, OCSS shall be entitled to file an affidavit of default with the Court. Upon the filing of such an affidavit, the Court may terminate the relief granted by this Order or dismiss the Debtor's case without further notice or hearing.

IT IS SO ORDERED.

At Newnan, Georgia, this 1 day of June, 2006.



W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE