

**SO ORDERED.**

**SIGNED this 2nd day of May, 2012.**



*Janice Miller Karlin*  
Janice Miller Karlin  
United States Bankruptcy Judge

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

**In re:  
Darren B. Cook  
Susan E. Cook,**

**Case No. 11-41054  
Chapter 7**

**Debtors.**

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**In re:  
Charles Andrew Railsback  
Jennifer Diane Railsback,**

**Case No. 11-41546  
Chapter 7**

**Debtors.**

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**In re:  
Jeremy Allen Roberts  
Sarah Jane Roberts,**

**Case No. 11-41943  
Chapter 7**

**Debtors.**

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**In re:  
Leeandrea Danielle Wolford,**

**Case No. 11-42000  
Chapter 7**

**Debtor.**

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**In re:**  
**Eric Eugene Wright,**

**Debtor.**

**Case No. 11-42052**  
**Chapter 7**

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**In re:**  
**Daryl Martin Downs**  
**Kerry Lynn Downs,**

**Debtors.**

**Case No. 11-42086**  
**Chapter 7**

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**Order Overruling Trustee's Motion for Partial Reconsideration**

This matter is before the Court on Trustee Robert L. Baer's motion for partial reconsideration, filed in each of the above-named cases. The Trustee seeks reconsideration of the Court's April 4, 2012 Order regarding the release of the above-named Debtors' tax refunds. The Court's Order stated, in pertinent part:

Additional objections to exemption challenging the constitutionality of the [Earned Income Tax Credit ("EIC")] exemption are held under advisement, pending resolution of any appeal in [*In re Westby*, Case No. 11-40986]. . . .

The Court previously ordered that the tax refunds in these cases be held in trust, pending the Court's decision on the constitutionality of the EIC exemption. The funds previously held in trust pursuant to the Court's prior orders shall now be released to the Debtors, both in this case and in all cases in which a Trustee has filed an objection to the exemption based on the constitutionality of the EIC.

The Trustee asks for reconsideration of the Court's Order that the EIC refunds held in trust should be released to the Debtors.

The Trustee's motion states two bases for reconsideration. First, the Trustee argues that, because there has been no final order on the objections to exemption in his

cases (because the objections to exemption were taken under advisement pending appeal in *Westby*), there is no basis to permit “turnover of estate property.” However, the requirement to place the refunds in trust in the first instance was a Court-created requirement stemming from a case management order. The Court is free to change its internal procedural handling of these cases at any time.<sup>1</sup>

Second, the Trustee argues that if the appeal in *Westby* is successful, then the debtors would be harmed by “adversary proceedings in which their discharge could be lost.” Basically, the Trustee argues that if the Court’s opinion is reversed and the Trustee’s objections to exemption of the EIC are ultimately sustained, and if the Debtors then did not repay those funds to the estate after a demand, then each of these Debtors would lose their discharge for failure to pay the EIC amount to the Trustee. The Trustee is, therefore, asking that the refunds remain in trust.

If a Debtor spends their tax refund money, and the Trustee’s objections to exemption are ultimately sustained, then the Trustee would simply need to seek turnover. Only if the Debtors had funds and refused to turn them over would the Court be likely to revoke a discharge.<sup>2</sup> The Trustees in this division regularly take payments over time when a party owes money to the estate and does not have ready cash on

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<sup>1</sup> See, e.g., *Clark v. State Farm Mut. Auto. Ins. Co.*, 590 F.3d 1134, 1140 (10th Cir. 2009) (stating that trial courts have “broad discretion to manage their dockets”).

<sup>2</sup> See, e.g., 11 U.S.C. § 727(d) (stating that the “court shall revoke a discharge” when certain delineated situations are present, including if a debtor “knowingly and fraudulently failed . . . to deliver or surrender” property of the estate to a trustee). As a result, it would absolutely not be certain that a discharge would be revoked where a trustee seeks turnover and a debtor is financially unable to immediately come up with funds for payment.

hand. The Court cannot imagine why or how these cases would be different.

Essentially, the Trustee is requesting a stay of the Court's order in *Westby*, alleging that any harm to Debtors from withholding money from them—money this Court has now held is theirs to keep—is outweighed by the “potential loss of discharge should they be unable to immediately remit the EIC” if an appeal in *Westby* changes the current posture of these cases.<sup>3</sup> To the contrary, it is this Court's belief that Debtors are more likely to be harmed by a stay of its Order, and the Trustee is not likely to suffer any irreparable injury. The Debtors, by the very nature of being eligible for the EIC, are low-income wage earners, and experience over time has shown this judge that low-income debtors rely on this money for immediate needs.<sup>4</sup>

**It is, therefore, by the Court ordered** that the Trustee's motion for partial reconsideration is overruled. The Clerk shall docket this order in each of the above-named cases, and transmit a copy of the order to the address of record for the Attorney General.

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<sup>3</sup> The standards for a stay pending appeal are: “(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; (3) whether granting the stay will result in substantial harm to the other parties to the appeal; and (4) the effect of granting the stay upon the public interest.” *Lang v. Lang (In re Lang)*, 305 B.R. 905, 911 (10th Cir. BAP 2004). So in these cases, the Court finds that 1) it is not likely the trustees will prevail on the merits; 2) that it is not likely that the trustees will suffer irreparable injury, or at least 3) that they will sustain less harm than the Debtors in each appeal, and 4) that it is not in the public interest to grant a stay, as that interest has been established by the Kansas legislature when it enacted the EIC exemption.

<sup>4</sup> See *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 864 (1986).