

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re RALPH NORMAND SWEET,	)	
	)	
Debtor.	)	Case No. 6:12-bk-03271-KSJ
	)	Chapter 13
_____	)	
	)	
RALPH NORMAND SWEET,	)	
	)	
Plaintiff,	)	Adversary No. 6:12-ap-00110-KSJ
	)	
vs.	)	
	)	
DONNA J. SWEET	)	
	)	
Defendant.	)	
_____	)	

**ORDER GRANTING DEFENDANT’S MOTIONS TO DISMISS**

Plaintiff and defendant are in the process of getting divorced in Sumter County, Florida.<sup>1</sup> According to plaintiff, the state divorce court awarded defendant temporary use of certain residential property, the Crate-Mills Evans Road Development Project (the “Property”), but required defendant to pay rent for use of the Property.<sup>2</sup> Plaintiff further alleges defendant failed to pay rent to him as required.<sup>3</sup> He filed this adversary proceeding to obtain an accounting of all rent paid and to recover the Property.<sup>4</sup>

Defendant Mrs. Sweet filed two Motions to Dismiss. One motion seeks dismissal alleging improper service.<sup>5</sup> The second Motion to Dismiss asserts the *pro se* Complaint fails to state a

<sup>1</sup> Doc. No. 9.

<sup>2</sup> Doc. No. 1 at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Doc. No. 6.

cause of action under Federal Rule of Civil Procedure 12(b)(6).<sup>6</sup> Plaintiff objects to both motions.<sup>7</sup>

As to the first motion alleging improper service, the record shows plaintiff failed to serve defendant with notice of the Complaint within the fourteen days required by Federal Rule of Bankruptcy Procedure 7004(e).<sup>8</sup> Defendant's Motion to Dismiss for insufficient service of Process is granted. The defect, however, is curable by timely service of an alias summons.

As to the second Motion to Dismiss for failure to state a claim, the Complaint does state a claim for relief. This is a Chapter 13 case. Debtor retains the right to enforce and to collect property of the estate. Because the Complaint alleges defendant may owe debtor money or rent, this Court has jurisdiction to decide the dispute. Therefore, assuming plaintiff's improper service is ultimately fixed, defendant's motion to dismiss is denied.

But, given the Supreme Court's prohibition against deciding family law or probate issues,<sup>9</sup> and the intertwined nature of the plaintiff's complaint to the issues raised in the pending divorce action, the court will abstain from resolving the dispute. Section § 1334(c)(1) of Title 28 of the United States Code provides: "Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under Title 11 or arising in or related to a

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<sup>6</sup> Doc. No. 7.

<sup>7</sup> Doc. Nos. 10–11.

<sup>8</sup> Plaintiff admits he filed the Complaint on June 14, 2012, and admits he served defendant on August 6, 2012. Doc. No. 11.

<sup>9</sup> *Carver v. Carver*, 954 F.2d 1573, 1578 (11th Cir. 1992) (stating "alimony, maintenance, or support are not standard debtor/creditor situations, but involve important issues of family law. Traditionally, the federal courts have been wary of becoming embroiled in family law matters. For that reason, federal courts generally abstain from deciding diversity 'cases involving divorce and alimony, child custody, visitations rights, establishment of paternity, child support, and enforcement of separation or divorce decrees still subject to state court modification.'" (citing *Ingram v. Hayes*, 866 F.2d 368, 369 (11th Cir.1988), and referencing *Simms v. Simms*, 175 U.S. 162, 20 S. Ct. 58, 44 L. Ed. 115 (1899) and *Crouch v. Crouch*, 566 F.2d 486, 487 (5th Cir. 1978)). See also *Ex parte Burrus*, 136 U.S. 586, 593-94, 10 S. Ct. 850, 853, 34 L. Ed. 500 (1890) (holding "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.")).

case under Title 11.”<sup>10</sup> The court may abstain on its own motion, or upon request of a party in interest.<sup>11</sup> The abstention provisions of the Code demonstrate Congress’s intent that “concerns of comity and judicial convenience should be met, not by rigid limitations on the jurisdiction of federal courts, but by the discretionary exercise of abstention when appropriate in a particular case.”<sup>12</sup> Here, given the relationship between the plaintiff’s complaint and the pendency of the divorce action, abstention is proper. The Court’s order lifting the automatic stay stands continues in effect.<sup>13</sup> Accordingly, it is

**ORDERED:**

1. Defendant’s Motion to Dismiss for Insufficient Service of Process (Doc. No. 6) is granted.
2. This adversary proceeding is dismissed.
3. Although defendant’s Complaint states a claim and defendant’s alternate motion to dismiss (Doc. No. 7) is denied, the Court will abstain from hearing the parties’ dispute. The state court is the proper forum to resolve the issues in connection with the pending divorce action. The automatic stay arising under § 362 of the Bankruptcy Code is modified for all purposes to allow the state court to proceed.

DONE AND ORDERED in Orlando, Florida, on November 15, 2012.



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KAREN S. JENNEMANN  
United States Bankruptcy Judge

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<sup>10</sup> Two other provisions relate to a bankruptcy court’s abstention. First, 28 U.S.C. § 1334(c)(2) requires mandatory abstention of “a State law claim or State law cause of action, related to a case under Title 11 but not arising under Title 11 or arising in a case under Title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section,” provided the claim can be timely adjudicated in the appropriate state court. Section 305 of the Bankruptcy Code also permits a Bankruptcy Court to abstain from hearing an entire bankruptcy case if it is in the interests of both the debtor and the creditors or if a foreign proceeding is involved.

<sup>11</sup> *Carver v. Carver*, 954 F.2d at 1579.

<sup>12</sup> *Id.* (citing *In re Wood*, 825 F.2d 90, 93 (5th Cir. 1987)).

<sup>13</sup> Doc. No. 34 in Main Case No. 12-bk-03271-KSJ.