

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF  
IOWA

IN RE: )  
 ) Chapter 13  
 PATRICIA A. DEVORE, )  
 ) Bankruptcy No. 01-03558  
 Debtor. )

ORDER RE:

JOSEPH CRAVEN'S OBJECTION TO HOMESTEAD EXEMPTION (Doc. 13) DEBTOR'S OBJECTION TO  
JOSEPH CRAVEN'S PROOF OF CLAIM (Doc. 32) MOTION TO AVOID LIEN (Doc. 65)

This matter came before the Court on March 5, 2002. Debtor Patricia DeVore was represented by attorney Janet Hong. Creditor Joseph Craven was represented by attorney Gregory Epping. After hearing evidence and arguments of counsel, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (K).

**STATEMENT OF THE CASE**

Creditor Joseph Craven's objection to Debtor's homestead exemption and Debtor's objection to Mr. Craven's proof of claim both came on hearing. Debtor also requests the Court avoid Mr. Craven's lien under § 522(f)(1). Although lien avoidance was not on the hearing schedule, Debtor subsequently filed a Motion to Avoid Lien to which Mr. Craven filed an objection. At the hearing on May 2, 2002, the parties agreed to stand on their briefs and arguments in this matter so that lien avoidance issues could be included in this ruling.

Mr. Craven asserts a lien against Debtor's homestead arising from the parties' dissolution proceedings, as well as a claim for indemnity. Debtor argues the indemnity claim was discharged in her prior Chapter 13 case and the lien is avoidable. She also asserts a right to setoff for Mr. Craven's portion of medical bills for the parties' children.

**FINDINGS OF FACT**

On June 13, 1996, Debtor Patricia DeVore and Creditor Joseph Craven were divorced by decree of dissolution of marriage filed in Linn County District Court. In the parties' Stipulation, Debtor agreed to pay an obligation to Helzberg Jewelers of \$3,268, among others. Mr. Craven also agreed to pay certain joint obligations. The Stipulation states: "Each party shall assume and hold the other harmless and indemnify the other from any obligation to pay the debts which each is assuming under the terms of the Stipulation and Settlement." In re Marriage of Craven, Linn County No. CD DM 024061, Stipulation at 12 (Iowa Dist. Ct. June 13, 1996).

The Stipulation also provided that Ms. DeVore would receive the parties' real estate and Mr. Craven would receive a lien on the real estate of \$7,000, representing his equity in the property. The Decree of Dissolution of Marriage specifically approves the Stipulation and states: "[The Stipulation] is incorporated and made a part of this Decree, the same as if it were fully set forth herein." Decree at 2.

According to the Stipulation, Mrs. DeVore was required to provide health insurance for the parties' children "for as long as a support obligation is owed with respect to said children by either party." Stipulation at 8. Further, "[a]ny medical expenses . . . not covered by [Ms. DeVore's] insurance, will be paid by [Mr. Craven] and [Ms. DeVore] equally." Id. Mr. Craven was ordered to pay monthly support. "These payments of support shall commence on the first day

of the first month following entry of this Decree of Dissolution." Id. at 5. The Decree and Stipulation were filed June 13, 1996 in Linn County District Court.

On June 26, 1997, Ms. DeVore filed a Chapter 13 petition. She did not list Mr. Craven as a creditor in her schedules. She did, however, disclose that Mr. Craven was a co-debtor on several debts and she included him on the mailing matrix. Thus, Mr. Craven received all notices in the Chapter 13 case that scheduled creditors received. Mr. Craven did not file a proof of claim or otherwise participate in Debtor's 1997 Chapter 13 case. The Chapter 13 plan, confirmed August 18, 1997, did not refer to Mr. Craven or to his claims. The Helzberg Jewelers debt, which Debtor agreed to pay in the parties' dissolution Stipulation, was scheduled as an unsecured claim. The confirmed plan provided for partial payment of unsecured claims. Helzberg did not file a proof of claim and, thus, did not receive any distribution through the plan. Ms. DeVore eventually completed the payments in her 1997 Chapter 13 case and received a discharge in December 2000.

Also in June 1997, Mr. Craven was sued in Arizona on the Helzberg Jewelers debt. Judgment was entered against Mr. Craven

on August 8, 1997 by agreed order in the total amount of \$4,746.74. Mr. Craven made payments as required by the agreed order and satisfied the judgment with a final payment on June 11, 1998.

Mr. Craven filed contempt proceedings against Debtor in the Linn County District Court on September 5, 2001, based on the Helzberg debt and Debtor's failure to pay Mr. Craven for his lien as the Stipulation requires. Debtor filed the present Chapter 13 case on October 19, 2001, in part to stay the contempt action and determine the parties' respective liabilities in bankruptcy court rather than in the contempt action. Debtor originally filed this as a joint case with her current husband. Mr. DeVore converted his case to Chapter 7 and Debtor has kept her case in Chapter 13.

Debtor asserts Mr. Craven's liability on their children's medical bills is \$1,418.72. She wishes to offset Mr. Craven's claim, if any, by this amount. Mr. Craven concedes that he is responsible for one-half of some of the medical bills relating to the parties' children. He denies any liability on \$415.90 in bills incurred prior to entry of the dissolution decree. He also argues that \$385.95 of the amounts Debtor claims he is jointly responsible for are not sufficiently documented. Thus, Mr. Craven admits to liability on the medical bills of \$1,031.30.

At the hearing, the parties agreed to submit this matter on briefs and exhibits without further evidentiary hearing. The main issues identified at the hearing and in the parties' briefs are: 1) the viability of Mr. Craven's lien on Debtor's exempt homestead; 2) the effect of Debtor's prior Chapter 13 discharge on Mr. Craven's claim based on the Helzberg Jewelers debt and 3) the extent of Mr. Craven's liability for medical bills, arising from the dissolution proceedings or by law, based on Debtor's documentation.

#### **CONCLUSIONS OF LAW**

At the time Debtor filed her first Chapter 13 case in June 1997, she owed debts to Mr. Craven arising from their dissolution proceedings. These included his lien in the amount of \$7,000 against the homestead, as well as the right to indemnity as to Debtor's debt to Helzberg Jewelers. The right to indemnity is a right to be reimbursed if Mr. Craven was actually required to pay Helzberg. See In re Krein, 230 B.R.

379, 386 (Bankr. N.D. Iowa 1999). This is separate from the obligation Debtor owed directly to Helzberg Jewelers. Id. at 383.

The lien from the dissolution case constituted both a statutory judgment lien and a judicial lien under Iowa law. In re Marriage of Hettinga, 574 N.W.2d 920, 923 (Iowa App. 1997).

Judgments are automatic liens against real estate owned by the judgment debtor. Slack v. Mullenix, 66 N.W.2d 99, 101 (Iowa 1955); Iowa Code § 624.23(1). A final, valid and subsisting judgment, by a duly authorized court, for payment of a defined and certain amount constitutes a statutory judgment lien under Iowa Code sec. 624.23(1). Schuling v. Tilley, 454 N.W.2d 899, 900 (Iowa App. 1990). The dissolution court is also authorized to secure future performance by imposing liens which are judicial or equitable liens. Hettinga, 574 N.W.2d at 923.

In the parties' dissolution case, the judgment imposed a \$7,000 lien on Debtor's homestead on Mr. Craven's behalf. Although Mr. Craven's right to indemnity was also included in the dissolution judgment, that right was not in an amount certain and was not included in the judgment lien. Furthermore, the dissolution court did not specifically grant the extraordinary remedy of an equitable lien to secure Debtor's future performance of the hold harmless provisions of the dissolution decree and stipulation.

As a general rule, a cause of action for indemnity accrues or becomes enforceable when legal liability becomes fixed or certain as in entry of a judgment or settlement. Vermeer v. Sneller, 190 N.W.2d 389 (Iowa 1971). The general law of indemnity under a contract holds that no action for indemnity may be maintained until all valid conditions precedent have been met. Cincinnati Ins. Co. v. Konicek, 503 N.W.2d 420, 422 (Iowa 1993).

Mr. Craven's cause of action for indemnity against Debtor had not yet accrued when Debtor filed her first Chapter 13 petition. It was not until Helzberg received its judgment against Mr. Craven that his right to indemnity from Debtor became actionable. This occurred on August 8, 1997, after Debtor filed her Chapter 13 petition and 10 days before the Court confirmed Debtor's Chapter 13 plan.

Mr. Craven's right to indemnity was merely an unsecured, contingent right at the time Debtor filed her first Chapter 13 petition in 1997. Regardless of when a cause of action for indemnity accrues, however, unsecured, contingent rights such as Mr. Craven's are included in the Bankruptcy Code's broad definition of "debt" and "claim". In re Manville Forest Prods. Corp., 209 F.3d 125, 129 (2d Cir. 2000). The right to indemnity is a right to payment which arises when the contract is executed or the order granting the right is entered. Id. The fact that a contingency materializes postpetition merely means that the prepetition claim has moved closer to being liquidated. Id. Thus, Mr. Craven's right to indemnity constituted an unsecured, contingent prepetition claim when Debtor filed her first Chapter 13 bankruptcy case. This right became fixed and liquidated postpetition and preconfirmation.

### DISCHARGE IN CHAPTER 13

Section 1328(a) provides that, after completion of all Chapter 13 payments, "the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502." A debt is "provided for" by the plan where the plan acknowledges the debt, i.e. the plan deals with it, makes provision for it, or refers to it. Rake v. Wade, 508 U.S. 464, 474 (1993); In re Hairopoulos, 118 F.3d 1240, 1243 (8th Cir. 1997). A claim is not "provided for" where the creditor does not receive proper notice in Chapter 13. Hairopoulos, 118 F.3d at 1244.

The Code requires "such notice as is appropriate". 11 U.S.C. § 342(a). Constitutional requirements mandate notice

which provides a meaningful opportunity to be heard and participate in the bankruptcy proceedings. Hairopoulos, 118

F.3d at 1244. In some circumstances a creditor may be discharged because it failed to properly further inquire once it has some notice of bankruptcy proceedings. Id. at 1245. For example, in In re Leber, 134 B.R. 911, 915 (Bankr. N.D. Ill. 1991), a taxing entity, not named in the bankruptcy schedules, received notice of a Chapter 13 case and the plan "provided for" payment of taxes. The court held that the unsecured debt was discharged as the creditor had actual notice of the case in time to protect its interests. Id.; see also In re Greenburgh, 151 B.R. 709, 717-19 (Bankr. E.D. Pa. 1993) (finding that creditor received some notice, though it was of poor quality; court gave equitable remedy of payment to creditor in the same percentage as that received by other unsecured creditors through the plan). In Hairopoulos, the court focused on whether the type of notice given put the IRS on inquiry notice that its claim may be affected. 118 F.3d at 1246 (finding insufficient notice was given where IRS was not given notice of conversion to Chapter 13, although it had received notice of the Chapter 7 no-asset filing).

A Chapter 13 plan which provides generally for payment of unsecured claims "provides for" such claims if they are listed in the bankruptcy schedules. In re Cody, 246 B.R. 597, 599 (Bankr. E.D. Ark. 1999). As to secured claims not provided for in a plan, "[i]f no proof of claim relating to the lien is filed in the bankruptcy case, the lien will not be affected." Harmon v. United States, 101 F.3d 574, 581 (8th Cir. 1996) (considering effect of Chapter 12 plan). A secured creditor who files a proof of claim and participates in the case is not in the same position as one who remains on the sidelines. Id. at 582. For example, where a secured creditor participated in a Chapter 13 case by filing a proof of claim and the claim was provided for in the plan as unsecured, this Court held that the lien, which was not preserved in the plan, was extinguished at confirmation. In re Harnish, 224 B.R. 91, 94 (Bankr. N.D. Iowa 1998).

#### MR. CRAVEN'S CLAIMS

Pursuant to the foregoing, the Court concludes Debtor's 1997 Chapter 13 plan did not "provide for" Mr. Craven's claims. Mr. Craven is not listed as a secured or unsecured creditor. Neither he nor his claims are mentioned in the Chapter 13 plan. He did not file a proof of claim. Although Mr. Craven received notice of the 1997 Chapter 13 case as a co-debtor with Debtor on certain debts, the notice was insufficient to put Mr. Craven on inquiry notice that his claims may be affected. Had Mr. Craven inquired into how his claim may be affected by reviewing the schedules and Chapter 13 plan, it would have appeared that the case had no effect on his lien on Debtor's homestead or on his right to indemnity. This claim for indemnity is separate from the Helzberg Jewelers claim which was discharged in the 1997 Chapter 13 case. In these unusual circumstances, the Court concludes Mr. Craven's \$7,000 lien on Debtor's homestead and his right to indemnity from the parties' dissolution proceedings survived the discharge in Debtor's 1997 Chapter 13 case. Even though Mr. Craven had notice of the case, these claims were not provided for in the plan and were not affected by the discharge. The right to indemnity is now fixed and liquidated by Mr. Craven's payment of the judgment Helzberg Jewelers received against him in the amount of \$4,747.74.

#### HOMESTEAD EXEMPTION AND AVOIDANCE OF LIEN

This Court has repeatedly held that liens created in dissolution proceedings such as Mr. Craven's attach to a debtor's homestead and are not avoidable in bankruptcy. See In re Reinders, 138 B.R. 937, 942 (Bankr. N.D. Iowa 1992) (concluding homestead is not exempt from lien granted in dissolution action); In re Nandell, No. 96-12411-KC, slip op. at 6 (Bankr. N.D. Iowa Dec. 13, 1996) (same); In re Booher, No. 94-10520-KC, slip op. at 5-6 (Bankr. N.D. Iowa Nov. 15, 1994) (same). In sum, a debtor's homestead is not exempt from liens granted in dissolution proceedings. Thus, the lien is not avoidable under § 522(f)(1)(A) because it does not impair an exemption.

Debtor argues this case is distinguishable because the lien was granted in the Stipulation rather than in the Decree. She asserts it is thus a voluntary lien, not a judicial lien. The Court concludes this is a distinction without a difference. The Decree specifically incorporates the Stipulation. Therefore, the Stipulation merges in and constitutes an operable part of the Decree, even though incorporated therein by reference.

Bowman v. Bennett, 250 N.W.2d 47, 50 (Iowa 1977). When the Stipulation merges into the Decree, it is then to be interpreted and enforced as a final judgment of the court, not as a separate contract between the parties. In re Marriage of Von Glan, 525 N.W.2d 427, 430 (Iowa App. 1994). The Court concludes that Mr. Craven's objection to the homestead exemption to the extent of the lien granted in the dissolution proceedings should be sustained. Further, Debtor's motion to avoid Mr. Craven's lien should be denied.

#### SETOFF FOR MEDICAL BILLS

Debtor asserts Mr. Craven is liable for one-half of total medical bills of \$2,837.43, or \$1,418.72. Mr. Craven concedes liability for \$1,031.30 of that amount. He disputes any liability for one-half of the medical bills incurred prior to the dissolution decree totaling \$415.90.

Based on the language of the Stipulation, Debtor was to provide health insurance for the children for as long as a support obligation is owed for the children. Mr. Craven's support payments commenced in the first month following entry of the Decree. Expenses not covered by Debtor's insurance "will be paid by [the parties] equally." The Court concludes that this language mandates Mr. Craven to pay one-half of the medical expenses not covered by insurance during the time he owes support payments, i.e. commencing one month after the Decree was entered. Mr. Craven's liability includes medical expenses arising after the date the decree was entered, June 13, 1996.

He has correctly calculated that \$415.90 of the expenses for which Debtor seeks reimbursement arose prior to the decree. The Court concludes that, pursuant to the decree, Mr. Craven is not liable to pay any of this amount.

Debtor argues that Iowa law imposes liability on Mr. Craven for these expenses regardless of the Decree. See Iowa Code § 597.14 (1996). As Mr. Craven points out, the terms of the Decree and Stipulation govern the parties respective liabilities. Beasley v. Beasley, 159 N.W.2d 449, 452 (Iowa 1968); Iowa Code § 598.21 (1996). The Court concludes that the provisions of the Decree and Stipulation conclusively determine the parties' respective liabilities for medical expenses, making sec. 597.14 irrelevant in this case.

Mr. Craven also disputes liability for one half of medical expenses totaling \$358.95 which he asserts are not sufficiently proved. Debtor has submitted copies of prescription receipts and "Explanations of Benefits" reports from insurance companies for these bills but has not submitted copies of her checks showing payment of the amounts due. The Court has reviewed the documentation for the disputed amounts. All but one of the items disputed is sufficiently evidenced by Debtor to entitle her to reimbursement. The Explanation of Benefits dated 02/19/01 showing "Employee's Responsibility" of \$66.00 indicates it is a duplicate claim. The Court concludes Mr. Craven is not liable for any of this amount. He is liable for one-half of the remaining \$292.95, or \$146.48.

In summary, Debtor concedes liability for medical expenses of \$1,031.30. He is not liable for the \$415.90 medical expenses arising pre-decree. He is liable for \$146.48 of the items he disputes as being insufficiently proved. Thus, his total liability is \$1,177.78, which Debtor is entitled to offset against his claim.

#### CONCLUSIONS

At the time Debtor filed her 1997 Chapter 13 case, Mr. Craven held a lien on Debtor's homestead and a right to indemnity from the parties' dissolution proceedings. Debtor failed to "provide for" these claims and

they survived discharge in Debtor's previous Chapter 13 case. At this time, Mr. Craven holds a lien on Debtor's homestead of \$7,000. He also holds an unsecured claim of \$4,746.74 based on his right to indemnity. Debtor's homestead is not exempt from Mr. Craven's lien and the lien is not avoidable. Mr. Craven owes Debtor \$1,177.78 for his portion of their children's medical expenses. This amount may be offset against Mr. Craven's unsecured claim. Thus, Mr. Craven has a secured claim of \$7,000, which is a lien on Debtor's homestead, and an unsecured claim of \$3,568.96.

**WHEREFORE**, Creditor Joseph Craven's objection to Debtor's homestead exemption (DOC 13) is GRANTED.

**FURTHER**, Debtor's objection to Mr. Craven's proof of claim (DOC 32) is DENIED.

**FURTHER**, Debtor's motion to avoid lien (DOC 65) is DENIED.

**FURTHER**, Joseph Craven holds a secured claim of \$7,000 which is a nonavoidable lien against Debtor's homestead.

**FURTHER**, Joseph Craven holds an unsecured claim of \$3,568.96, which takes into account an offset of \$1,177.78 for medical expenses Mr. Craven owed to Debtor. Thus, Mr. Craven is no longer liable for any of the medical expenses itemized in this matter as arising from the parties' dissolution proceedings.

**FURTHER**, Debtor's homestead is not exempt from Mr. Craven's \$7,000 lien.

**FURTHER**, judgment shall enter accordingly.

**SO ORDERED** this 3rd day of May, 2002.

PAUL J. KILBURG  
CHIEF BANKRUPTCY JUDGE