

# In the United States Bankruptcy Court

## for the Northern District of Iowa

MARY E. KINSEL  
*Debtor(s).*

Bankruptcy No. 94-61501KW  
Chapter 7

### ORDER RE TRUSTEE'S REPORT ON CLAIMS

Trustee filed his Report on Claims in the above-captioned matter and creditors Clifford Kinsel and Mary I. Kinsel objected. Telephonic hearing on this matter was held November 20, 1996. Debtor Mary E. Kinsel was represented by James Wagner. Attorney James Sheerer represented Clifford Kinsel and Attorney Paul Demro represented Mary I. Kinsel. Trustee Michael C. Dunbar also participated in the hearing. Arguments were presented and the matter was taken under advisement. The parties were given until December 6, 1996 to file briefs. The time for briefing has now passed and the matter is ready for determination. This matter is a core proceeding under 28 U.S.C. §157(b)(2)(B).

#### STATEMENT OF THE CASE

Trustee filed his claims report in Debtor's Chapter 7 case. In the report, he allowed a claim by Clifford Kinsel, a claim by Debtor's attorney, and a claim by David and Cynthia Hershberger. The Trustee's claims report disallowed two claims filed by Mary I. Kinsel.

Clifford Kinsel and Mary I. Kinsel object to the Trustee's disallowance of Mary I. Kinsel's claim. They also request that Clifford Kinsel's claim and Mary I. Kinsel's claim should be paid in full out of proceeds from the sale of Debtor's real estate. They both object to the classification of attorney fees incurred by the Debtor as a secured claim. Additionally, Mary I. Kinsel objects to the allowance of the claim of David and Cynthia Hershberger.

#### STATEMENT OF FACTS

Clifford Kinsel and Debtor Mary E. Kinsel were married. Clifford Kinsel incurred \$32,000.00 in criminal defense costs during his marriage to Debtor, which were advanced by Mary I. Kinsel, Clifford Kinsel's sister. Clifford Kinsel was convicted and subsequently incarcerated for second degree murder. On April 26, 1994, Clifford Kinsel signed an Offer to Confess Judgment in the amount of \$32,000.00 in favor of Mary I. Kinsel which was filed in Black Hawk County District Court. Mary I. Kinsel obtained a judgment against Clifford Kinsel for the \$32,000.00 plus costs and attorney fees which was entered on August 4, 1994 by the District Court.

The marriage of Debtor Mary E. Kinsel and Clifford Kinsel was dissolved by the Iowa District Court for Black Hawk County on July 11, 1994. In the dissolution decree, Clifford Kinsel was awarded his personal property and his pension plan. Debtor was awarded the remainder of the marital property, including a 401K plan and the parties' homestead, subject to the establishment of an account for child support and the payment of all liens and marital indebtedness by Debtor. The decree also required Debtor to pay Clifford Kinsel's attorney fees of \$3,000.00 incurred in the dissolution proceedings. The decree ordered Debtor to immediately liquidate any property necessary to pay all of the marital liabilities, including the debt owed to Mary I. Kinsel, and the \$3,000.00 attorney fees incurred by Clifford Kinsel.

Debtor Mary E. Kinsel filed her Chapter 13 petition on September 15, 1994, listing all of the debts she was ordered to pay in the dissolution decree. Debtor's case was converted from Chapter 13 to Chapter 7 in May, 1995. Trustee filed his

Report on Claims on October 29, 1996. He reported liquidated assets of the estate to be in the amount of \$56,776.85, and an additional asset, the 401K plan, in the approximate amount of \$29,000.00. Trustee allowed \$3,000.00 for the payment of attorney fees to Clifford Kinsel. Trustee reported a claim of \$38,335.00 to Mary I. Kinsel to be disallowed as a result of no documentation. Trustee also disallowed a claim of \$42,105.35 by Mary I. Kinsel on grounds of inadequate documentation and that it was not a claim of Debtor. Trustee reported as a secured claim \$2,500.00 owed to Debtor's attorney, James Wagner. A unsecured claim in the amount of \$5,311.84 held by David and Cynthia Hershberger was allowed by the Trustee.

Clifford Kinsel objected to the Report on Claims. He claims that the obligations which Debtor was ordered to pay in the dissolution decree should be paid as ordered. He asserts that the judgment of Mary I. Kinsel is a lien included in these obligations and should be paid from proceeds from the sale of the homestead. Clifford Kinsel claims that the amount owed to him pursuant to the dissolution decree in the amount of \$3,000.00 should be classified as a secured claim against the proceeds of the real estate and should be paid. He objects to the Trustee's classification of the claim of James Wagner, Debtor's attorney, for \$2,500.00, as secured.

Creditor Mary I. Kinsel objected to the Trustee's report of claims. She claims that the debts incurred by Debtor and Clifford Kinsel to her were reduced to judgment liens prior to bankruptcy and Debtor was ordered to pay these liens in the dissolution decree. The amount of these judgments was documented in the dissolution decree to total \$32,000.00. Mary I. Kinsel has filed no further documentation to support her claims that a higher amount is owed.

Mary I. Kinsel objects to the classification of James Wagner's claim for attorney fees as secured. Finally, she objects to the allowance of \$5,311.84 for the claim of David and Cynthia Hershberger on the grounds that the nature of the debt is unclear and that the debt is not a legal obligation of the Debtor.

Debtor was ordered to establish a child support trust fund in the dissolution decree to provide for support of Debtor's and Clifford Kinsel's two children, Levi D. Kinsel, born June 20, 1980, and Marjorie N. Kinsel, born September 26, 1983. Debtor did not establish this fund before she filed for bankruptcy. Since her dissolution, Debtor has not received any child support payments. She requests that the Court provide for child support payments in its determination of the distribution of her estate.

### **ALLOWABILITY OF MARY I. KINSEL'S CLAIM**

A claim is defined under the Bankruptcy Code as a right to payment. 11 U.S.C. §101(5). A judgment lien, which may be defined as a right to payment, is a claim. In re Derrick, 190 B.R. 346, 356 (Bankr. W.D. Wis. 1995). The bankruptcy court is granted the authority to inquire into any claim asserted against the estate and to disallow the claim if it is without lawful existence. In re Werth, 54 B.R. 619, 623 (D. Colo. 1985).

The grounds upon which the trustee or another party in interest may object to a proof of claim are set forth in 11 U.S.C. §502(b), (d), (e). The general rule provides that a claim may be disallowed if it is a claim unenforceable under any agreement or applicable law against a debtor for a reason other than such claim is contingent or unmatured. Id.; 11 U.S.C. §502(b)(1). Claims may also be disallowed under §502(b) for various reasons. 11 U.S.C. §502(b). None of the reasons for disallowance listed in §502 other than the enforceability of a claim and lack of documentation are at issue in this case.

A claim which is based upon a writing should be filed with the original or a copy of the writing. Fed.R.Bankr.P. 3001(c). A claim filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. Fed.R.Bankr.P. 3001(f); In re Fullmer, 962 F.2d 1463, 1466 (10th Cir. 1992). The person objecting to the claim must negate the prima facie validity of the filed claim. Fullmer, 962 F.2d at 1466. After the prima facie validity of the claim is negated, the evidentiary burden shifts to the claimant to demonstrate that the claim is legitimate. In re Harrison, 987 F.2d 677, 680 (10th Cir. 1993).

If documentation of the claim is missing, the creditor cannot rest on the proof of claim as prima facie evidence of the claim but neither is the creditor forever barred from establishing the claim. In re Stoecker, 5 F.3d 1022, 1029 (7th Cir. 1993). A creditor can be allowed to amend the incomplete proof of claim, which is often denominated an informal proof of claim, to comply with the requirements of Bankruptcy Rule 3001, if other creditors are not harmed by the completion

of the amended filing. Legal harm to other creditors occurs when the failure to file proper documentation with the proof of claim misleads the other creditors. Amendment of a proof of claim is freely permitted if it initially provided adequate notice of the existence, nature, amount of the claim, and the creditor's intent to hold the estate liable. In re Unioil, Inc., 962 F.2d 988, 992 (10th Cir. 1992).

The claim submitted by Mary I. Kinsel included attachments of the Offer to Confess Judgment signed by Clifford Kinsel and the August 4, 1994 Order granting her a judgment in the amount of \$32,000.00 against Clifford Kinsel. All parties stipulate that the dissolution decree which makes the claim of Mary I. Kinsel a legal obligation of Debtor has been admitted as evidence and submitted to the court file. The absence of a copy of the dissolution decree with her proof of claim did not mislead other creditors. Since her proof of claim provided notice of the existence, nature, amount and intent to hold the estate liable, Mary I. Kinsel's claim may be amended to include a copy of Debtor's dissolution decree. As amended, her claim constitutes prima facie evidence that her claim is valid.

Mary I. Kinsel's claim is allowable under §502 if it is enforceable under applicable law. Since it was a claim ordered to be paid by the state court in a dissolution decree, it is enforceable under state law. The remaining issues to be resolved are the priority of the claim of Mary I. Kinsel and the allowable amount.

### **PRIORITY OF MARY I. KINSEL'S CLAIM**

In Iowa, a judgment lien obtained in a district court constitutes a lien upon the real estate owned by the defendant when the judgment is rendered and also upon all real estate the defendant subsequently acquires within ten years from the date of judgment. Iowa Code §624.23(1) (1996). The judgment lien attaches when the judgment of the court is entered if the real estate lies within the county of the court in which the judgment was entered. Iowa Code §624.24 (1996). As a general rule, however, a judgment lien does not attach to property occupied and used as a homestead, regardless of whether such property has been platted or recorded as a homestead. Brown v. Vonnahme, 343 N.W.2d 445, 449 (Iowa 1984).

The judgment lien of Mary I. Kinsel did not attach to the homestead of Debtor and Clifford Kinsel when Clifford Kinsel signed an Offer to Confess Judgment in April, 1994 for two reasons. First, the Offer to Confess Judgment is not a judgment against Clifford Kinsel. The Order granting Mary I. Kinsel a judgment against Clifford Kinsel was not entered until August, 1994. Secondly, no lien attached to the real estate in this dispute in April, 1994 because the property was the homestead of Clifford Kinsel and Debtor. Under Iowa law, no judgment lien attaches to a homestead. Accordingly, Mary I. Kinsel did not have a judgment lien on the real estate prior to the dissolution decree.

When the judgment was recorded in August, 1994 it did not attach to Debtor's homestead because the judgment was not against Debtor. The judgment was only against Clifford Kinsel. Mary I. Kinsel v. Clifford Kinsel, No. LACV 074383, (Iowa Dist. Ct. Black Hawk County, August 4, 1994) (submitted with Mary I. Kinsel's proof of claim). At the time the judgment was entered, Clifford Kinsel no longer had an interest in the real estate to which the judgment could attach. Mary I. Kinsel's claim that the judgment gave her a lien on the property of Debtor is incorrect.

A remaining question is the effect of the dissolution decree on the claim of Mary I. Kinsel. The decretal court had the power under Iowa Code sec. 598.21 to create a lien against the homestead included in the "remaining property" granted to Debtor. The dissolution decree reordered the interests of the parties and granted the remaining property to Debtor subject to the "establishment of the account for child support, and the payment of all liens and marital indebtedness." The specific language of the decree directs a charge against or an interest in the property to secure payment of a debt. As a result, a lien was created by the dissolution decree against all of the property awarded to Debtor in the dissolution. This dissolution lien created by the decree consists of an account for child support, liens and marital indebtedness. None of these three categories is given a specific priority by the dissolution decree. It appears that the trial court assumed that the assets awarded to Debtor were sufficient to satisfy all of these obligations. All three categories of liabilities, child support, liens and marital indebtedness, have equal priority under the dissolution decree and constitute a lien against the property awarded to Debtor.

When the remaining property, including the homestead, was granted to Debtor, the interests had been reordered by the

dissolution decree. Debtor never held Clifford Kinsel's previous interest in the property without it being subject to the lien imposed by the dissolution decree. The decree awarded Debtor "all remaining property of the marriage subject to the establishment of an account for child support and the payment of all liens and marital indebtedness." Kinsel Dissolution Decree, No. EQCD38831, slip op. at 5 (Iowa Dist. Ct. Black Hawk County July 11, 1994). Under Iowa Code sec. 598.21, the lien imposed by the dissolution decree against all property awarded to Debtor in the decree overrides Debtor's homestead exemption. The dissolution lien attaches to Debtor's interest in the entire property granted in the decree, and not only to the one-half joint tenancy interest previously held by Clifford Kinsel.

Mary I. Kinsel claims that her judgment is a lien on the homestead because of the language of the dissolution decree, awarding the Debtor property subject to "liens and marital indebtedness." She asserts that her judgment must constitute a lien upon the real estate because no other lien existed at the time the dissolution decree was entered. This position is misplaced. The decree did not categorize her claim as a lien, but rather listed her claim as a liability along with the other outstanding debts. The decree did not use specific language which can be construed as creating a lien in favor of Mary I. Kinsel superior to that of any other claim. Accordingly, Mary I. Kinsel's claim does not have priority over any other listed liability in the dissolution decree. Her claim is part of the dissolution lien imposed by the decree on the homestead and property awarded to Debtor.

### AMOUNT OF MARY I. KINSEL'S CLAIM

Unmatured interest is not allowable as a claim against a bankruptcy estate pursuant to §502(b)(2). In re Hanna, 872 F.2d 829, 830 (8th Cir. 1989). This provision generally prevents creditors from receiving postpetition interest on their claims in bankruptcy. Id. It does not, however, adversely impact on prepetition interest charges. In re Orsa Assocs., Inc., 106 B.R. 418, 424 (Bankr. E.D. Pa. 1989). The amount of a claim is fixed at the time of the filing of the petition. In re Ridder, 171 B.R. 345, 346 (Bankr. W.D. Wis. 1994). The amount of the claim that may be allowed is for principal and unpaid interest accrued as of that date. Id.; In re Blinks, No. 95-1010KC, slip op. at 2 (Bankr. N.D. Iowa April 19, 1996).

A secured claimant is allowed to recover postpetition interest to the extent that the value of the secured property is greater than the claim. 11 U.S.C. §506(b). This subsection has the effect of denying undersecured creditors postpetition interest on their claims. United Savs. Ass'n. v. Timbers of Inwood Forest Assocs. Ltd., 484 U.S. 365, 373 (1988). Interest on a judgment is recoverable under Iowa Code sec. 535.3 at a rate ten percent per year.

The amount of Mary I. Kinsel's claim is an issue in this matter. Her Objection to Trustee's Report on Claims values her claim at "over \$30,000.00" Both the dissolution decree and Clifford Kinsel's Objection to Trustee's Report on Claims value Mary I. Kinsel's claim at \$32,000.00. The two proofs of claim filed by Mary I. Kinsel list claims in the amount of \$38,335.00 and \$42,105.35 based on the judgment against Clifford Kinsel. The claim on which she will recover under the dissolution decree is valued at \$32,000.00 as of July 11, 1994.

Since the assets awarded to Debtor in the dissolution decree did not satisfy the total of the dissolution lien imposed, the dissolution lien is an undersecured claim. As a result, Mary I. Kinsel may not recover postpetition interest on her claim. Mary I. Kinsel's claim may recover interest prepetition from the date the dissolution decree was entered, July 11, 1994, until the date Debtor filed her petition, September 15, 1994. Interest recoverable during this 66 day period at a rate of ten percent per year totals \$578.63. Mary I. Kinsel's total allowable claim as part of the dissolution lien against property awarded to Debtor in the decree is \$32,578.63.

### ATTORNEY FEES

Both Clifford Kinsel and Mary I. Kinsel object to the classification of the attorney fees of James Wagner as secured in the Trustee's report on claims. During the telephonic hearing, the parties agreed that to the extent the \$3,000.00 attorney fees claimed by James Wagner arose from legal services performed in the context of Debtor's bankruptcy estate, the attorney fees are an administrative expense of the estate. Reasonable attorney fees are allowable as an administrative expense under 11 U.S.C. §503(b)(4). Since no party objected to this classification of attorney fees in the hearing on this matter, the attorney fees of James Wagner in the amount of \$3,000.00 may be classified as an administrative expense.

James Wagner and Clifford Kinsel both submitted claims for attorney fees arising out of the prior dissolution

proceeding. Both fees were listed in the dissolution decree as marital liabilities. Following the same analysis that the decree created a dissolution lien for listed marital liabilities, the attorney fees of James Wagner in the amount of \$2,500.00 and the attorney fees of Clifford Kinsel, payable to his prior attorney David Correll, in the amount of \$3,000.00 are part of the dissolution lien. The claims of James Wagner and Clifford Kinsel arising out of the dissolution have equal priority with the claim of Mary I. Kinsel and other listed marital indebtedness in the dissolution decree.

### **HERSHBERGERS' CLAIM**

A proof of claim executed and filed in accordance with the bankruptcy rules is prima facie evidence of the validity and amount of that claim. Fed.R.Bankr.P. 3001(f); In re Fullmer, 962 F.2d 1463, 1466 (10th Cir. 1992). The person objecting to the validity of the claim must negate the prima facie validity of the filed claim. Fullmer, 962 F.2d at 1463. After the prima facie validity of the claim is negated, the evidentiary burden shifts to the claimant to demonstrate that its claim is legitimate. In re Harrison, 987 F.2d 677, 680 (10th Cir. 1993).

The Trustee allowed the proof of claim filed by David and Cynthia Hershberger in the amount of \$5,311.84. No objection was filed by the Hershbergers. Creditor Mary I. Kinsel objects, but does not allege that the proof of claim was not executed and filed in accordance with the bankruptcy rules. Accordingly, the Hershbergers' claim is prima facie valid. Creditor Mary I. Kinsel has not produced any evidence to negate the validity or amount of the claim. Therefore, the burden of proof does not shift to the Hershbergers, and the claim is presumed valid.

### **CLAIM FOR CHILD SUPPORT**

The Bankruptcy Code's definition of a claim in §101(5) is extremely broad. In re Thomas, 12 B.R. 432, 433 (Bankr. S.D. Iowa 1981); Laws v. United Missouri Bank, 188 B.R. 263, 268 (W.D. Mo. 1995). All legal obligations of the debtor will be dealt with in a bankruptcy case. Thomas, 12 B.R. at 433. The debtor becomes liable for child support payments when the debtor is judicially ordered to pay child support. Id.

A creditor may file a proof of claim. 11 U.S.C. §501(a). A creditor is defined as an entity that had a claim against the debtor that arose prior to the debtor's order for relief. 11 U.S.C. §101(10)(a). The debtor may file a proof of claim for a creditor who does not timely file a proof of claim. 11 U.S.C. §501(c). An informal proof of claim may be amended. In re Stoecker, 5 F.3d 1022, 1029 (7th Cir. 1993). Amendment of an informal proof of claim is freely permitted so long as it initially provided adequate notice of the existence, nature, amount of the claim, and the creditor's intent to hold the estate liable. In re Unioil, Inc., 962 F.2d 988, 992 (10th Cir. 1992).

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, becomes property of the estate only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold. 11 U.S.C. §541(d). The nature and extent of a debtor's interest in property are determined by state law. In re N.S. Garrott & Sons, 772 F.2d 462, 466 (8th Cir. 1985). Under Iowa law, a constructive trust is defined as a "remedial device by which the holder of legal title is held to be trustee for the benefit of another who is entitled to the beneficial interest." In re Estate of Farrell, 461 N.W.2d 360, 361 (Iowa App. 1990).

Congress intended the exclusion created by §541(d) to include funds held in express trusts and constructive trusts. In re Columbia Gas Sys., Inc., 997 F.2d 1039, 1059 (3d Cir. 1993). Where property is subject to a constructive trust, the debtor's estate "holds the property subject to the outstanding interest of the beneficiaries." Connecticut Gen. Life Ins. Co. v. Universal Ins. Co., 838 F.2d 612, 618 (1st Cir. 1988). A bankruptcy court is bound to recognize equitable interests of the beneficiaries when the estate holds funds in trust. N.S. Garrott & Sons, 772 F.2d at 466.

The dissolution decree awarded child support to Debtor. Due to the incarceration of Clifford Kinsel, the dissolution decree awarded Debtor assets to put in an account, and provided that Debtor withdraw money from the account in a specific amount each month as child support for the benefit of the children. Kinsel Dissolution Decree, No. EQCD38831, slip op. at 5 (Iowa Dist. Ct. Black Hawk County July 11, 1994). The dissolution decree also provided that the balance of the account shall be given to Clifford Kinsel upon his release from prison. If Clifford Kinsel is released prior to the depletion of the child support account, the account becomes his property and he shall commence making

monthly child support payments. Id.

Both Clifford Kinsel and the children are beneficiaries of Debtor's legal obligation created in the dissolution decree to establish a child support account. Clifford Kinsel's objection to the Report on Claims and request that Debtor pay all obligations the dissolution decree imposed, constitutes an informal claim for the establishment of a child support account. Debtor's request that the Court provide for child support constitutes an informal claim for child support on behalf of creditors, her children.

The dissolution decree gave Debtor legal title to the property, and the children and Clifford Kinsel entitlement to the beneficial interest in the property. This language constitutes a constructive trust. When the property became property of Debtor's estate upon commencement of her case, the estate took the property subject to the equitable interest of the child support account. Debtor's estate has an interest in the property to the same extent Debtor had at the commencement of the case. The Court must recognize the equitable interests of the beneficiaries against all property awarded to Debtor in the dissolution decree and provide for the payment of child support as ordered by the decree.

### 401K AND CHILD SUPPORT

It is important for bankruptcy courts to avoid incursions into family law matters out of considerations of court economy, judicial restraint, and deference to state courts and their established experience in these matters. In re MacDonald, 755 F.2d 715, 717 (9th Cir. 1985). Bankruptcy courts are without jurisdiction to establish and modify an obligation for child support, In re Harrell, 33 B.R. 989, 995 (D. Ga. 1983), aff'd, 754 F.2d 902 (11th Cir. 1985). "Our society must recognize the needs of children for support and must not compromise that important principle for reasons extraneous to a child's welfare." 132 Cong. Rec. H9002 (daily ed. Oct.2, 1986) (discussing amendments to 11 U.S.C. §523(a)(5) which does not allow the debtor to discharge child support obligations).

Under Iowa law, child support in arrears may not be forgiven. In re Marriage of Phillips, 493 N.W.2d 872, 879 (Iowa App. 1992). Child support payments ordered by the original dissolution decree which have accrued are vested and may not be taken away. Id.; In re Evans, 267 N.W.2d 48, 50 (Iowa 1979). The importance of providing for child support is evident in the Bankruptcy Code also. Child support is given priority status under §507(7).

The state court dissolution decree awarded Debtor the "remaining property subject to the establishment of an account for child support." Kinsel Dissolution Decree, No. EQCD38831, slip op. at 3 (Iowa Dist. Ct. Black Hawk County July 11, 1994). It provides that Debtor set up an account with a value of no less than \$46,400.00 for the payment of child support. Id. Debtor can withdraw \$608.35 per month as long as both children are under the age of eighteen. Id. When only one child qualifies for support, the decree provides that Debtor may withdraw \$456.26 per month. A child ceases to qualify for support when the child reaches age eighteen or graduates from high school, whichever occurs later. Id. The state court decree ordered child support to commence effective July 1, 1994.

Debtor claims that an account similar to the trust account ordered by the state court should be set up in the amount of \$46,400.00. She also requests that the Court provide that she receive child support for the previous 18 months. This back child support totals \$18,250.50.

The total assets of the estate including the 401K total \$85,951.86. This number assumes that the Trustee's report of liquidated assets in the amount of \$56,766.85 does not include the 401K plan in the approximate amount of \$29,185.01, as listed in Exhibit 1 of Clifford Kinsel. A child support account set up in the amount of \$46,400.00 would leave \$39,551.86 in Debtor's estate to divide for expenses and among creditors with claims of \$52,906.84. Since the only expenses which have priority over child support in this case are administrative expenses, child support as set by the dissolution court should be paid in full.

While all creditors may not receive payment of their claims in full, this Court concludes that it should defer to the state court decree awarding child support in view of the state court's established experience in these matters. The lack of jurisdiction of a bankruptcy court to modify an award of child support requires deference to the state court decree. The child support payments which have already accrued are vested and should not be taken away. The dissolution court awarded only legal title of assets to Debtor, and granted an equitable interest for the establishment of child support to the beneficiaries of this award. The Court must not grant the estate greater title in the assets than held by Debtor had at

the commencement of the case. Consequently, the award of child support out of the assets of Debtor as originally provided for in the state court decree should be fulfilled after the payment of administrative expenses, leaving the remainder of the estate for the payment of expenses and creditors.

### **TRUSTEE'S DUTY**

Matters involving liquidation of the estate are the duty of the trustee. In re Impact Pubs., Inc., 24 B.R. 980, 982 (Bankr. N.D. Tex. 1982). The authority of the trustee, however, is subject to judicial oversight in order to ensure that the interests of the bankruptcy estate are served. In re Thinking Machs. Corp., 67 F.3d 1021, 1026 (1st Cir. 1995).

In the present case, objections to the report on claims and the funding of child support are at issue. An objection to a report on claims is a core proceeding under 28 U.S.C. §157(b)(2)(B). Since the Trustee requested in the telephonic hearing that the Court determine the status of child support, this Court concludes that the Trustee seeks a determination of the child support issue by the Court and that the Court is performing within its sphere of judicial oversight in making this determination.

All parties stipulated in the telephonic hearing that if the estate were to liquidate the 401K plan to satisfy general debts of Debtor, tax penalties and expenses would be incurred. The dissolution court also recognized this possibility and provided that if the 401K plan was needed to satisfy obligations imposed in the dissolution lien, Debtor's lawyer should draw up a Qualified Domestic Relations Order (QDRO) to transfer the interest to Debtor. The parties agree that no penalties would be incurred if the 401K was used to fund an account for child support. This Court concludes that allowing the Trustee to apply the 401K plan to fund child support will maximize Debtor's estate. See In re Bequette, 184 B.R. 327, 333 (Bankr. S.D. Ill. 1995) (stating that the Chapter 7 trustee is obligated to enhance the debtor's estate for the benefit of unsecured creditors). Since the estate would receive maximum benefit if the 401K plan was used to fund the child support account, the Court finds that the 401K plan should be applied to finance the child support account.

**WHEREFORE**, the objection to Trustee's disallowance of Mary I. Kinsel's claim is SUSTAINED.

**FURTHER**, Mary I. Kinsel's claim is allowed in the amount of \$32,578.63.

**FURTHER**, the claim of attorney's fees of James Wagner in the amount of \$3,000 is classified as an administrative expense payable under 11 U.S.C. §503(b)(4).

**FURTHER**, attorney's fees for Attorney James Wagner in the amount of \$2,500 arising out of work performed in the dissolution action and attorney's fees to Attorney David Correll in the amount of \$3,000, also as attorney's fees arising out of the dissolution proceedings, are treated as claims and allowed in the stated amounts.

**FURTHER**, the objection by Mary I. Kinsel to the allowance of the claim of David and Cynthia Hershberger is OVERRULED for the reasons set forth in this opinion.

**FURTHER**, the child support obligation ordered under the dissolution decree will be treated as a claim. As the funds were set aside in the dissolution decree, they constitute a constructive trust. The full amount of the child support obligation shall be set aside and funded in accordance with the dissolution decree.

**FURTHER**, consistent with its oversight authority, the Court concludes that the child support trust account should be funded first from the 401K Plan to maximize estate assets.

**SO ORDERED** this 9 day of January, 1997.

PAUL J. KILBURG

Paul J. Kilburg  
U.S. Bankruptcy Judge