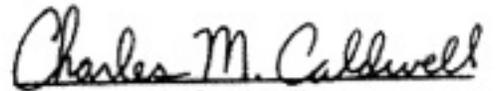


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: May 30, 2008


Charles M. Caldwell
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re Case No. 05-63769 :
Michael R. Greene and Shalene T. Greene, :
Debtors. :
Michael R. Greene, :
Plaintiff, : **Adv. Pro. No. 06-02135**
v. : Chapter 13 (Judge Caldwell)
Paula Greene, :
Defendant. :

ORDER REGARDING COMPLAINT OF MICHAEL R. GREEN (NO. 1)
AND DISMISSING ADVERSARY PROCEEDING

On February 2, 2006, the instant adversary proceeding was filed on behalf of the chapter 13 Debtor, Michael R. Greene ("Plaintiff"), against his former spouse, Paula Greene ("Defendant"), and the Licking County, Ohio, Court of Common Pleas ("Licking County"). On April 5, 2007, the claims asserted against Licking County were dismissed. In the Complaint the Plaintiff seeks the recovery

of divorce-related awards to the Defendant and to avoid all associated liens held by the Defendant as part of the divorce proceedings. The bases asserted include that the awards and liens are preferential (11 U.S.C. § 547(b)), they impair the Plaintiff's bankruptcy exemptions (11 U.S.C. § 522(f)(1)(A)) and they are dischargeable because they are not alimony, maintenance or support, as required by section 523(a)(5) of the United States Bankruptcy Code.

The Plaintiff and the Defendant were married on October 24, 1992, and on August 11, 2003, the original divorce decree was entered. This decree included an asset distribution equalization payment of \$35,035.86, attorney fees in the amount of \$7,500.00 and reimbursement for bills that were paid and one-half of tax refunds and additional attorney fees in the total amount of \$6,077.10, all for the benefit of the Defendant. The decree provided that it, ". . . shall be binding upon the heirs, executors, administrators and assigns of the parties and any obligations of the parties shall be a specific lien and charge against the estate of said party." The record indicates that a judgment lien was recorded for the awarded amounts.

As the result of contempt proceedings, based upon the Plaintiff's failure to comply with the original divorce decree, the Defendant was awarded additional amounts on December 1, 2004, including \$6,214.72 for bill payment reimbursement and \$3,000.00 for attorney fees. In addition, as the result of a June 29, 2004, appellate decision and after remand, additional sums were awarded, including the sum of \$9,914.00 for the Defendant's interest in the Plaintiff's sick leave and the sum of \$1,342.00 for her interest in his vacation pay. The Defendant asserts that in view of these awards and giving credit for payment, she is currently owed the sum of approximately \$60,000.00.

Based upon the evidence, a review of pleadings and statements of counsel, the Court has determined that it is bound by controlling authority in this Circuit, and that the awards and liens

granted as part of the divorce decrees and proceedings, are held in constructive trust for the benefit of the Defendant, and are not property of the estate. On this basis they are not subject to avoidance or discharge.

The Sixth Circuit Court of Appeals has concluded that as part of the divorce process, marital property is divided in an equitable manner, and upon division the parties become legally entitled to their allotted portion of the marital assets. The debtor holding the property only has legal title, and the equitable interest imposed by a pre petition divorce decree constitutes a constructive trust to protect the interests of the non-filing spouse once bankruptcy is filed and to avoid unjustly enriching debtors. *McCafferty v. McCafferty (In re McCafferty)*, 96 F.3d 196-200 (6th Cir. 1996) (citations omitted); *Hines v. Hines (In re Hines)*, 193 Fed. Appx. 391 (6th Cir. BAP 2006). As concluded by the Sixth Circuit, "No known policy would be furthered by allowing (the debtor) to manipulate the bankruptcy system as a means to emasculate the decree of a state domestic relations court." *In re McCafferty* at 200. This ruling renders moot any consideration of the avoidance and discharge claims asserted by the Plaintiff.

Accordingly, the above-captioned adversary proceeding is **DISMISSED**.

It is further **ordered** that the Clerk of Court forthwith close this adversary proceeding.

IT IS SO ORDERED.

Copies to:

Shannon M. Treynor, Esq. (electronic service)
Michael T. Gunner, Esq. (electronic service)
Michael R. Greene, 13450 Danville Road, London, Ohio 43140
Paula Greene, 10155 Canal Road, Hebron, Ohio 43025