

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

TELEPHONE (605) 224-0560
FAX (605) 224-9020

May 18, 2001

Dennis C. Whetzal,
Chapter 7 Trustee
Post Office Box 8285
Rapid City, South Dakota 57709

David L. Claggett, Esq.
Counsel for Dan Schlup
522 Main Street
Spearfish, South Dakota 57783

John H. Mairose, Esq.
Counsel for Debtor
2640 Jackson Blvd., #3
Rapid City, South Dakota 57702

Subject: *In re Carlene R. Schulp,*
Chapter 7; Bankr. No. 01-50124

Dear Trustee and Counsel:

Before the Court are Dan Schlup's Motion to Extend Time to File Complaint to Discharge Certain Debts and his Motion for Relief From Stay, both filed May 2, 2001, and Debtor's objection to each. These are core proceedings under 28 U.S.C. § 157(b)(2). As discussed below, the extension motion will be denied. Additional information is needed before a disposition is made regarding the relief motion.

SUMMARY. Based on the present record, Debtor and Dan Schlup have a divorce pending in state court that was commenced pre-petition. Dan Schlup has sought relief from the stay so that he can "pursue any and all claims against [Debtor]" in the divorce action. Debtor has objected on the grounds that the state court does not have jurisdiction to deal with Debtor's assets or liabilities or the dischargeability of particular debts.

Dan Schlup also wants an extension of time in which he may file a non dischargeability complaint. Debtor has objected to that motion on the grounds that Dan Schlup does not presently hold a claim that would give rise to a non dischargeability claim.

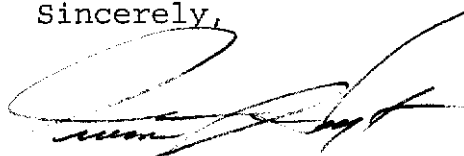
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DISCUSSION. Needless to say, a bankruptcy commenced in the middle of a divorce is not the ideal. While the automatic stay does not stop the divorce court from resolving matters of support or alimony, 11 U.S.C. § 362(b)(2), it does deprive the divorce court of jurisdiction over the debtor's assets and liabilities. In some cases, especially "no asset" Chapter 7 cases, I have granted relief so that the parties may complete the divorce while the bankruptcy case is being administered. That may be an option here. If Trustee Whetzal and counsel agree that there are no assets for him to administer, there is no reason for the divorce to be delayed. Therefore, please confer and advise me by May 25, 2001 whether there are assets for the Trustee to administer. If not, relief from the automatic stay will be entered.

Finally, in this Circuit, a divorce-related claim does not come into existence until the divorce court enters a dispositive order. *Bush v. Taylor*, 893 F.2d 962, 965 (B.A.P. 8th Cir. 1990); *Arleaux v. Arleaux*, 210 B.R. 148, 149-50 (B.A.P. 8th Cir. 1997), *aff'd*, 149 F.3d 1186 (8th Cir. 1998); *Arleaux v. Arleaux (In re Arleaux)*, 229 B.R. 182, 184-86 (8th Cir. 1999); see also *Compagnone v. Compagnone (In re Compagnone)*, 239 B.R. 841, 843 (Bankr. D. Mass. 1999) (setting forth line of cases in accord with *Arleaux*). Accordingly, in this case, though the divorce was commenced pre-petition, Dan Schlup does not hold a pre-petition, divorce-related claim that can be discharged through this bankruptcy proceeding. That renders moot any non dischargeability issues he may have. An order denying his extension motion will be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve copies on parties in interest)

I hereby certify that a copy of this document
was mailed, hand delivered, or faxed this date
to the parties on the attached service list.

MAY 18 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota

By: 

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

MAY 18 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Case: 01-50124 Form id: 122 Ntc Date: 05/18/2001 Off: 3 Page : 1

Total notices mailed: 5

Debtor Schlup, Carlene R. 540 State Street, Spearfish, SD 57783

Aty Mairose, John H. 2640 Jackson Blvd. #3, Rapid City, SD 57702

Trustee Whetzal, Dennis C. PO Box 8285, Rapid City, SD 57709

Aty Claggett, David 522 Main, Spearfish, SD 57783

Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321