



**SO ORDERED.**

**SIGNED this 02 day of June, 2010.**

*Janice Miller Karlin*  
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**JANICE MILLER KARLIN**  
**UNITED STATES BANKRUPTCY JUDGE**

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

**In re:** )  
 )  
**CRAIG MICHAEL ULLRICH,** ) **Case No. 10-40329**  
 )  
**Debtor.** )  
\_\_\_\_\_ )

**ORDER STAYING FURTHER PROCEEDINGS ON ESTRADA CONTEMPT  
MOTION IN DISTRICT COURT OF PUEBLO COUNTY, COLORADO**

This matter is before this Court on the Motion for Order to Appear and Show Cause<sup>1</sup> filed by Debtor, Craig Michael Ullrich. In that motion, Debtor alleges that his former spouse, Susan Estrada, has violated the automatic stay imposed by § 362 of the Bankruptcy Code by acquiring an order in the District Court of Pueblo County, Colorado requiring Debtor to appear there on June 7, 2010.<sup>2</sup> Ms. Estrada’s actions in state court were based upon allegations that Debtor had not fulfilled the financial obligations he agreed to in his the parties’ divorce.

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<sup>1</sup>Doc. 19 filed May 10, 2010.

<sup>2</sup>Order to Issue Citation and Citation to Show Cause signed April 19, 2010 by Judge Larry Schwartz.

The Motion was not accompanied by the parties' divorce decree or underlying documentation to demonstrate the nature of any obligation Debtor owes, or the basis for Ms. Estrada's motion for contempt. The Court thus requested a copy of the underlying divorce documents to determine whether issuance of a show cause order was appropriate. The following documents were then supplied by Debtor's counsel:

1. Verified Motion and Affidavit for Contempt of Court signed by Ms. Estrada;
2. Separation Agreement;
3. Parenting Plan;
4. Affidavit for Decree without Appearance of Parties; and
5. Decree of Dissolution of Marriage (which expressly incorporates the Parenting Plan filed May 26, 2009 and "[a]ny Support Order" entered.

None of these documents is filed of record with the Court, because many of them contain the names of the minor children, and all the parties' Social Security numbers, but the Court has reviewed them in order to determine whether a show cause order should be issued.

A review of these documents shows that Debtor and Ms. Estrada represented themselves in their divorce. In the Parenting Plan, under Section D(a), entitled "Financial Obligations for the Benefit of the Child(ren)," and "Child Support<sup>3</sup> Calculation," it states

The amount of child support agreed to by the parties **is not based** upon the attached Child Support Worksheet which reflects an amount of child support of \$1700.00 per month. Please identify the agreed upon amount and the reasons why you agree to deviate from the amount identified in the Child Support Worksheet. **(The Court must approve any deviation from the guideline amount and will do so only for compelling reasons if this amount is lower than the guideline amount.)**

In some party's handwriting, it is then written:

Craig Michael Ullrich agrees to pay \$1700 a month for mortgage and house insurance, payments will be paid to the 1<sup>st</sup> National Bank of Pueblo for the mortgage on the 1<sup>st</sup> of each month and the house insurance paid to USAA on the 15<sup>th</sup> of each month."

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<sup>3</sup>Emphasis added each time the form uses the term "child support." .

In subsection b of Section D, entitled “Child Support Agreement,” it states “[t]he Father shall pay child support to the Mother in the sum of \$1700 per month beginning on May 1<sup>st</sup> 2009.”

Accordingly, this document would suggest that at least \$1700, and maybe \$1700 times 2, was intended by the parties to be child support, since it is under the Section dealing with “child support,” and the term “child support” is used seven times on the pertinent page.

Debtor’s Motion for Order to Appear, however, is accompanied by a sworn affidavit signed by Craig Michael Ullrich stating he owes “an obligation arising as property settlement agreement in a divorce action....” The affidavit is silent on whether all, or any part, of the \$1700 ordered by the Pueblo County District Court, was in the “nature of ... support ...of such child of the debtor, without regard to whether such debt is expressly so designated.”<sup>4</sup>

Notwithstanding Debtor’s affidavit, a further review of the documents ultimately provided to the Court would tend to suggest, without more, that the \$1700 was not intended to be a property settlement agreement. First, on the first page of the Affidavit for Decree Without Appearance of Parties filed May 28, 2009, in paragraph 4, it states “**There is no marital property to be divided and there are no marital debts and neither party requests spousal support/maintenance.**”<sup>5</sup> Second, the parties’ Separation Agreement provides that “Craig will pay mortgage and insurance on house for next 5 years or until my son [minor child’s name omitted for privacy purposes] graduates college whichever comes first. After 5 years or [name omitted] finishes college, the house will be put up for sale and the profit will be split 50-50 between Craig and Susan.” One could construe this to suggest that the way Mr. Ullrich would support his children was by paying the mortgage for a time

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<sup>4</sup>See 11 U.S.C. § 101(14A), which is the definition of a “domestic support obligation.”

<sup>5</sup>Emphasis in original.

on the home where all three children reside at some point during the year. In other words, it appears that this payment could have been made in lieu of a direct child support payment, but still constituted child support nonetheless.

If the payment is construed as child support, then efforts by Susan Estrada to collect that support may not have been a violation of the automatic stay in this Chapter 7 proceeding. Section 362(b)(2)(B) specifically states that the filing of the bankruptcy petition does not operate as a stay “of the collection of a domestic support obligation from property that is not property of the estate.”<sup>6</sup> The definition of a domestic support obligation includes anything that is “in the nature of alimony, maintenance, or support . . . without regard to whether such debt is expressly so designated.”<sup>7</sup> If Susan Estrada is attempting to enforce a property settlement debt rather than a domestic support obligation, however, then her efforts may well violate the automatic stay imposed by the Bankruptcy Code and she could be liable for damages, including actual damages, attorney fees, and potentially punitive damages.

Because Mr. Ullrich’s affidavit implies, without so stating, that he has no child support obligation, but only a property settlement obligation arising out of the divorce, the Court elected to set the matter for a telephonic hearing. The Court agreed to allow the parties to appear by telephone because of the relative hardship that would be imposed on Ms. Estrada to travel to Kansas for a stay violation hearing, and, similarly, the hardship placed upon Debtor to travel to Colorado for the

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<sup>6</sup>At this stage of the Pueblo County proceedings, the matter is merely set for a hearing. Susan Estrada does, however, indicate that she would like to have a garnishment levied against Debtor’s post-petition wages. Such a garnishment could operate as the collection from property of the estate, if Debtor is successful in converting this case to a Chapter 13 proceeding. He has filed such a motion, objections were due by May 31, 2010, and none were filed.

<sup>7</sup>11 U.S.C. § 101(14A).

contempt proceeding. An order issued May 19, 2010<sup>8</sup> set the matter for a hearing on June 1, 2010, and specifically permitted each party to appear by telephone.

Mr. Ullrich appeared by telephone (with bankruptcy counsel appearing in person, and his Colorado divorce counsel appearing by telephone), but Ms. Estrada did not appear at all. The Court's record shows that Ms. Estrada was mailed a copy of the Order by first class mail at her address of 457 East Scandia Drive, Pueblo CO 81007-1304 AND to another apparently similar address of 457 E. Scandia Dr, Pueblo West CO 81007-1304.<sup>9</sup> Nothing indicates either mailing has been returned by the U.S. Postal Service.

At the hearing, the Court noted that Debtor had filed a Motion to Convert<sup>10</sup> to a Chapter 13 proceeding (which has not been opposed), because, as the Motion states, he “needs a payment plan in order to address the provisions of 11 U .S.C. 523(a)(15).”<sup>11</sup> Debtor's counsel admitted at the hearing that if Debtor is allowed to convert, he will propose a plan that provides that he owes no child support, and that because he contends any other obligation he might have to Susan Estrada is not in the nature of child support, it should thus be discharged upon his completion of any Chapter 13 plan.<sup>12</sup> Since Ms. Estrada has one of the children in her home (and a second who is above the age

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<sup>8</sup>Doc. 25.

<sup>9</sup>Doc. 33.

<sup>10</sup>Doc. 21.

<sup>11</sup>A § 523(a)(15) obligation is one owed to a spouse, former spouse, or child of the debtor that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, but which is expressly not a § 523(a)(5) obligation. Section 523(a)(5) obligations are those for a domestic support obligation, as defined by § 101(14A).

<sup>12</sup>The Court does note that the Pueblo County divorce records show that Debtor agreed to give Ms. Estrada a portion of his Army retirement. The Court is unsure whether Debtor intends to promulgate a plan proposing to discharge that liability, as well.

of majority), and Mr. Ullrich has custody of the third child, the Court supposes it is possible the parties agreed there would be no child support obligation flowing to either parent.

Because this Court will need to determine at some point whether Mr. Ullrich's obligation is "in the nature of" child support, because of the obligations imposed on it to not confirm any plan with provisions that violate the Bankruptcy Code,<sup>13</sup> the Court will use its equitable powers under 11 U.S.C. § 105(a) to stay the contempt proceedings in the District Court of Pueblo County, Colorado until further order of this Court. Although Ms. Estrada failed to appear by telephone, or otherwise, at the hearing, she will nevertheless be given another opportunity to object to any plan that she believes is contrary to the Bankruptcy Code, or to take whatever other legal action she deems appropriate **in this Court**, to protect her interests, or those of her children. With a copy of this Order going to Ms. Estrada, the Court warns Ms. Estrada that further failure to avail herself of the privileges of appearing in this Court to assert her claims against Mr. Ullrich, if any, may serve to forever bar her from pursuing those claims, or Mr. Ullrich, in any court.<sup>14</sup> The Court further admonishes Ms. Estrada that it is likely in her best interest to obtain bankruptcy counsel in Kansas.

IT IS, THEREFORE, ORDERED that the Debtor's Motion for an Order to Show Cause is denied, because this Court cannot definitively determine at this point whether the obligation that is the subject of that proceeding is, or is not, a domestic support obligation. Nevertheless, the Court will stay the District Court of Pueblo County, Colorado from conducting any further proceeding on

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<sup>13</sup>See *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010).

<sup>14</sup>See 11 U.S.C. § 1327, which provides that the provisions of any confirmed plan bind the debtor and each creditor. See also *Espinosa*, 130 S. Ct. at 1380 (holding that a confirmed plan is binding upon the parties regardless of whether the contents of that plan are not in accordance with the Bankruptcy Code).

Susan Estrada's Verified Motion and Affidavit for Citation for Contempt of Court, or any similar proceeding, pending further order from this Court.

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