



**SO ORDERED,**

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack  
United States Bankruptcy Judge  
Date Signed: April 13, 2016**

**The Order of the Court is set forth below. The docket reflects the date entered.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**BRIAN KEITH VOWELL AND  
TRACIE LYNN VOWELL,**

**CASE NO. 16-00298-NPO**

**DEBTORS.**

**CHAPTER 13**

**ORDER (1) DENYING MOTION FOR CONTEMPT OR  
IN THE ALTERNATIVE TO DISGORGE TAX REFUND AND  
(2) SUSTAINING OBJECTION TO CONFIRMATION OF PLAN**

This matter came before the Court for hearing on March 28, 2016 (the “Hearing”), on (1) the Motion for Contempt or in the Alternative to Disgorge Tax Refund (the “Motion”) (Dkt. 25) filed by the debtors, Brian Keith Vowell (“Brian”) and Tracie Lynn Vowell (“Tracie”) (collectively, the “Debtors”); (2) the Response to Motion for Contempt or in the Alternative to Disgorge Tax Refund (the “Response”) (Dkt. 27) filed by the Mississippi Department of Human Services—Child Support Legal Services (“MDHS”); and (3) the Objection to Confirmation of Plan (the “Objection”) (Dkt. 28) filed by MDHS in the above-styled chapter 13 bankruptcy case (the “Bankruptcy Case”). At the Hearing, Jim Arnold (“Arnold”) appeared on behalf of the

Debtors and Susanne A. Merchant (“Merchant”) appeared on behalf of MDHS. After fully considering the matter, the Court finds as follows:

### **Jurisdiction**

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(A) and (L). Notice of the Motion and Objection was proper under the circumstances.

### **Facts**

1. The Debtors filed a joint petition for relief pursuant to chapter 13 of the Bankruptcy Code (Dkt. 1) and their Chapter 13 Plan (the “Plan”) (Dkt. 7) on February 2, 2016.

2. The Plan provided that Terrie Tolbert (“Tolbert”) was a priority claim holder of a domestic support obligation (the “DSO”) (Plan at 1). According to the Plan, Tolbert is owed ongoing monthly payments of \$500.00, which the Debtors proposed to pay directly to her rather than through the Plan. (*Id.*). The Plan also shows that the pre-petition arrearage on the DSO is \$7,424.09, which the Debtors proposed to pay through the Plan at \$134.98 per month. (*Id.*).

3. The Debtors filed the Motion on February 19, 2016, arguing that MDHS “wrongfully intercepted the tax refund of [Brian] and his present wife, [Tracie] who filed jointly with the Debtor.” (Mot. at 1). The Debtors claimed that MDHS had notice of the Bankruptcy Case and that they provided for payment of the DSO through the Plan. (*Id.*). The Debtors contended that MDHS should be held in contempt for “wrongfully” withholding the Debtors’

joint tax refund (the “Tax Refund”)<sup>1</sup> and that MDHS should be “required to return said funds to the Debtors.” (*Id.* at 2).

4. MDHS filed its proof of claim on February 22, 2016 (the “POC”) (Claim No. 3-1). The POC indicates that the DSO is for outstanding child support owed to Tolbert in the amount of \$8,624.09. (POC at 1-2). According to the POC, Brian also is obligated to pay Tolbert ongoing child support of \$500.00 per month. (*Id.* at 2).

5. MDHS filed the Response on February 22, 2016, arguing that the Motion should be denied because MDHS is entitled to “intercept the tax refund of a debtor in bankruptcy if the Debtor has a child support arrearage” pursuant to § 362.<sup>2</sup> (Resp. at 1). According to MDHS, the “Debtor’s current child support arrearage is \$8,624.09.” (*Id.*). MDHS argued in the Response that it is unable to further respond to the contentions in the Motion because Debtors did not indicate “why the interception of the tax refund is wrongful . . . .” (*Id.* at 2).

6. MDHS filed the Objection on February 22, 2016. In the Objection, MDHS argued that the Plan should not be confirmed because the DSO and the arrearage should both be paid through the Plan. (Obj. at 1). According to MDHS, “Debtor has not made a full monthly payment since March of 2015 and his arrearage increases every month.” (*Id.*).

7. Arnold argued at the Hearing that the Debtors filed a joint tax return and MDHS took money from Tracie’s portion of the Tax Refund to satisfy the DSO, even though she is not responsible for the DSO. According to Arnold, “half” of the Tax Refund does not belong to

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<sup>1</sup> As the Court will discuss herein, the Secretary of the Treasury is only permitted to intercept the amount of a tax refund that is equal to the amount of outstanding child support owed. 42 U.S.C. § 664(a). The term “Tax Refund” refers to that amount.

<sup>2</sup> All code sections refer to the Bankruptcy Code in title 11 of the U.S. Code unless stated otherwise.

Brian and that portion should not be used to satisfy his DSO. (Hr'g at 10:56:40).<sup>3</sup> Arnold stated that the Debtors will lose their house if Tracie's "half" of the Tax Refund is not released. (Hr'g at 11:02:15).

8. At the Hearing, Merchant argued that § 362(b)(2)(F) provides an exception to the automatic stay that allows MDHS to intercept tax refunds to satisfy outstanding child support obligations. Merchant stated that MDHS has never differentiated between one debtor who has arrears and one who does not. Merchant reasoned that MDHS is allowed to freeze accounts and confiscate funds to satisfy child support obligations, and it does not matter if it is a joint tax return. According to Merchant, MDHS has always intercepted joint tax refunds to satisfy outstanding obligations, even in situations where there is no bankruptcy case.

9. After considering the parties' arguments at the Hearing, the Court allowed them fourteen (14) days in which to submit legal authorities regarding whether MDHS can retain the entire sum of the Tax Refund, including Tracie's portion, to satisfy Brian's DSO.

10. MDHS filed a letter brief on April 8, 2016 (the "MDHS Letter") (Dkt. 51), outlining several legal reasons why MDHS is permitted to retain the entire Tax Refund. According to the MDHS Letter, "MDHS' system interfaces with the IRS' system and the Debtor's tax refund is automatically redirected from the Debtor to MDHS" when a debtor's child support arrearage is more than \$500.00. (MDHS Letter at 1). Further, "[w]hen the Debtor who owes the arrearage files a Joint Tax Return, and the spouse does not have a child support arrearage, the refund is treated differently." (*Id.*). In that case, the full amount of the joint tax refund is directed to MDHS, but the Internal Revenue Service ("IRS") holds the refund for six (6) months in order to give the "injured spouse," that is, the spouse who is not responsible for the

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<sup>3</sup> The Hearing was not transcribed. Citations are to the time stamp of the audio recording.

debt, the opportunity to file IRS Form 8379: Injured Spouse Allocation (“Form 8379”).<sup>4</sup> (*Id.*). According to the MDHS Letter, if the IRS receives Form 8379, it will “calculate the amount of the refund that should be returned to the injured spouse.” (*Id.*). If the “injured spouse” follows instructions and files Form 8379, the IRS will “deduct that amount from the money sent to MDHS, and then release the balance of the refund so it can be disbursed to the custodial parent.” (*Id.*). If the spouse does not file Form 8379 within six (6) months after the refund is issued, the IRS will release the full amount to MDHS. (*Id.* at 2). Here, the Debtors’ tax refund is \$8,624.00, and the IRS will release the full amount to MDHS on August 20, 2016, unless Tracie files Form 8379. (*Id.* at 1). Until the IRS releases the funds, MDHS has no control over them.

11. Arnold did not file a supplemental letter and did not otherwise provide the Court with legal authority to support the Debtors’ position.

## **Discussion**

### **I. Motion Denied**

The IRS is authorized by § 362(b)(2)(F) and 42 U.S.C. § 664 to intercept tax refunds to satisfy outstanding child support obligations as an exception to the automatic stay. Nonetheless, the Debtors argued that MDHS violated the automatic stay by intercepting the entire sum of the Tax Refund because Tracie is not a debtor to the DSO. The Debtors ignore, however, the procedural remedy available to Tracie at this juncture.

When a debtor owes child support arrearage of more than \$500.00, the MDHS system “interfaces” with the IRS’ system so that the debtor’s refund, equal to the amount of the outstanding child support, is redirected to MDHS, which then disburses the money to the

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<sup>4</sup> MDHS attached a copy of the letter the IRS sends to taxpayers informing them that their tax refund has been redirected to MDHS. The letter “gives instructions to the taxpayers on what to do if only one of the taxpayers has a child support arrearage.” (MDHS Letter at 1; Ex. A). An example Form 8379 is also attached to the MDHS Letter. (MDHS Letter Ex. B).

custodial parent. Until the IRS releases the funds, MDHS has no control over the funds. In the Bankruptcy Case, Brian owes unpaid child support, but Tracie does not. According to the MDHS Letter, the notice the IRS sends to taxpayers informing them that their refund was redirected to MDHS includes a notice instructing the “injured spouse,” in this case, Tracie, to file Form 8379. Tracie has the burden to file Form 8379 by August 20, 2016, which she has not yet done. If she fails to file Form 8379 by August 20, 2016, the IRS will release the full amount of the Tax Refund to MDHS. MDHS is then permitted to disburse the amount of the past-due child support to Tolbert.

At the time the IRS exercises its right to intercept a tax refund, it has no way of knowing how much of the joint refund is owed to a debtor in bankruptcy with child support obligations and a joint debtor without such obligations.<sup>5</sup> The IRS’ procedure for making that determination, under the facts of the Bankruptcy Case, does not result in a violation of the automatic stay by MDHS under the § 362(b)(2)(F) exception for child support. The submission of Form 8379 within six (6) months after the issuance of the Tax Refund is a method for Tracie to identify the portion of the Tax Refund that belongs to her. If Tracie files Form 8379 by August 20, 2016, it will provide her with a remedy as the “injured spouse” in regard to her portion of the Tax Refund. Therefore, the Court finds that the Motion should be denied.

## **II. Objection Sustained**

The Court finds that the Objection should be sustained and the Debtors should pay the ongoing monthly child support payments of \$500.00 through the Plan. Brian owes \$8,624.09 in

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<sup>5</sup> Although Arnold repeatedly stated that “half” of the Tax Refund belongs to Tracie, such a result is highly unlikely. The Debtors’ Schedule I: Your Income of the bankruptcy schedules indicates that Tracie is currently unemployed. (Dkt. 3 at 22). The IRS must analyze a joint tax return to determine which portion of the refund belongs to which debtor. Only when the IRS receives Form 8379 does it conduct this analysis and issue a refund to the “injured spouse.”

outstanding child support to Tolbert. (Obj. at 1). Brian is obligated to pay \$500.00 a month pursuant to the DSO, but he has not made a full monthly payment since March of 2015. (*Id.*). To ensure that Brian pays Tolbert the child support payments she is entitled to under the DSO, the Court finds that the Debtors should pay the DSO through the Plan along with any arrearage. The Plan should be modified to also account for the IRS' withholding of the Tax Refund.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

IT IS FURTHER ORDERED that the Objection is hereby sustained.

IT IS FURTHER ORDERED that the Debtors shall amend the Plan within fourteen (14) days from the date of this Order to (1) provide for payments of \$500.00 a month to Tolbert through the Plan; (2) to indicate that the IRS has seized the Tax Refund for payment of the child support arrearage; and (3) that any amounts disbursed to MDHS should decrease its claim.

**##END OF ORDER##**