

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

<u>In re</u> MARRIAGE OF SHIRLEY GEREBIZZA,	)	Appeal from the Circuit Court of Lake County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 01—D—86
	)	
ALFRED R. GEREBIZZA,	)	Honorable
	)	Joseph R. Waldeck,
Respondent-Appellant.	)	Judge, Presiding.

---

JUSTICE BOWMAN delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice McLaren concurred in the judgment.

**ORDER**

*Held:* Where it is unclear whether the wife's contempt proceeding sought to collect from the husband's non-bankruptcy estate property, cause is remanded for further determination as to whether exception to the automatic stay provision of the Bankruptcy Code applies.

Respondent, Alfred R. Gerebizza, appeals *pro se* the circuit court order dated September 18, 2009, which issued a body attachment against him for his failure to appear in court and his prior indirect civil contempt violations. Respondent argues that under §362 of the Bankruptcy Code (11 U.S.C. §362 (West 2006)), he was entitled to an automatic stay of enforcement of the amount he

owed petitioner, Shirley Gerebizza, pursuant to the judgment of dissolution of their marriage. We vacate the circuit court order and remand the cause for further proceedings.

### I. BACKGROUND

Shirley filed for dissolution of marriage in early 2001. Following years of litigation, the couple reached a settlement agreement on January 26, 2006. Under the terms of that agreement, Alfred was to pay Shirley \$2.5 million in two installments. The first payment of \$1.5 million was due February 15, 2006, and the second \$1 million was due on April 26, 2006. Alternatively, Alfred could make one lump sum payment of \$2.4 million by February 15, 2006. The agreement was later incorporated into the judgment for dissolution of marriage and included the following language:

“C. Based upon the lump sum settlement reached between the parties and the representations made by ALFRED relative to his conveyance to SHIRLEY of \$1,500,000.00 by February 15, 2006 and \$1,000,000.00 by April 26, 2006, SHIRLEY hereby waives all alimony, maintenance and spousal support, whether past, present or future, and hereby stipulates that this agreement, when effective, shall terminate and bar her rights to receive maintenance, alimony or spousal support from ALFRED whether past, present or future.

\* \* \*

G. In full and complete satisfaction of all claims by SHIRLEY against ALFRED for *child support and maintenance arrearages*, continuing maintenance, contribution to debts, contribution to attorneys fees pursuant to 750 ILCS 5/508(a), 750 ILCS 5/508(b) and Supreme Court Rule 219 as well as in consideration for her interest in ALFRED’s business holdings \*\*\*, ALFRED shall remit to SHIRLEY the sum of One Million Five Hundred

Thousand dollars (\$1,500,000) on or before February 15, 2006 and the sum of One Million dollars (\$1,000,000.00) on or before April 26, 2006.” (Emphasis added.)

In addition, the agreement specifically provided that in consideration of the \$2.5 million, Shirley would be responsible for the health care costs not covered by insurance for the couple’s minor child, her own health care expenses, and the minor’s post-secondary educational expenses.

Alfred failed to make the agreed upon payments. This led to the court finding Alfred in indirect contempt of court on March 20, 2006, followed by postdissolution litigation, and additional contempt findings. Alfred appealed an April 26, 2007, trial court order that held him in indirect civil contempt and remanded him into custody, denied his 2—1401 (735 ILCS 5/2—1401 (West 2006)) motion to vacate the dissolution agreement, and denied his motion to stay the contempt proceedings. He also appealed an order denying his section 2—1203 (735 ILCS 5/2—1203 (West 2006)) motion to vacate. Finally, he appealed in a consolidated case number, a circuit court order dated December 11, 2007, which set his appeal bond in the amount of \$500,000. This court affirmed the judgment of the circuit court on all issues. *In re Marriage of Gerebizza*, Nos. 2—07—0436 & 2—08—0039 cons. (2008) (unpublished order under Supreme Court Rule 23).

Following our order, Shirley filed a motion on March 27, 2009, requesting the court release the previous stay order and remand Alfred to the Lake County jail in accordance with its April 27, 2007, finding of indirect civil contempt. Shirley requested the purge amount be set in the full amount owed. On August 12, 2009, the trial court entered an order stating that Alfred filed for bankruptcy on August 11 and granted him seven days to file a motion to stay the proceedings. It ordered Alfred appear in court on August 28. On August 20, 2009, Alfred filed a motion to enforce

an automatic stay pursuant to §362 of the Bankruptcy Code. Per the motion, Alfred filed for bankruptcy in the Southern District of Florida on August 11, 2009.

On August 28, 2009, the trial court noted that Alfred failed to appear in court as previously ordered. His counsel appeared and argued his motion. The court determined that the monies owed to Shirley constituted a “domestic support obligation” and thus the exception to the automatic stay applied. The court ordered Alfred to appear in court on September 18, 2009, at which time the court would hear Shirley’s motion to release the stay and remand Alfred to jail. The court stated that Alfred’s failure to appear “shall result in the issuance of a body attachment.”

Naturally, with a history of disregarding court orders, Alfred did not appear in court on September 18. The trial court issued a body attachment order, with a \$1 million purge amount, for his failure to appear, as well as pursuant to its prior findings of indirect civil contempt. Alfred timely filed his notice of appeal, and we have jurisdiction under Rule 304(b)(5). Ill. S. Ct. R. 304 (eff. Feb. 26, 2010).

## II. ANALYSIS

On appeal, Alfred argues that §362 of the Bankruptcy Code provides an automatic stay on the contempt proceedings and that the trial court erred in issuing the body attachment order in violation of federal law. Shirley, on the other hand, argues that the automatic stay is not applicable to child support and maintenance obligations as provided by the exceptions contained in section 362(b) of the statute. 11 U.S.C. § 362(b) (2006).

We first consider whether the circuit court had jurisdiction to interpret §362. In fact, the circuit court has jurisdiction to determine whether the action pending before it is subject to the stay provided by §362 of the Bankruptcy Code. *In re Weller*, 189 B.R. 467, 471 (E.D. Wis. 1995); *In re*

*Franklin*, 179 B.R. 913, 925 (E.D. Cal. 1995) (“even though a nonbankruptcy court cannot terminate, annul, modify, or condition the automatic stay, it can determine that the automatic stay does not apply, or the extent to which it does apply, to a matter before that court”). Because this issue requires us to construe §362 of the Bankruptcy Code, we review *de novo*. *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010) (statutory construction is reviewed *de novo*).

The automatic stay provisions in §362 of the Bankruptcy Code exist for those who file bankruptcy for the purpose of delaying collection proceedings against the debtors to give those debtors “breathing room.” *In re Collins*, 250 B.R. 645, 663 (N.D.Ill. 2000). Actions taken in violation of the automatic stay are void. *In re Eden*, 405 F.3d 582, 588 (7th Cir. 2005). Section 362 of the Bankruptcy Code provides in relevant part:

“(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], operates as a stay, applicable to all entities, of--

\* \* \*

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

\* \* \*

(b) The filing of a petition under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], does not operate as a stay--

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding--

\* \* \*

(ii) for the establishment or modification of an order for domestic support obligations;

\* \* \*

(B) of the *collection* of a domestic support obligation from property *that is not property of the estate.*” (Emphasis added.) 11 U.S.C. § 362 (b)(2)

(B).

Shirley argues that because the agreement contained language that the \$2.5 million was in consideration of child support and maintenance and arrearages amounts for both that §362(b) excepts collection from the automatic stay provision provided in §362(a). We agree with Shirley that the \$2.5 million constitutes a “domestic support obligation” as defined under the Bankruptcy Code. Section 101 of the Bankruptcy Code (11 USCA § 101 (West 2010)) defines “domestic support obligation” as follows:

“a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

(A) owed to or recoverable by--

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit ) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.” 11 U.S.C. §101 (2006).

The language in the parties' agreement was clear in that the \$2.5 million was covering maintenance and child support, including arrearages already accrued. As Shirley seeks to collect on this prior judgment, we must consider whether the exception to the automatic stay in §362(b)(2)(B) applies.

A closer reading of §362(b) than Shirley articulates provides that in order for a proceeding to qualify for the exception in §362(b)(2), it must be: “1) limited to collection [of the domestic support obligation]; 2) it must be for alimony, maintenance or support; and 3) recovery must be

directed against property that is not property of the estate.” *In re Dexter*, 116 B.R. 92, 93-94 (S.D. Ohio 1990). Although Shirley is correct in stating that §362(b)(2) provides an exception to the automatic stay for some maintenance and child support proceedings, “it clearly does not provide an exception from the automatic stay for *all* actions involving alimony, maintenance, or support.” (Emphasis in original.) *In re Carver*, 954 F.2d 1573, 1576-77 (11th Cir. 1992). For example, some courts have held that the exception applies only to actions for “*collection* of alimony, maintenance, or support, not actions for *modification* of child support.” (Emphases in original.) *Id.*, citing *In re Stringer*, 847 F.2d 549, 552 (9th Cir. 1988). More importantly, §362(b)(2)(B) “expressly limits its coverage to actions seeking ‘property that is not property of the estate.’ ” *Id.* at 1577. Section 541 of the Bankruptcy Code defines the “property of the estate,” which generally includes all the debtor’s property as of the commencement of the bankruptcy estate.<sup>1</sup> *Id.*; see 11 U.S.C. §541 (2006). Therefore, the exception provided in §362(b)(2) is very narrow and is applied only to collection efforts that are made against the property that is *not* property of the bankruptcy estate. *Id.*; see also *In re Johnston*, 321 B.R. 262, 278 (D. Ariz. 2005) (stating so long as collection efforts seek to collect only from non-estate property, they are within §362(b)(2)(B) exception to the automatic stay);

---

<sup>1</sup> The *Carver* court noted that when a debtor files under Chapter 13 of the Bankruptcy Code, the estate also includes property and earnings of the debtor acquired *after* filing for bankruptcy but before disposition of the case. *Carver*, 954 F.2d at 1577. As such, the court stated that the exception in §362(b)(2) “has little or no practical effect in Chapter 13 situations.” *Id.* Alfred alleges in his brief that he filed under Chapter 7 but the record lacks any copies or documents pertaining to his bankruptcy petition or proceedings.

*In re Glabb*, 261 B.R. 170, 174 (W.D. Penn. 2001) (finding that contempt proceeding which sought to collect from non-bankruptcy estate property did not violate automatic stay).

Before considering the facts of our case, we must also consider the courts' treatment of civil and criminal contempt proceedings when determining whether the exception to the automatic stay applies. Courts have consistently held that civil contempt orders fall within the scope of the automatic stay under §362(a) of the Bankruptcy Code but that criminal contempt orders do not. *In re Maloney*, 204 B.R. 671, 674 (E.D.N.Y. 1996). "Criminal contempt orders, which are purely punitive, are outside the scope of the automatic stay whose purpose is to protect the estate for the benefit of creditors and promote the estate's orderly disposition." *Id.* Civil contempt orders are coercive in nature rather than punitive. *In re Wrobel*, 197 B.R. 289, 293 (N.D. Ill. 1996). The finding of civil contempt results from one's failure to do something which the court has ordered for the benefit or advantage of another, and the court acts to compel the contemnor to obey the order. *Id.* In contrast, criminal contempt is an act that disrespects the court or its process, and the court acts to preserve the dignity by punishing the wrongdoer. *Id.*

In this case, we know that Shirley's contempt proceeding sought payment for the prior judgment of \$2.5 million, which we agree constituted a "domestic support obligation" under the Bankruptcy Code. We do not know, however, whether Shirley was seeking payment from non-bankruptcy estate property or from property within the estate. We also do not know what is contained in the bankruptcy estate. We do not have any report of proceeding from the hearing on Alfred's motion to determine whether the court even considered whether Shirley's contempt proceeding sought non-bankruptcy estate property. However, since Shirley was re-instituting her prior contempt proceeding following our decision in Alfred's appeal in the underlying divorce matter

and since the issue is not addressed in the briefs to this court or in the motions filed in the trial court, we presume the issue was not considered. Regarding the contempt order, we find that the order was civil in nature, evidenced by the fact that Alfred had the ability to release himself by paying the purge amount. Thus, in spite of the court's statement that it found him in contempt for failing to appear in court on numerous occasions, Alfred still held the proverbial keys to the jailhouse. Civil contempt orders are not excepted from the automatic stay. Therefore, we vacate the circuit court order and remand the cause to the trial court to fully consider whether Shirley sought to collect from non-bankruptcy estate property.

We note that upon remand, it may be discovered that Alfred has no non-bankruptcy estate property for Shirley to attack within the scope of the exception provided in §362(b)(2). However, Shirley is not without recourse in that event as §362(d) provides an avenue to file for relief from the automatic stay. 11 U.S.C. §362(d) (2006). This relief is sought from the bankruptcy court which has jurisdiction to terminate, modify, annul, or condition the automatic stay. *Franklin*, 179 B.R. at 925. Typically, the federal courts will liberally grant such relief where the matter involves child support or maintenance to avoid entangling itself in family law matters generally left to the state courts. See *Carver*, 954 F.2d at 1578; *In re Trout*, 414 B.R. 916, 920 (S.D. Ga. 2009) (finding relief from stay was warranted where the debtor had “vigorously litigated his divorce and the financial obligations arising therefrom,” had been “hailed into court on more than one occasion and cited for contempt,” had sold real estate and kept the money, and “his contempt for the legitimate processes and orders” of the court was “palpable”); *In re Bunn*, 170 B.R. 670, 674 (D. Minn. 1994) (stating that courts should be willing to grant relief from the automatic stay when the debtor uses bankruptcy as a method of avoiding child support responsibilities). Given Alfred's extensive history using the

litigation process to avoid satisfying his financial obligations to Shirley and his family, his prior contempt findings, repeated changes of attorneys (see generally *Gerebizza*, Nos. 2—07—0436 & 2—08—0039 cons.), and his present failures to appear in court, it would not be out of the realm of possibility that the bankruptcy court would grant relief from the automatic stay in this particular case.

### III. CONCLUSION

For the reasons stated, we vacate the judgment of the circuit court of Lake County and remand for further proceedings consistent with this order.

Order vacated; cause remanded.