

**FILED**

JAN 12 2006

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re:	)	Chapter 7
	)	
DARELL W. JOHNSTON SR. and	)	No. 4-04-bk-05703-JMM
COLEEN D. WISDOM,	)	
	)	Adversary No. 4:05-ap-00109-JMM
_____ Debtors.	)	
	)	<b>MEMORANDUM DECISION</b>
BETSY FOSTER-JOHNSTON,	)	
	)	(Opinion to Post)
Plaintiff,	)	
vs.	)	
	)	
DARELL W. JOHNSTON SR. and	)	
COLEEN D. WISDOM (JOHNSTON),	)	
	)	
_____ Defendants.	)	

The trial in this adversary proceeding was held on January 10, 2006. The Plaintiff was present with her attorney, Michael H. Gottesman; the Debtors appeared *pro se*. After consideration of the evidence and the law, the court now rules.

**PROCEDURE**

The Plaintiff filed this action on March 13, 2005. It sounded in §§ 523(a)(5) and (15) of the Bankruptcy Code. The Defendants answered on April 15, 2005, denying the § 523 allegations and referring to a violation of the automatic stay of § 362(a). Damages under § 362(h) were not specified.

1 **FACTS**

2  
3 The parties were divorced, in Colorado, on July 17, 2001. Child support was awarded to  
4 the Plaintiff in the monthly amount of \$894.74. (Ex. 1, p. 8, para. 20.) Property and debts were also  
5 divided. (Ex. 2.) Spousal maintenance was not awarded to the Plaintiff.

6 In February, 2002, the parties returned to court, on contempt proceedings initiated by the  
7 Plaintiff, concerning arrearages for child support. In those hearings, the court found that Debtor, Darell  
8 W. Johnston, was behind in child support payments by \$4,341.92. (Ex. 8 at 2, para. 5.) The court found  
9 Mr. Johnston to be in contempt, and awarded attorneys' fees to Plaintiff in the sum of \$2,275.23. (Order  
10 of March 6, 2002, Ex. 3.) Later, Mr. Johnston paid the delinquent child support portion, but did not pay  
11 the attorney fee award. (See Exs. A and 6.) The balance currently due thereunder, with accrued interest,  
12 is \$3,009.28. (Ex. 7.)

13 The parties again returned to court in May, 2003, once more on contempt proceedings.  
14 In that action, in addition to acknowledging that the \$2,275.23 award of May 6, 2002 was still unpaid,  
15 the court reaffirmed a prior contempt award of \$2,436.01, and entered an additional award of fees. By  
16 affidavit dated May 22, 2003, those fees and costs were calculated to be \$2,097.99. (Ex. 4.) That latter  
17 sum has now grown, at 8% interest, to \$2,503.55. (Ex. 7.) The previous unpaid award for fees and costs  
18 referred to in paragraph 7(a) of Ex. 4 (\$2,436.01), has now grown to \$3,221.93. (Ex. 7.) The court's  
19 order was dated June 11, 2003. (Ex. 4.)

20 The Debtors filed this chapter 7 bankruptcy petition on November 11, 2004.

21 After bankruptcy was filed, further hearings were conducted by the Colorado State court,  
22 again on contempt proceedings, on December 10, 2004 (Ex. 5). The issue concerned the Debtor, Darell  
23 W. Johnson's, failure to comply with the earlier orders. For those wilful infractions, the court ordered  
24 a jail sentence, plus the payment of \$1,209.93 in attorneys' fees. (Ex. 5.) The last fee award has grown  
25 to \$1,253.25 (Ex. 7).

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1 Consequently, judicial inquiry into the respective hardships of the parties is unnecessary,  
2 and Exs. H and I are not material. No balancing of those relative hardships is required.

3 The Plaintiff's claim on this ground will be dismissed.  
4

5 **Section 362(h)**  
6

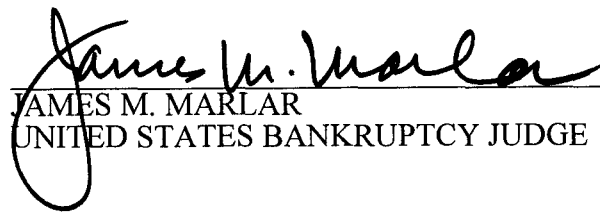
7 Because Plaintiff's enforcement of child support debts, now determined to be non-  
8 dischargeable, occurred post-petition, there was no damage to the Defendants, and such actions have now  
9 been determined to have been lawful. Those matters were never subject to the automatic stay. Section  
10 362(b)(2)(B). Thus any § 362(h) counterclaim is moot, and will be dismissed.  
11

12 **RULING**  
13

14 A separate judgment will be entered which:

- 15 1. Grants Plaintiff a judgment that the Colorado State court orders of March  
16 6, 2002, June 11, 2003, and January 10, 2005 are non-dischargeable  
17 obligations;
- 18 2. Dismisses any claims of the Plaintiff for § 523(a)(15) relief;
- 19 3. Dismisses any claims by the Defendants that the enforcement actions  
20 violated the automatic stay of § 362(a).  
21

22 DATED: January 12, 2006.  
23

24   
25 JAMES M. MARLAR  
26 UNITED STATES BANKRUPTCY JUDGE

1 COPIES mailed this 12  
2 day of January, 2006, to:

3 Michael Gottesman  
4 P.O. Box 30445  
5 Tucson, AZ 85751

6 Darell W. Johnston Sr.  
7 Coleen D. Wisdom (Johnston)  
8 502 8th Street  
9 Fowler, CO 81039

10 Office of the United States Trustee  
11 230 North First Avenue, Suite 204  
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13  
14 By MB Thompson  
15 Judicial Assistant  
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