

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

IN RE:)	
)	
HERBERT G. JONES,)	Case No. 96-10867
)	Chapter 13
Debtor.)	
_____)	
)	
HERBERT G. JONES,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 00-5120
)	
ATTORNEY GENERAL, STATE OF)	
TEXAS, ATTORNEY GENERAL)	
STATE OF ALASKA, ATTORNEY)	
GENERAL, STATE OF KANSAS,)	
STEPHANIE D. GOODSON, ALEASHA)	
JONES, AND SEDGWICK COUNTY)	
COURT TRUSTEE,)	
Defendants.)	
_____)	

MEMORANDUM AND OPINION

Debtor Herbert G. Jones filed this adversary proceeding to determine the dischargeability of certain child support obligations which are the subject of certain reciprocal support enforcement actions commenced in several states. Defendants, the Attorneys General for the states of Texas, Alaska, and Kansas (the "States") seek dismissal of this adversary proceeding for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P.12(b)(1) as it is made applicable to bankruptcy under Fed. R. Bankr. P. 7012 because of their sovereign immunity as preserved by the

Eleventh Amendment .¹ Defendant Sedgwick County Court Trustee (the “Court Trustee”) requests that this Court abstain from deciding the issues outlined in Jones’ complaint. Texas is represented by Arturo Alvarez, Assistant Attorney General for the State of Texas. Alaska is represented by Rhonda F. Butterfield, Assistant Attorney General for the State of Alaska. Kansas is represented by Christopher Burger, Assistant Attorney General for the State of Kansas. Herbert G. Jones, debtor, is represented by co-counsel Cheryl J. Roberts and Mark A. Marion. Stephanie D. Goodson and Aleasha Jones are represented by Jennifer Olsen in her representative capacity as Sedgwick County Deputy Court Trustee. The parties have submitted briefs and after careful review, the Court concludes that the States’ motions to dismiss should be granted.

With respect to defendants Stephanie Goodson, Aleasha Jones and the Sedgwick County Court Trustee, the Court finds that it lacks subject matter jurisdiction to intervene in the state court action and, even if such jurisdiction existed, discretionary abstention pursuant to 28 U.S.C. § 1334(c)(1) is in order.

JURISDICTION

This proceeding is properly before the United States Bankruptcy Court for the District of Kansas because plaintiff is a debtor in this Court and has invoked its core jurisdiction. 28 U.S.C. §157(b)(2)(I); 28 U.S.C. §1334(a). Venue is properly laid in the District of Kansas, Wichita Division. 28 U.S.C. §1409.

¹Technically, the Attorney General of Texas appears for the Attorney General of Texas, Child Support Division. The Attorney General of Alaska appears on behalf of himself and the State of Alaska, Department of Revenue, Child Support Enforcement Division. The Attorney General for Kansas appears on behalf of himself and the Sedgwick County Court Trustee.

FACTS

Herbert G. Jones, debtor, filed this adversary proceeding seeking a determination that his child support obligation to Stephanie Goodson and Aleasha Jones is dischargeable but for approximately \$981.00. In his complaint, Jones also seeks declaratory and injunctive relief against the States and the Court Trustee concerning their respective efforts to collect the child support in question.

Jones and Stephanie Jones, now known as Stephanie Goodson (“Goodson”), were divorced in Alaska on February 27, 1980. Pursuant to the child support order, Jones was directed to pay \$150 per month to Goodson for the support of their daughter, Aleasha Denise Jones (“Aleasha”) beginning April 11, 1980. Jones made his child support payments directly to the Alaska Child Support Enforcement Division (CSED). On May 10, 1982, the Alaska Child Support Enforcement Agency suspended Jones’ child support payments “for lack of sufficient information for enforcement of the Order” because “there have been no payments received under this order and the payee has failed to respond to Agency correspondence.”² Apparently, Goodson and Aleasha left the state of Alaska and thereafter, Jones left Alaska as well.

In March of 1986, the Court Trustee, Gary Jarchow,³ commenced an action (the “State Court Action”) in the District Court of Sedgwick County, Kansas, Family Division, and issued a summons for Jones to appear. The action was captioned “State of Texas and Stephanie D. Goodson, Petitioners, v. Herbert G. Jones, Respondent,” and assigned case number 86 R 59. According to the Order to Appear issued by the Kansas court, the Texas attorney general had

²Notice of Suspension dated May 10, 1982.

³The Court Trustee is “responsible for collection of support from the obligor upon the written request of the obligee or upon the order of the court.” Kan. Stat. Ann. § 23-495.

initiated a Uniform Reciprocal Enforcement of Support proceeding in Travis County, Texas, and that proceeding was transferred to Sedgwick County, Kansas, pursuant to the Uniform Reciprocal Enforcement of Support Act.⁴ Jones asserts that he met with Jarchow in an effort to resolve the matter, but the facts are controverted regarding what, if any, agreement was reached concerning either the amount of the child support he owed or to whom he owed it.⁵ A Journal Entry of Judgment dated March 24, 1986, was filed in the State Court Case, directing Jones to pay \$150.00 per month in child support and \$5.00 per month on an arrearage in child support of \$9,075.00 commencing April 10, 1986.⁶ It is unclear whether Jones' made any child support payments to Goodson pursuant to this order.

Jones filed his Chapter 13 petition on March 20, 1996 and his plan is scheduled to pay out in April 2001. Jones filed an amended Chapter 13 petition and plan on April 21, 2000, to include a child support debt of \$981.00 to Goodson and Aleasha. Thereafter on May 26, 2000, Jones filed

⁴URESAs was repealed by the Kansas Legislature effective July 1, 1995. In its place, the legislature adopted the Uniform Interstate Family Support Act. "Both URESAs and UIFSA were promulgated and intended to be used as procedural mechanisms for the establishment, modification, and enforcement of child and spousal support obligations." Gentzel v. Williams, 25 Kan. App. 2d 552, 556, 965 P.2d 855 (Kan. 1998).

⁵According to Jones, he and Jarchow made an agreement which paralleled the Alaska support order of \$150 per month plus \$5.00 per month for a purported arrearage. They also agreed that there would be no interest regarding any alleged past due payments under the Alaska court order. Jarchow does not exactly remember the events that occurred on March 24, 1986, as evidenced by his deposition taken on April 12, 2000. Jarchow states, "And I don't – quite frankly, I don't remember the exact details of the case. There is no record and I don't know whether it was – whether Mr. Jones agreed to pay this or not or whether he was ordered to pay it. It was one or the other." (Jarchow depo. at 24.) Jarchow also states in his deposition that he cannot remember why Jones was ordered to pay a minimal \$5.00 per month on the purported child support arrearage.

⁶Jones asserts in his statement of facts that the order was entered on March 28, 1986, however the court file stamp on the attached exhibit is illegible and the Court is unable to ascertain for itself what date the March 24, 1986 order was filed.

this Complaint. In it, he seeks this Court's determination of dischargeability of certain child support orders which were entered first in Alaska in 1980, then enforced in Texas and forwarded to Sedgwick County, Kansas for enforcement in the State Court Action. In particular, Jones requests this Court to make findings that Kansas and Texas lacks jurisdiction of both the parties and subject matter of the State Court Action. He also asks this Court to determine if any debt, including interest, is owed to Goodson or Aleasha. On June 5, 2000, the Sedgwick County Court Trustee's Office filed a proof of claim for child support on behalf of Goodson in the amount of \$10,495.70. The States filed Motions to Dismiss. Additionally, the Court Trustee sought stay relief to continue prosecuting the child support claim in Sedgwick County District Court. On August 21, 2000, the Court granted the Court Trustee's motion for relief from stay to allow the parties to litigate the matter of pre-petition child support in the appropriate state court and denied without prejudice the amended plan pending resolution of the dischargeability of the claim in state court.

ANALYSIS

The States assert that they are immune from suit in federal court by a citizen of a foreign state without their consent. They rely on their sovereign immunity which has been preserved by the Eleventh Amendment which provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend XI. Although not expressly stated within the Amendment, an unconsenting state is also "immune from suits brought in federal courts by her own citizens." Edelman v. Jordan, 415 U.S. 651, 662-63, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974). This jurisdictional bar applies regardless of the nature of relief sought. Pennhurst State School & Hospital v. Halderman, 465

U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). In Seminole Tribe of Florida v. Florida, 517 U.S. 44, 58, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996), the Court stated:

[T]he type of relief sought is irrelevant to whether Congress has power to abrogate States' immunity. The Eleventh Amendment does not exist solely in order to "preven[t] federal-court judgments that must be paid out of a State's treasury," *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. 30, 48 (1994); it also serves to avoid "the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties," *Puerto Rico Aqueduct and Sewer Authority*, 506 U.S., at 146 (internal quotation marks omitted).

The majority of courts, including the Tenth Circuit, have held that "an adversary proceeding that names a State as a defendant and summons it to appear in federal court is a suit for Eleventh Amendment purposes, regardless of whether the plaintiff is seeking monetary relief from the State. Chandler v. State of Oklahoma ex rel. Oklahoma Tax Comm'n (In re Chandler), 251 B.R. 872, 875 (10th Cir. B.A.P. 2000). See also Straight v. Wyoming Dep't of Transp. (In re Straight), 248 B.R. 403, 409 n.4 (10th Cir. B.A.P. 2000). An adversary proceeding is deemed a suit because (1) "naming a State as a defendant results in the issuance of a summons against the State thereby subjecting it to the 'indignity' of a required appearance in a judicial tribunal," and (2) the bankruptcy court exercises *in personam* jurisdiction over the State and the resolution is "specifically binding on the State." Chandler, 251 B.R. at 876.

In his dischargeability complaint, Jones first prays for a finding that any judgment entered in the State Court Action is void for lack of jurisdiction and that none of the States have jurisdiction of the case. He then asks this Court to determine whether Jones owes a child support debt and, if so, whether Jones owes the debt to Goodson or Aleasha who has now reached majority. He further asks for a finding that the support debt has accrued no interest, presumably because it is, he says, unliquidated. Although Jones asserts that he proceeds under 11 U.S.C.

§523(a)(5) and (a)(15)⁷, his Complaint and memoranda neither state that the obligations to Goodson and Aleasha Jones are something other than child support nor do they suggest that the obligations are subject to discharge under §523(a)(15). As an adjunct claim, Jones requests an injunction of the States' attorneys general from enforcing the support obligation.

By naming and serving the attorneys general as defendants in this proceeding, Jones has caused this Court to summon these States to appear here, thus exposing them to the "indignity" that the Eleventh Amendment was ratified to prevent. Chandler, 251 B.R. at 876. See also Straight, 248 B.R. at 409 n. 4; University of Va. v. Robertson, 243 B.R. 657, 662-65 (W.D. Va. 2000); Pitts v. Ohio Dep't of Taxation (In re Pitts), 241 B.R. 862, 869-70 (Bankr. N. D. Ohio 1999). Absent valid waiver by the States of their immunity, the Bankruptcy Court lacks jurisdiction of this proceeding.

Nothing in the record suggests a valid waiver by any of the States of their sovereign immunity. Numerous courts have questioned the constitutionality of Congress' attempt to abrogate a State's sovereign immunity by enacting §106(a) and the Tenth Circuit Bankruptcy Appellate Panel held the statute unconstitutional in In re Straight, 248 B.R. at 421. The States may, however, waive their sovereign immunity in a bankruptcy case either under § 106(b) or under common law principles. See Straight, 143 F.3d 1387, 1390 (10th Cir. 1998). Section 106(b) provides, "[a] governmental unit that has filed a proof of claim in the case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which the claim of such governmental unit arose." The States have not filed proofs of claim or otherwise appeared in this case and

⁷All statutory references are to the Bankruptcy Code, Title 11, U.S.C., unless otherwise noted.

cannot be held to have waived their sovereign immunity under §106(b).

Jones cited neither state statutes nor state constitutional provisions that waive the States' sovereign immunity with respect to the dischargeability action and the facts of this case do not point to any involvement in a federal program. Straight, 248 B.R. at 413. There appears to be no common law waiver of sovereign immunity in this case.

Although Jones' memoranda do not directly address the point, his complaint generally alleges violations of his Fourteenth Amendment Due Process and Equal Protection rights by the Court Trustee. These allegations appear to be based upon Jones' assertions that he has not been properly served in the Kansas reciprocal action and that Kansas lacks jurisdiction over him to adjust his child support obligation. Additionally, he named as defendants not the several states as political units, but their attorneys general. This mandates this Court's consideration of the exception to the sovereign immunity rule articulated in Ex parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). In Young, the Supreme Court held that a suit challenging the violation of federal law by a state official acting in his or her capacity as a state official is cognizable in federal court notwithstanding the Eleventh Amendment. Jones has not pleaded facts which, viewed in a light least flattering to the defendants, persuade this Court that any of the States in this matter or the Court Trustee are engaged in a pattern of violation of federal law which would justify invocation of the Young exception to the sovereign immunity doctrines preserved by the Eleventh Amendment. It appears each of the States and the Court Trustee have followed established legal procedures to enforce support orders and, in any event, Jones fails to point to any conduct or procedure on the part of any of the defendants which would call into question his Due Process or Equal Protection rights.

In a futile attempt to demonstrate waiver on the part of all the defendants and bestow

jurisdiction on this Court, Jones argues that the Court Trustee's proof of claim filed on behalf of Goodson, should be deemed to waive the sovereign immunity of the States. No authority of any kind is provided to support this novel proposition and the Court was unable to find any in its research.⁸ Indeed, because the Court Trustee filed its proof of claim for a debt on behalf of Goodson,⁹ and not in an attempt to collect a debt owed to a state, the Court Trustee's filing of the proof of claim can hardly be imputed to the state of Kansas, far less to Texas and Alaska. Nowhere in the record is there any indication that the Court Trustee has any power to waive the immunity of Texas and Alaska. The States' motions to dismiss for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) and Fed. R. Bankr. P. 7012 are therefore GRANTED.

The Court Trustee asks that this Court abstain from this domestic relations case and dismiss the adversary proceeding. The Court Trustee proceeded in the State Court Action as a representative of the defendants Goodson and Aleasha Jones. Jones' proceeding in this Court is better characterized as a motion to reduce the support obligation as determined by the Alaska domestic court than as a dischargeability complaint. After all, Alaska's judgment is merely being enforced in the State Court Case. This adversary proceeding is, in reality, his attempt to modify or appeal that final result in this Court. The Court declines Jones' invitation to sit in review of the

⁸In its supplemental brief, the Texas' Attorney General cites two cases for the proposition that the filing of a proof of claim under § 106(b) by one governmental agency does not constitute a waiver of sovereign immunity by all governmental agencies of that state with respect to the debtor. See In re William Ross, Inc., 199 B.R. 551, 554-55 (Bankr. W.D. Pa. 1996); In re Rocchio and Sons, Inc. v. State of Rhode Island, Dep't of Transp. (In re Rocchio and Sons, Inc.), 165 B.R. 86, 88 (Bankr. D. R.I. 1994). While these cases clarify the issue with respect to Kansas, they do not speak to whether the proof of claim filed by the court trustee should be imputed also to Texas and Alaska.

⁹See Kan. Stat. Ann. § 23-496(a). "The court trustee shall be authorized and empowered to pursue all civil remedies which would be available to the obligee in establishing and enforcing payment of support."

Sedgwick County District Court's decision based on federal comity with state courts.

This proceeding, as it relates to the Court Trustee, begs for application of the Rooker-Feldman doctrine which bars a lower federal court from hearing what amounts to an appeal from the state court's judgment. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983). See also In re Abboud, 237 B.R. 777, 780 (10th Cir. B.A.P. 1999); Williams Natural Gas Co. v. City of Oklahoma City, 890 F.2d 255, 264-65 (10th Cir. 1989), *cert. denied*, 497 U.S. 1003 (1990). This doctrine provides that the jurisdiction to reconsider the underlying bases of state court judgments lies in the appellate courts of the several states and the United States Supreme Court, not in inferior federal tribunals. Because Jones attacks the state court judgment on the merits, this Court cannot intervene and lacks subject matter jurisdiction to render the prayed-for relief.¹⁰

Even if this Court had jurisdiction of the subject matter, discretionary abstention would be proper. The parties do not contest that this Court has jurisdiction over the adversary case pursuant to 28 U.S.C. § 1334(b),¹¹ however the Court Trustee seeks this Court's discretionary abstention under § 1334(c)(1). Section 1334(c)(1) provides for the Court to exercise discretion in abstaining from hearing a particular proceeding arising under Title 11 or arising in or related to a case under

¹⁰Jones' Response dated October 2, 2000 makes numerous references to the state court judgment being "void" for various reasons. Voidness could arguably supply a basis for an objection to the Court Trustee's claim. See Heiser v. Woodruff, 327 U.S. 726, 736, 66 S.Ct 853 (1948), as quoted in Abboud at 782. As noted *infra*, however, this court is not the best suited to consider the issues relevant to a determination of child support amounts and, therefore, is inclined to abstain, deferring to the state court.

¹¹Section 1334(b) provides, "The district court shall have original but not exclusive jurisdiction of civil proceedings arising under title 11, or arising in or related to cases under title 11."

Title 11 “in the interest of justice or in the interest of comity with State courts or respect for State law.” 28 U.S.C. § 1334(c)(1); Franklin Sav. Corp. v. Office of Thrift Supervision, Dep’t of the Treasury, 213 B.R. 596, 601 (D. Kan. 1997)(Courts may abstain from hearing a particular proceeding in the interest of justice.) Discretionary abstention can be invoked at any time. See In re Mills, 163 B.R. 198, 202 (Bankr. D. Kan. 1994)(citing In re Wicecarver, 110 B.R. 957, 959 (Bankr. D. Kan. 1990)). Any decision whether or not to abstain under § 1334(c)(1) is not appealable to either the Court of Appeals or the United States Supreme Court. 28 U.S.C. §1334(d).

Although mandatory abstention is not applicable here, the elements of mandatory abstention are helpful to the court in determining whether to exercise discretionary abstention under § 1334(c)(1). The provisions for mandatory abstention are contained in § 1334(c)(2). If most of the elements of mandatory abstention are present, then courts are often inclined to exercise discretionary abstention. See Board of Dir., Olathe Pub. Library v. Century Office Prod., Inc., 164 B.R. 339, 341 (D. Kan. 1994)(citations omitted).

This case meets many of the requirements for mandatory abstention and an examination of the facts as asserted by Jones convinces this Court that abstention is not only legal, but also is appropriate in this case. The Court Trustee filed a timely motion to abstain. The issues to be decided in this proceeding, the amount of child support owed and who it is owed to, are based upon state law and eminently suited to disposition in the state domestic court arena. The fact that this adversary proceeding “arises under” title 11, 28 U.S.C. § 1334(b), and is a core proceeding since it purports to be action to determine dischargeability, does not preclude this Court’s abstaining. Indeed, Jones’ complaint sounds more in the nature of an objection to claim than an assertion of dischargeability. The amount of child support owed and to whom it is owed are

questions best left to the state court to resolve. Furthermore, this action could not have been commenced in bankruptcy court absent Jones' bankruptcy. Finally, the Court granted the Court Trustee relief from stay on August 21, 2000, to continue prosecuting the State Court Action and the Court is not persuaded that it cannot be timely adjudicated there. Therefore, even if elements remaining in this adversary proceeding do not take this Court beyond Rooker-Feldman's boundaries, the Court respectfully abstains from deciding the proceeding as it relates to the Court Trustee. This Court defers to the District Court of Sedgwick County, Kansas and/or any other Court of competent jurisdiction to determine the amount of support due, the extent to which the support obligation bears interest, and to whom the support is actually owed. This adversary proceeding is accordingly DISMISSED.

The foregoing constitute Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52(a) of the Federal Rules of Civil Procedure. The Judgment on Decision based on this ruling will be entered on a separate document as required by Fed. R. Bankr. P. 9021 and Fed. R. Civ. P. 58.

Dated at Wichita, Kansas this 16th day of October, 2000.

ROBERT E. NUGENT
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **MEMORANDUM AND OPINION** was deposited in the United States mail, postage prepaid on this 16th day of October, 2000, to the following:

U.S. Court Trustee- Jennifer Olsen
525 N. Main; 7th Floor
Wichita, KS 67203

Laurie Williams
328 N. Main; Ste. 200
Wichita, KS 67202

Sedgwick County Court Trustee
c/o Gary Jarchow
525 N. Main; 7th Floor
Wichita, KS 67203

Cheryl J. Roberts
707 N. Waco; Ste. 101-M
P.O. Box 86
Wichita, KS 67201-0086

Herbert G. Jones
P.O. Box 3182
Wichita, KS 67201

Arturo Alvarez
3001 S. Lamar; Ste. 200
Austin, TX 78704

Mark A. Marion
707 N. Waco
Wichita, KS 67203

Rhonda F. Butterfield
State of Alaska; Dept. of Law
1031 W. 4th Ave.; Ste. 200
Anchorage, AK 99501

Stephanie D. Goodson & Aleasha Jones
Office of Attorney General, State of Texas
P.O. Box 12017
Austin, TX 78711

Brenda Staehr
Office of Attorney General, State of Texas
P.O. Box 12017
Austin, TX 78711

Attorney General, State of Kansas
301 W. 10th; 2nd Floor
Topeka, KS 66612-1597

Christopher F. Burger
Asst. Attorney General
Memorial Hall - 2nd Floor
120 SW 10th Ave.
Topeka, KS 66612-1597

Alaska Child Support Enforcement Dept.
c/o Dept. Director
550 W. Seventh Ave; Ste. 110
Anchorage, AK 99501

Attorney General, State of Alaska
1031 W. 4th Ave.; Ste. 200
Anchorage, AK 99501

In re Jones
Case No. 96-10867; Adv. No. 00-5120
Order Granting the Attorneys' General of Texas, Alaska and Kansas Motion to Dismiss
and Granting the Sedgwick County Court Trustee's Motion to Abstain

Sarah L. Newell