

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-3529

Summary Calendar

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IN THE MATTER OF: LINDA VENUS MAYER,  
Debtor,

LINDA VENUS MAYER,

Appellant,

versus

BERNARD J. RICE, III, HOME INSURANCE COMPANY, and  
WILLIAM W. MAYER,

Appellees.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA 93-1245-"E" (2))

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(February 11, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Linda Venus Mayer filed suit in United States Bankruptcy Court, alleging inter alia that defendants William Ward Mayer, her former husband, and Bernard Rice, his attorney, were guilty

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

of civil contempt for violating the automatic stay provisions of 11 U.S.C. § 362 by continuing marital separation proceedings in Louisiana state court after the Mayers had filed a voluntary bankruptcy petition. The bankruptcy court granted summary judgment for the defendants on the civil contempt claim and dismissed Ms. Mayer's other claims for lack of subject matter jurisdiction. The district court affirmed the judgment of the bankruptcy court, and Ms. Mayer now appeals. We affirm the judgment of the district court.

I.

On March 25, 1988, William Ward Mayer filed a petition for separation from bed and board against Linda Venus Mayer in Louisiana state district court based on abandonment and cruel treatment. On April 20, 1988, the Mayers filed a voluntary petition for Chapter 7 relief in the United States Bankruptcy Court. On May 10, 1988, Ms. Mayer signed a personal acceptance of service, which allowed the separation proceeding to go forward. On May 17, 1988, the state district court entered a default judgment of legal separation in favor of Mr. Mayer, finding Ms. Mayer not to be free of legal fault.

Ms. Mayer then filed a petition for divorce in Louisiana state district court on November 15, 1988. In this petition and during the divorce trial, she requested the court to grant her a judgment of divorce based on the judgment of legal separation and the fact that she and her husband had lived separate and apart without reconciliation for six months from the date of that

judgment. The court granted a judgment of divorce in favor of Ms. Mayer and against Mr. Mayer on November 22, 1988.

Four years later, in April 1992, Ms. Mayer filed a petition for nullity in Louisiana state district court, requesting that the court set aside both the judgment of separation and the judgment of divorce. She alleged that the 1988 judgment of separation was null because she was not properly served with citation and the petition, she did not waive service, she was not served with notice of the default judgment, she was incompetent at the inception of the proceedings and not represented by counsel as required by law, and the judgment was obtained by fraud and the "ill practices" of her husband and his attorney, Bernard Rice. She alleged that the judgment of divorce was premature because there was no valid judgment of separation and because the judgment of separation was fraudulently obtained. The state district court denied Ms. Mayer's petition for nullity by granting Mr. Mayer's motion for summary judgment, and the Louisiana Fourth Circuit Court of Appeals affirmed, stating that by relying on the default judgment of separation to obtain her judgment of divorce, Ms. Mayer had accepted the judgment of separation. Ms. Mayer's writ application was denied by the Louisiana Supreme Court on November 19, 1992.

Ms. Mayer also directly appealed both the judgment of legal separation and the judgment of divorce. The Louisiana Fourth Circuit Court of Appeals dismissed Ms. Mayer's appeal on October 2, 1992, based on her "clear acquiescence" to the judgment of

separation. The court of appeals denied her motion for rehearing, and the Louisiana Supreme Court denied her writ application on February 19, 1993.

Before either of these state appeals became final, on September 4, 1992, Ms. Mayer filed suit in the United States Bankruptcy Court for the Eastern District of Louisiana against Mr. Mayer, Rice, and the Home Insurance Co., the professional liability insurance carrier for Rice. She alleged inter alia that Mr. Mayer and Rice had violated the automatic stay provisions of 11 U.S.C. § 362 by continuing with the state court separation proceedings after the Mayers had filed their bankruptcy petition and that the defendants were thus guilty of civil contempt. She also requested the bankruptcy court (1) to nullify the 1988 judgment of separation and declare that she was entitled to back alimony because of the violation of the automatic stay, (2) to award her compensatory and punitive damages, attorney's fees, and costs for alleged violations of 42 U.S.C. § 1983, (3) to award her damages against Rice for his breach of fiduciary duty to her and his participation in the deprivation of her property rights, and (4) to award her damages for violation of unspecified state and federal statutes.

She moved for partial summary judgment on her request to nullify the 1988 judgment of separation. The defendants asserted by cross-motion for summary judgment and/or to dismiss that the automatic stay provisions of 11 U.S.C. § 362 were inapplicable to

the 1988 separation proceeding and that the bankruptcy court lacked jurisdiction over Ms. Mayer's remaining claims.

On January 15, 1993, the bankruptcy court conducted a hearing on the motions. The court then denied Ms. Mayer's motion for partial summary judgment and granted the defendants' motion for summary judgment on Ms. Mayer's civil contempt claim. The court stated that because separation and divorce proceedings were not covered by the automatic stay provision of 11 U.S.C. § 362, the defendants did not violate the automatic stay provisions and hence could not be held in contempt. The court also dismissed the remainder of Ms. Mayer's claims--i.e., that the judgment of separation was void and that because the automatic stay provisions had been violated, she was entitled to alimony, damages under 42 U.S.C. § 1983, and damages from Rice for his breach of fiduciary duty--for lack of subject matter jurisdiction. The court explained that these claims were not significantly connected with the bankruptcy, if they were connected at all, and that Ms. Mayer still had lawsuits pending in state court in which she had addressed these claims.

Ms. Mayer then filed a motion for new trial and a motion for leave to file a third amended and supplemental complaint, both of which the bankruptcy court denied on January 29, 1993. Ms. Mayer appealed to the United States District Court for the Eastern District of Louisiana from the order denying a new trial. The district court, in the interest of judicial economy and because Ms. Mayer was proceeding pro se, treated the appeal as one from

the January 15 order in which the defendants' motion for summary judgment was granted and Ms. Mayer's remaining claims were dismissed. The district court affirmed the judgment of the bankruptcy court on June 22, 1993.

Ms. Mayer then filed a timely notice of appeal. She also moved to strike the appellees' original brief. However, finding that she was not prejudiced in any way by the action of which she complains in her motion, we deny her motion to strike.

## II.

This court reviews findings of fact by the bankruptcy court under the clearly erroneous standard. Allison v. Roberts (In re Allison), 960 F.2d 481, 483 (5th Cir. 1992); Killebrew v. Brewer (In re Killebrew), 888 F.2d 1516, 1519 (5th Cir. 1989). Thus, bankruptcy court "findings of fact will be reversed only if, upon review of the entire evidence, we are left with the definite and firm conviction that a mistake has been made." Allison, 960 F.2d at 483. Conclusions of law, however, are reviewed de novo. Killebrew, 888 F.2d at 1519.

## III.

Ms. Mayer first asserts that the bankruptcy court erred in determining that the automatic stay provisions of 11 U.S.C. § 362 were inapplicable to Louisiana state court separation proceedings. We disagree.

Under § 362, the filing of a bankruptcy petition imposes a stay upon acts and proceedings against the debtor and the estate to protect the relative position of creditors and shield the

debtor from financial pressure during the pendency of a bankruptcy proceeding. S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.), 817 F.2d 1142, 1146 (5th Cir. 1987); Commonwealth Oil Ref. Co., Inc. v. United States Env'tl. Protection Agency, 805 F.2d 1175, 1182 (5th Cir. 1986), cert. denied, 483 U.S. 1005 (1987). The automatic stay provisions of § 362, however, do not apply to an act or proceeding that does not affect property of the debtor's estate. See Edwards v. Armstrong World Industrs., Inc., 6 F.3d 312, 316 (5th Cir. 1993). Thus, in the realm of domestic relations litigation, matters which do not bear on a debtor's economic status, such as the dissolution of the marital relationship, are not stayed under § 362. Rook v. Rook (In re Rook), 102 B.R. 490, 492 (Bankr. E.D. Va. 1989); see Schock v. Schock (In re Schock), 37 B.R. 399, 340 (Bankr. D.N.D. 1984) (finding that state court divorce proceedings between debtor and spouse could proceed, but that the state court could not make a disposition of property of the bankruptcy estate); General Oil Distributors, Inc. v. Charter Int'l Oil Co. (In re General Oil Distributors, Inc.), 33 B.R. 717, 718 (Bankr. E.D.N.Y. 1983) (examining the legislative history of § 362 to determine that divorce or child custody proceedings are generally not related to a bankruptcy case).

Under Louisiana law in effect at the time Mr. Mayer petitioned for separation from bed and board, the legal regime of community property--i.e., the community of acquets and gains--could be terminated by a judgment of separation from bed and

board. LA. CIV. CODE ANN. art. 2356 (West 1985). Such a termination is generally retroactive to the date of the filing of the petition for separation. Id. at comment (c). However, the "termination" brought about by a judgment of separation from bed and board only ends the regime of community property from the effective date of termination. See id. at comment (d) (explaining that "'termination' connotes an ending to a regime of community property for the future"). Thus, the judgment of separation alone merely establishes a legal separation of the spouses without an effect on the community property. As the Louisiana Supreme Court explained:

No change of ownership in community property occurs with the entry of a separation judgment; prior to the judgment, the spouses own an undivided half interest; subsequent to the judgment, the spouses own an undivided half interest.

Davis v. Davis, 420 So. 2d 432, 435 (La. 1982). A judgment of separation thus makes a de jure division of the community without making a de facto partition of community property. Id. Although a partition of community property may be judicially obtained after a judgment of separation has been issued, see LA. REV. STAT. ANN. § 9:2801 (West 1988), no such action was taken in the instant case. The bankruptcy court therefore did not err in determining that because the separation proceedings in the instant case did not affect the property of the debtors' estate, but merely affected the status of the spouses, the automatic stay provisions of § 362 were inapplicable to the separation proceedings. Further, because the automatic stay provisions of



§ 362 were inapplicable, the defendants could not have violated those provisions and could not be held in contempt.

Ms. Mayer also alleges that the bankruptcy court erred in dismissing her remaining claims for lack of subject matter jurisdiction. Again, we disagree.

A bankruptcy court is not a court of general jurisdiction where any matter involving a present or former debtor may be adjudicated. See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 87-88 (1982). A bankruptcy court has jurisdiction of "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334; see Wood v. Wood (In re Wood), 825 F.2d 90, 92-3 (5th Cir. 1987).

None of Ms. Mayer's remaining claims--i.e., that because of the alleged violations of the automatic stay provisions of § 362 she be awarded alimony, damages under 42 U.S.C. § 1983, and damages against Rice for his breach of fiduciary duty--"arise under" the bankruptcy or are "related to" the bankruptcy.<sup>1</sup> Furthermore, inasmuch as she bases these claims on the alleged violation of the automatic stay provisions of § 362, these claims are without merit. The bankruptcy court therefore did not err in dismissing Ms. Mayer's remaining claims.

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<sup>1</sup> We also note that federal courts have long disclaimed jurisdiction over a claim for an award of alimony. See Ankenbrandt v. Richards, 112 S. Ct. 2206, 2210 (1992) (discussing the holding in Barber v. Barber, 62 U.S. (21 How.) 582 (1859)).

V.

Ms. Mayer's motion to strike the appellees' original brief is DENIED. For the reasons discussed above, we AFFIRM the judgment of the district court. Appellees' request for sanctions is denied, but Ms. Mayer is warned that any further frivolous filings will be sanctioned.