

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

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August 26, 2003

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Subject: *Graham v. Meinders (In re Meinders)*,  
Adversary No. 02-4062;  
Chapter 13; Bankr. No. 00-40914

Dear Counsel:

The matter before the Court on the record<sup>1</sup> and briefs is whether Plaintiff Delores Graham's claim against Defendants-Debtors Ray and Joy Meinders is nondischargeable under 11 U.S.C. § 1328(a)(3). This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that Plaintiff's claim against Defendant-Debtor Joy Meinders is excepted from discharge under § 1328(a)(3).

*Summary.* The material facts are not in dispute. In 1998, Joy Meinders was convicted in state court of stealing money from her mother, Florence Docken. By order entered January 11, 1999, the criminal court judge gave her *inter alia* a short jail term and probation and ordered her to pay \$90,000 in restitution to her mother's estate. The restitution paid was to be offset by any funds Joy Meinders was to receive from her mother's estate. By order entered April 13, 1999, the criminal court entered a second

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<sup>1</sup> The parties failed to file joint stipulated facts as ordered by the Court.

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order. It denied Joy Meinders' request for a reduction in the restitution amount. The criminal court also provided in the April 13, 1999, order

that pursuant to SDCL § 23A-27-25.6, and to better facilitate the collection of the Restitution amount and Costs Ordered by the Court in this matter, that the Clerk of Courts for Minnehaha County is ordered to docket this Order, and the Judgment filed in this matter as a Civil Judgment for levy and execution thereon.

Joy Meinders and her husband Ray Meinders filed a Chapter 13 petition in bankruptcy on October 30, 2000. Just before a plan was confirmed,<sup>2</sup> Delores Graham, as the special administrator for the Florence Docken Estate, filed an adversary complaint against a bank and Debtors seeking a constructive trust on some realty and also seeking a determination that the restitution claim that it holds is nondischargeable. The claims against the bank and one nondischargeability claim against Debtors were dismissed in an earlier order. Graham's remaining claim was whether the probate estate's claim arising from the criminal restitution order was nondischargeable pursuant to 11 U.S.C. § 1328(a)(3) where the criminal restitution order had been docketed as a civil judgment.

Section § 1328(a)(3) provides:

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided

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<sup>2</sup> Defendants-Debtors' confirmed plan provided that a portion of Florence Docken's estate's judgment was secured by real property. The balance was to be treated as an unsecured claim. The Docken Estate agreed to its treatment as a secured creditor but sought a larger secured claim based on equitable grounds, which it raised in the instant adversary. The confirmed plan, however, while recognizing the Docken Estate's secured claim, fails to specify treatment for that claim. All parties in interest generally understood at the time of confirmation, though not as artfully stated on the record or in the Plan as Confirmed as it could have been, that treatment of the Docken Estate's claim would be further addressed after resolution of the adversary proceeding.

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for by the plan or disallowed under section 502 of this title, except any debt--

.....  
(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.<sup>3</sup>

DISCUSSION. This Court joins other courts in concluding that the docketing of a criminal restitution order as a civil judgment does not remove the claim from under § 1328(a)(3). *Ulwelling v. Dick Wehner Crane Service, Inc. (In re Ulwelling)*, 133 F.3d 923, 1998 WL 42582 (8th Cir. 1998) (a state's decision to allow enforcement of a criminal restitution obligation as a civil judgment does not divest the restitution obligation of its identity as part of the criminal sentence); *Bova v. St. Vincent De Paul Corp. (In re Bova)*, 326 F.3d 300, 302 and 302 n.3 (1st Cir. 2003) (state law that provides that a restitution judgment operates like a civil judgment for enforcement does not mean restitution judgment loses its criminal character) (cites therein); see *Hardenberg v. Virginia Department of Motor Vehicles (In re Hardenberg)*, 42 F.3d 986, 989-92 (6th Cir. 1994) (with 1990 legislation, Congress intended that state criminal restitution orders not be discharged in Chapter 13 cases).

Clearly, § 1328(a)(3) applies to the facts presented here. Debtor was convicted of a crime and was ordered to pay restitution of \$90,000 to the Florence Docken Estate. State law provides that execution of the restitution order may issue like a judgment in a civil action against Debtor Joy Meinders, the convicted defendant. S.D.C.L. § 23A-27-25.6. There is nothing in the state criminal court's use of this statute that altered or supplanted the criminal nature of the restitution order against Debtor Joy Meinders. Accordingly, under § 1328(a)(3) the restitution debt is not dischargeable as to Debtor Joy Meinders.

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<sup>3</sup> As used in § 1328(a)(3), "conviction of a crime" may include a plea of guilty followed by a sentence of probation, despite the absence of the formal entry of a conviction by the criminal court. *Wilson v. Cumis Insurance Society, Inc. (In re Wilson)*, 252 B.R. 739, 741 (B.A.P. 8th Cir. 2000) (citing *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 103 S.Ct. 986, 74 L.Ed.2d 845 (1983)).



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