Opinion Title: 10/07/2003 UNPUBLISHED In re Brewer v. Brewer, 02-2465, Judge Thurman
Body: Plaintiff/Debtor filed a declaratory action against Defendant, former husband, seeking sanctions and a determination that his state court proceeding to enforce divorce-ordered payments were in violation of her discharge. The Debtor and the Defendant were divorced prior to the Debtor filing for Chapter 7 relief. The Divorce Decree ordered the Debtor to assume and pay two debts that had been co-signed by the parties. The Debtor ceased paying the debts and subsequently filed her Chapter 7 case. The Defendant began paying and eventually paid off the debts. The Debtor did not schedule the Defendant in her bankruptcy papers, but did list the two debts and the corresponding creditors. The Trustee filed a No Asset Report and the Debtor received a discharge. Three years later, the Defendant sought reimbursement from the Debtor for the amounts he had paid on the debts by filing a Motion for Order to Show Cause in state court. The state court ruled that the payments made by the Defendant on the debts were post petition obligations and ordered the obligations non-dischargeable because the Defendant was not scheduled in the Debtor's bankruptcy papers.At trial, the Bankruptcy Court ruled that the state court order was void ab initio because the state court lacked jurisdiction. The state court order was void under the Ellis v. Consolidated Diesel Electric Corp. decision of the Tenth Circuit. As a result, the Rooker-Feldman doctrine did not apply and the Bankruptcy Court had jurisdiction to considering a collateral attack on the state court's ruling. The Court found that the debts were not in the nature of alimony or support and were incurred by the parties pre-petition. Notwithstanding the lack of scheduling in the bankruptcy papers, the debts were discharged by operation of law because Debtor's case was a no asset case, there was no bar date set for filing proofs of claims, and the claims were not in the nature of otherwise non-dischargeable claims. Sanctions were imposed on the Defendant because he refused to cease his collection efforts, even though he had been placed on notice of the Debtor's bankruptcy and the Tenth Circuit's decision of In re Parker , at least by the time the Order to Show Cause was heard in state court.
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Judge: Judge William T. Thurman [2]
Date: Tuesday, October 7, 2003

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