STATE OF MICHIGAN

COURT OF APPEALS

JOHN W. UJLAKY,

Plaintiff/Counter-Defendant-Appellee,

v

DAVID J. ROBACH and ANN R. ROBACH,

Defendants/Counter-Plaintiffs-Appellants.

UNPUBLISHED
December 13, 2005

No. 256238
Eaton Circuit Court
LC No. 03-001571-AV

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

Defendants appeal by leave granted an order of the Eaton Circuit Court affirming an order of the district court denying defendants' motion for relief from judgment. We affirm.

This matter has a long history beginning in 1994, when defendants retained plaintiff to represent them in two legal proceedings. The first resulted in a jury verdict of no cause of action. Defendants filed suit against plaintiff for legal malpractice but stipulated to dismiss that claim. The other matter was a claim for United States Department of Labor (USDL) workers' disability compensation. The disability claim was resolved in defendants' favor, and plaintiff told defendants that he would follow the federal guidelines for his contingency fees. In 1996, the USDL approved certain fees. Defendants requested reconsideration, which the USDL rejected on October 5, 1998. On November 12, 1998, plaintiff filed a complaint for nonpayment of those fees in the 56th District Court. Defendants counterclaimed for fraud, violations of the Consumer Protection Act, intentional infliction of emotional distress, and legal malpractice.

The district court removed the case to the circuit court on February 2, 1999. Plaintiff moved for default on the counterclaim in both courts. On March 15, 1999, the circuit court transferred the case back to the district court because defendants failed to pay the statutory transfer fee. Both courts entered defaults in plaintiff's favor on the counterclaim. Defendants appealed to the circuit court, but the circuit court dismissed that appeal. The district court then entered a default in plaintiff's favor on his original claim. Defendants moved for relief on the ground that the removal to circuit court divested the district court of jurisdiction. The district court denied the motion on the basis of defendants' failure to pay the transfer fee.

Defendants then discovered that plaintiff had filed for Chapter 13 bankruptcy on April 23, 1998, five months before he filed this case, when the Bankruptcy Court issued an automatic stay. Defendants again moved for relief from judgment, arguing that the district court lacked jurisdiction to hear the case. The district court denied the motion and a subsequent motion for reconsideration on the basis of alleged procedural flaws in the entry of the default judgments. The circuit court granted defendants leave to appeal, limited to the question of whether the bankruptcy proceedings divested the district court of jurisdiction at the time plaintiff filed the case. The circuit court concluded that the district court had jurisdiction over non-bankruptcy actions, and the automatic stay only protected plaintiff, not defendants. We granted leave to appeal.

Defendants first raise the assertion that the circuit court erred by refusing to address all of the issues they raised in their application for leave to appeal from the district court. Although this issue was among those on which we granted leave to appeal, defendants failed to provide any discussion, argument, or support in their appellate brief. It is therefore abandoned, and we will not consider it. *Check Reporting Services, Inc v Michigan National Bank-Lansing*, 191 Mich App 614, 628; 478 NW2d 893 (1991).

Defendants next argue that the district court had no jurisdiction of the matter because plaintiff was involved in bankruptcy proceedings when he filed suit. Defects in subject-matter jurisdiction may be asserted at any time, *Smith v Smith*, 218 Mich App 727, 729-730; 555 NW2d 271 (1996), and our review is de novo. *Steiner School v Ann Arbor Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999). However, defendants fail to cite any authority in support of this argument, thus abandoning it. *Chapdelaine v Sochocki*, 247 Mich App 167, 174; 635 NW2d 339 (2001). We decline to consider this issue.

Defendants finally argue that the circuit court erred in its interpretation and application of 11 USC 362(a), the bankruptcy code's automatic stay provision. We disagree.

We review questions of statutory interpretation de novo with the goal of giving effect to the intent of the Legislature by enforcing plain language as it is written. *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175 (2003). The relevant part of 11 USC 362(a) provides:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

The courts should not inquire into the wisdom or fairness of a statute or statutory scheme. *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 430; 617 NW2d 536 (2000). If the language is plain and unambiguous, we may not depart from a literal construction even to avoid

an absurd or unjust result, lest we engage in impermissible "judicial lawmaking." *People v McIntire*, 461 Mich 147, 155-156 n 2; 599 NW2d 102 (1999).

The plain language of 11 USC 362(a)(1) is unambiguous: it provides an automatic stay of any action *against the debtor*. Thus, the debtor in a bankruptcy proceeding is protected from the commencement or continuation of suit by another party. The automatic stay provision imposes no reciprocal restriction on the debtor's ability to commence or continue a suit. Thus, we reject defendants' assertion that plaintiff's original suit was barred by his bankruptcy proceedings.

Defendants also argue that their counterclaims were also barred by 11 USC 362(a)(1). We disagree. The plain language of the statute does not necessarily preclude a counterclaim, depending on the nature thereof. The United States Bankruptcy Court for the District of Idaho has held that where a debtor initiates a non-bankruptcy proceeding, the defendant in such an action is *entitled* to relief from the automatic stay to the extent necessary to bring any counterclaims that are compulsory under the relevant civil procedure rules. *In re Millsap*, 141 B R 732, 733 (Bankr D. Idaho, 1992). The United States Bankruptcy Court for the Eastern District of Pennsylvania noted that non-debtors *generally* may not assert counterclaims against debtors outside of bankruptcy proceedings, but "fair play" mandates "counterclaims to be asserted defensively against debtors in affirmative suits litigated by them, particularly if the counterclaims set forth plausible affirmative defenses or setoff claims." *In re Pemberton*, 148 B R 415, 418 (Bankr ED Pa, 1992).

Although these cases are not binding on us, we find them persuasive. *Allen v Owens-Corning Fiberglass Corp*, 225 Mich App 397, 402; 571 NW2d 530 (1997). We are not faced with the question of what defendants could *recover* on their counterclaim. Where a debtor in bankruptcy initiates an independent claim in state court, 11 USC 362(a) does not bar *assertion of* counterclaims that are compulsory under the court rules and could either function as a setoff or an affirmative defense. Thus, we also reject defendants' assertion that their counterclaims were absolutely barred by plaintiff's bankruptcy proceedings.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Alton T. Davis