



**IT IS ORDERED as set forth below:**

**Date: May 17, 2013**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>IN RE:</b>	:	
	:	Case No. 13-55783-pwb
JAMES CURTIS HIGGINS and	:	
GEORGANNA PEAL HIGGINS,	:	Chapter 7
	:	
Debtors.	:	
	:	

**ORDER ON OBJECTION TO DISBURSEMENT OF GARNISHED FUNDS  
AND DETERMINATION THAT FUNDS ARE PROPERTY OF THE ESTATE**

Michele Williams, as “assignee for King Realty Group, LLC,” filed a pleading in this case called “Order for Objection to Disbursement of Funds.” [Docket No. 17]. Ms. Williams alleges that the plaintiff in a civil action against the Debtor filed a continuing wage garnishment action in the Magistrate Court of Athens-Clarke County on February 19, 2013, against Heyward Allen Toyota, the Debtor’s employer, and the Debtor and that \$375.12 has been paid into that court’s registry.

Ms. Williams further states that the Magistrate Court entered an Order for the

disbursement of the funds to the Debtor in the absence of a timely objection, that she objected and appeared in the Magistrate Court at a hearing on April 22, 2013, and that the Presiding Judge stated that the plaintiff “should file an objection to the Bankruptcy Court.” Ms. Williams has not attached any papers from the Magistrate Court action that would permit the Court to determine whether her description of events in the Magistrate Court is accurate.

Upon the filing of the Debtor’s Chapter 7 case on March 15, 2013, the automatic stay of 11 U.S.C. § 362(a) came into effect. The automatic stay required the garnishor in the garnishment action to take affirmative steps to stop the garnishment with regard to postpetition wages, but it does not necessarily require termination of the garnishment action or a release of funds paid into the Magistrate Court. *See generally In re Johnson*, 479 B.R. 159, 170-72 (Bankr. N.D. Ga. 2012).

Whether the debtor, bankruptcy trustee, or the garnishor is entitled to funds garnished prior to the filing of a bankruptcy case depends on what happens during the bankruptcy case. For example, if a debtor claims the funds as exempt and avoids the garnishment lien under 11 U.S.C. § 522(f), the debtor is entitled to the funds. *Id.* at 178-79. In the meantime, it is appropriate for the garnished funds to remain in the registry of the garnishment court. *Id.* at 171-72 n.56.

Ms. Williams apparently requests that this Court rule on her objection to disbursement of the garnished funds to the Debtor. The Court declines to do so because it is not appropriate for a bankruptcy court to tell another court what to do.

To the extent that Ms. Williams wants this Court to determine that the Debtor is not

entitled to the garnished funds,<sup>1</sup> the court declines to do so because this issue is not properly before the Court at this time. Neither the Debtor nor the Trustee has taken any action with regard to the garnished funds, the garnishment lien, or the judgment lien. No one has requested relief from the automatic stay to permit the garnishment action to proceed.

In these circumstances, the automatic stay of § 362(a) simply remains in place and operates to maintain the status quo pending developments in this bankruptcy case. If the Debtors had properly scheduled an interest in the garnished funds on the bankruptcy schedules they filed in this case, the closing of the case without any party having taken any action with regard to the garnished funds would result in expiration of the automatic stay by operation of law. This is because, under 11 U.S.C. § 554(c), scheduled property that is not administered during the case is abandoned and is not property of the estate, and the automatic stay expires by operation of law with regard to property that is not property of the estate under 11 U.S.C. § 362(c)(1).

It appears, however, that the Debtors did not list the garnishment action in their statement of financial affairs and that they did not schedule an interest in the garnished funds on their schedules of assets. Under 11 U.S.C. § 554(d), property that is not scheduled and is not abandoned remains property of the estate unless the court orders otherwise.

Ms. Williams' filing of her pleading has disclosed the potential interest of Mr. Higgins in the garnished funds as a matter of record in this Court. Accordingly, it is

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<sup>1</sup>Ms. Williams states that the lien on the funds is not avoidable as a preference under 11 U.S.C. § 547 because the aggregate value is less than \$600, see § 547(c)(8), but this does not mean that the Debtor could not exempt the funds and avoid the lien as a judicial lien under 11 U.S.C. § 522(f).

appropriate that the garnished funds be deemed to have been administered in this case upon its closing, regardless of whether the Debtors schedule any interest in the garnished funds or the Trustee formally abandons any interest of the estate in the funds. Consequently, the garnished funds will not be property of the estate upon the closing of this case, and the automatic stay with regard to such funds will terminate at that time.

This determination is without prejudice to: (1) any rights of the Debtors to schedule the funds, claim an exemption in them, and seek to avoid the garnishment and judgment liens relating to the funds; (2) any rights of the Trustee to seek to administer the garnished funds as property of the estate; and (3) any rights of the garnishor to oppose any action by the Debtors or the Trustee to avoid liens or to recover the funds or to seek relief from the automatic stay.

Except to the extent that this Order grants relief with regard to the consequences of the closing of this case upon the garnished funds as property of the estate, the objection to disbursement of funds is denied, without prejudice.

#### **End of Order**

#### **DISTRIBUTION LIST:**

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