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Peter Swiecicki
University of Michigan Law School

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BANKRUPTCY COURT JURISDICTION TO MODIFY ALIMONY PAYMENTS OF CHAPTER 13 DEBTORS

The Bankruptcy Reform Act of 1978¹ revolutionized bankruptcy jurisdiction by expanding it to encompass all civil proceedings "related to" the bankruptcy case.² Proceedings brought to modify a chapter 13 debtor's alimony payments "relate to" the chapter 13 case because any modification would have a direct and immediate impact on the debtor's chapter 13 plan. Thus, the alimony modification proceedings should fall within the bankruptcy court's jurisdiction.

Traditionally, however, federal courts have had limited jurisdiction in matters pertaining to domestic relations.³ This limitation is based on the premise that the states have an overriding interest in the area of domestic relations and that state courts are especially competent to administer state domestic relations law.⁴

¹ Pub. L. No. 95-598, 92 Stat. 2549 (codified primarily at 11 U.S.C. §§ 101-152326 (Supp. III 1979)).

Constitutionally, bankruptcy is subject to federal jurisdiction. U.S. CONST. art. I, § 8, cl. 4 (Congress shall have power to establish "uniform Laws on the subject of Bankruptcies throughout the United States"). Federal jurisdiction has been exercised continually since enactment of the Bankruptcy Act of 1898, ch. 541, 30 Stat. 544. This oft-amended Act was repealed and replaced by the Bankruptcy Reform Act of 1978.

² 28 U.S.C. § 1471(b) (Supp. III 1979). Although most of the Bankruptcy Reform Act is codified as title 11 of the United States Code, and referred to as the Bankruptcy Code, the jurisdictional section is part of the Judiciary and Judicial Procedure Code.

Bankruptcy courts under the Bankruptcy Act were not independent courts but divisions of the federal district courts. Bankruptcy Act, ch. 541, §§ 1-2, 30 Stat. 544-46 (1898). The Reform Act creates independent bankruptcy courts which will come into existence on April 1, 1984. Pub. L. No. 95-598, § 402(b), 92 Stat. 2682 (1978). The old court structure continues until then, but during the transition period from 1979 to 1984 the old courts have the expanded jurisdiction of the independent courts. *Id.* § 405(b), 92 Stat. at 2685. See generally Kennedy, *The Bankruptcy Court Under the New Bankruptcy Law: Its Structure and Jurisdiction*, 11 ST. MARY'S L.J. 251 (1979), reprinted in 55 AM. BANKR. L.J. 63 (1981).

³ The Supreme Court set forth the domestic relations limitation in *Barber v. Barber*, 62 U.S. (21 How.) 582 (1859), and federal courts have applied the limitation since then. See pt. I B *infra*.

⁴ 13 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3609

This article examines a bankruptcy court's power to modify a chapter 13 debtor's alimony payments. Part I discusses the bankruptcy court's jurisdiction in chapter 13 cases and the connection between the chapter 13 case and alimony modification proceedings. It then outlines the domestic relations limitation and the resulting conflict between bankruptcy courts and state courts with respect to alimony modification. Part II analyzes various arguments for and against allowing bankruptcy courts to hear alimony modification requests in chapter 13 cases. This analysis reveals that any state interests are far outweighed by the substantial benefits to be gained from consolidating the alimony modification proceedings with the chapter 13 case in the bankruptcy court.

I. THE JURISDICTIONAL CONFLICT BETWEEN BANKRUPTCY COURTS AND STATE COURTS REGARDING MODIFICATION OF A CHAPTER 13 DEBTOR'S ALIMONY PAYMENTS

This section examines the scope of bankruptcy jurisdiction in chapter 13 cases *vis a vis* modification of the debtor's future alimony obligation. The interdependence of the two proceedings establishes a *prima facie* case for bankruptcy court jurisdiction over both. The domestic relations limitation on federal court jurisdiction arguably prohibits bankruptcy courts from exercising their jurisdiction to modify alimony payments. However, analysis of the limitation reveals that it is far from absolute and, in fact, is generally adhered to only when overriding state interests compel federal courts' abstention.

A. *Bankruptcy Court Jurisdiction in Chapter 13 Cases*

1. *Scope of the jurisdiction*— Chapter 13 debtors are individuals with regular income whose debts do not exceed a specified amount.⁵ The debtor is able to avoid liquidation by promising to pay a portion of his disposable postpetition income to a trustee, who distributes appropriate shares to creditors pursuant to a court-approved plan.⁶ The debtor is discharged from most

(1975) [hereinafter cited as WRIGHT *et al.*].

⁵ 11 U.S.C. § 109(e) (Supp. III 1979) (noncontingent, liquidated, unsecured debts of less than \$100,000, and noncontingent, liquidated, secured debts of less than \$350,000).

⁶ See H.R. REP. No. 595, 95th Cong., 1st Sess. 118 (1977) [hereinafter cited as H.R. REP. No. 595], reprinted in [1978] U.S. CODE CONG. & AD. NEWS 5963, 6079; S. REP. No.

prepetition debts when payments under the plan are completed.⁷

When a chapter 13 petition is filed, the bankruptcy court acquires original and exclusive jurisdiction of the bankruptcy case. The court also obtains "original but not exclusive jurisdiction of all civil proceedings . . . related to [the chapter 13 case]."⁸ "Related to" is undefined in the statute; however, the House Report states that the new jurisdiction extends to "proceedings to which the debtor is a party if the outcome of the proceeding will have an impact on the case."⁹ In floor debate, this language was described as giving the bankruptcy court jurisdiction "to resolve all disputes affecting the bankruptcy estate."¹⁰

2. *Application of the jurisdictional standard to alimony modification*— Alimony modification proceedings clearly meet this standard by affecting the plan and the estate. In every

989, 95th Cong., 2d Sess. 12-13 (1978) [hereinafter cited as S. REP. No. 989], reprinted in [1978] U.S. CODE CONG. & AD. NEWS 5787, 5793-99.

11 U.S.C. § 1306(a) (Supp. III 1979) provides that in a chapter 13 case the property of the estate that is used to pay creditors includes not only the debtor's property at the time the petition is filed, *see id.* § 541, but also all property and earnings acquired by the debtor after the petition is filed. *See* S. REP. No. 989, *supra*, at 140-41. In chapter 13, the debtor is entitled to retain the property he has when the petition is filed, 11 U.S.C. § 1306(b) (Supp. III 1979), but the trustee receives all future earnings of the debtor necessary to execute the plan. *Id.* § 1322(a)(1).

The debtor must be able to make all payments and comply with the plan before it can be confirmed. *Id.* § 1325(a)(6). Unsecured creditors cannot receive less than they would receive if the debtor's estate were liquidated under chapter 7 as of the effective date of the plan, *id.* § 1325(a)(4), but they can receive payments over a longer time period. *Id.* § 1322(c).

⁷ 11 U.S.C. § 1328 (Supp. III 1979).

⁸ *Id.* § 1471, which reads in pertinent part:

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

⁹ H.R. REP. No. 595, *supra* note 6, at 48-49.

¹⁰ 123 CONG. REC. 35,449 (1977) (remarks of Rep. Butler). *See also* H.R. REP. No. 595, *supra* note 6, at 544 (Separate Additional Views of Hon. George E. Danielson) language was "broadening the jurisdictional base to permit virtually any and all kinds of litigation to be tried before the bankruptcy courts" (quoting Judge Shirley M. Hufstедler); *Bankruptcy Reform Act of 1978: Hearings on S. 2266 and H.R. 8200 before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 832 (1977) [hereinafter cited as 1977 *Hearings*] (memorandum of the National Bankruptcy Conference) (supporting the language as giving the bankruptcy court "jurisdiction over any matter or lawsuit that affected the estate"); J. TROST, G. TREISTER, L. FORMAN, K. KLEE & R. LEVIN, *RESOURCE MATERIALS: THE NEW FEDERAL BANKRUPTCY CODE* 47 (1979) [hereinafter cited as J. TROST *et al.*] (language gives bankruptcy courts jurisdiction over matters in which "the estate could be expected to have an interest").

chapter 13 confirmation hearing, the court must balance the debtor's prepetition assets and postpetition regular income with the debtor's expenses and the creditors' prepetition claims.¹¹ Future alimony payments are one of the debtor's expenses.

However, alimony payments are not permanently fixed in amount by divorce decrees. The vast majority of states statutorily permit modification of alimony.¹² Changed financial circumstances constitutes one of the most common grounds for either ex-spouse to seek modification.¹³ A change includes a reduction or cessation of the payor spouse's income¹⁴ or an increase in the income of the payee spouse.¹⁵ These and other possible grounds for modification could exist in the case of a chapter 13 debtor.

Any such modification of alimony payments by a chapter 13 debtor directly affects the debtor's plan. If the alimony payment is decreased through modification, the debtor's expenses change correspondingly and a greater share of the regular income becomes available for creditors.

The operation of the Bankruptcy Code's automatic stay provision¹⁶ further highlights the interdependence of the chapter 13 and alimony modification proceedings. When an ex-spouse petitions a state court to increase the payor spouse's alimony payments, filing of the payor's chapter 13 petition automatically stays the state court proceedings.¹⁷ This enables the debtor to

¹¹ See 11 U.S.C. §§ 1322, 1325(a)(6) (Supp. III 1979).

¹² Forty-three states and the District of Columbia statutorily permit modification of alimony. Two states allow modification at common law, and two other states allow it only if the parties have so agreed. See Note, *Modification of Spousal Support: A Survey of a Confusing Area of the Law*, 17 J. FAM. L. 711, 719-21 (1978-79).

¹³ See Note, *Domestic Relations: Modification of Future Alimony Payments Due to Changed Circumstances*, 20 WASHBURN L.J. 66 (1980); Annot., 18 A.L.R.2d 10, 16 (1951); e.g., 23 PA. STAT. ANN. § 501(e) (Purdon's Pa. Leg. Service 1980) ("Any order entered pursuant to this section [permitting the granting of alimony] is subject to further order of the court upon changed circumstances of either party of a substantial and continuing nature whereupon such order may be modified, suspended, terminated, reinstated, or a new order made.").

¹⁴ E.g., *In re Marriage of Acosta*, 67 Cal. App. 3d 899, 137 Cal. Rptr. 33 (1977); *Denny v. Denny*, 334 So. 2d 300 (Fla. Dist. Ct. App. 1976); *Barrow v. Barrow*, 33 Ill. App. 3d 654, 342 N.E.2d 237 (1975); *Bellamy v. Bellamy*, 572 S.W.2d 220 (Mo. App. 1978); *Ridge v. Ridge*, 542 P.2d 189 (Utah 1975).

¹⁵ E.g., *Hornbaker v. Hornbaker*, 25 Ariz. App. 577, 545 P.2d 425 (1976); *Mumm v. Mumm*, 353 So. 2d 134 (Fla. Dist. Ct. App. 1977); *Brodway v. Brodway*, 43 Ill. App. 3d 628, 357 N.E.2d 128 (1976); *Jarvis v. Jarvis*, 218 Kan. 679, 544 P.2d 1384 (1976); *Ferrara v. Ferrara* 320 So. 2d 287 (La. App. 1975); *Ellis v. Ellis*, 135 Vt. 83, 370 A.2d 200 (1977).

¹⁶ 11 U.S.C. § 362 (Supp. III 1979).

¹⁷ The automatic stay provision of the Bankruptcy Code stays all entities from the commencement or continuation of any proceeding against the debtor or to recover a prepetition claim against the debtor, or from any act to obtain possession of property of the estate. 11 U.S.C. § 362(a)(1), (3) (Supp. III 1979). However, the automatic stay does not apply to the collection of alimony from property that is not property of the estate.

complete a plan designed to accommodate his present alimony payments. The bankruptcy court cannot anticipate future modification by a state court when it confirms a plan. If no automatic stay were in effect, the state court's granting of the ex-spouse's request for increased alimony payments would upset the assumptions on which the plan was confirmed and thereby affect the chapter 13 case.

Thus, the impact of alimony modification on the chapter 13 case is readily apparent.¹⁸ Because they "relate to" the chapter 13 case, alimony modification proceedings fall within the scope of the bankruptcy court's jurisdiction. Bankruptcy courts should not hesitate to exercise this new jurisdiction unless countervailing policy considerations compel abstention.

Id. § 362(b)(2), and the ex-spouse can also collect prepetition and postpetition alimony from the debtor's exempt property. *Id.* § 522(c). Normally there is little such collectable property or it is secured by various liens. The debtor's regular income is the most likely source available for collection proceedings, but in chapter 13 this is property of the estate. See note 7 *supra*. Therefore, the collection proceeding is stayed. See *In re Lovett*, 6 Bankr. Rep. 270 (Bankr. Ct. D. Utah 1980); Cox, *Family Law Newsletter: Bankruptcy and Divorce*, 9 COLO. LAW. 1181, 1182 (1980).

But see *In re Garrison*, 5 Bankr. Rep. 256 (Bankr. Ct. E.D. Mich 1980), in which the court allowed a state agency to proceed in state court against a chapter 13 debtor's postpetition earnings to compel continuation of child support payments. The court held that the automatic stay did not apply to the case, on the grounds that "property of the estate" as used for automatic stay purposes did not include postpetition property added to the term "property of the estate" by chapter 13.

The court's interpretation is poorly reasoned. The court admits that good faith requires the plan to provide for alimony or support in order to be confirmed. *Id.* at 260 n.7. In order to confirm the plan, the court could require payment of all accrued alimony or child support from the time the petition was filed until the plan was confirmed. The legislative history states, "[T]he commencement of a chapter 13 case operates as a stay of all actions by creditors against the debtor or his property. The stay provides the debtor with the necessary breathing spell to arrange his financial affairs for a repayment plan." H.R. REP. NO. 595, *supra* note 6, at 121 (footnote omitted). The *Garrison* decision flies in the face of this "necessary breathing spell" on the grounds that nondischargeability of the child support debt compels the continuation of payments and no stay. However, the good faith requirement, 11 U.S.C. § 1325(a)(3) (Supp. III 1979), provides the bankruptcy court with the necessary discretion to avoid any problems posed by nonpayment. Additionally, the decision ignores the court's responsibility to determine nondischargeability and the extent of property of the estate, factors that are crucial to the bankruptcy case and the alimony or support payments. Finally, the court can always lift the stay for cause. *Id.* § 362(d). For these reasons, "property of the estate" should not be given the limited interpretation of *Garrison*.

¹⁸ This contrasts with a chapter 7 liquidation, in which the court only concerns itself with prepetition debts and assets. For example, unmatured alimony claims may not be paid out of property of the estate, 11 U.S.C. § 502(b)(6) (Supp. III 1979), and are not accounted for in the chapter 7 plan, but a court must take such claims into account in confirming a chapter 7 plan. See *id.* § 1325(a)(6). Therefore, although one of the purposes of chapter 7 plans is to give the debtor a fresh start, see note 32 and accompanying text *infra*, this purpose extends only to prepetition financial affairs. A chapter 7 case's "relation to" alimony modification is consequently much weaker than that of a chapter 13 case.

B. The Domestic Relations Limitation on Federal Court Jurisdiction

More than a century ago the Supreme Court disclaimed "any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony."¹⁹ The Court has reiterated this policy concerning federal jurisdiction in several instances.²⁰ The domestic relations limitation now stands as a judicially created exception to the exercise of the power of the federal courts.²¹ Lower courts often decline jurisdiction on this basis.²²

However, despite the fact that the Supreme Court has stated the domestic relations limitation in sweeping terms, as applying to all federal court jurisdiction,²³ the potentially broad nature of the limitation has been narrowly confined.²⁴ Federal courts routinely hear certain cases dealing with domestic relations. These include actions to enforce alimony decrees, to collect damages

¹⁹ *Barber v. Barber*, 62 U.S. (21 How.) 582, 584 (1859). The Court held that a Wisconsin federal district court could enforce a New York alimony decree when the ex-husband moved to Wisconsin and stopped paying alimony while his ex-wife remained in New York. The Court held that a federal court could act as a court of equity to prevent the alimony decree from being defeated by fraud. *Id.* at 591. Because the Court found the exercise of jurisdiction justified, the statement regarding the federal court's lack of jurisdiction was dictum.

²⁰ In *Popovici v. Alger*, 280 U.S. 397 (1930), the Court held that the constitutional grant of jurisdiction to federal courts in cases affecting ambassadors and counsels, along with a federal law giving federal courts exclusive jurisdiction over such cases, did not deny an Ohio state court the jurisdiction to grant a divorce to a wife whose husband was a Romanian vice counsel and claimed exclusive federal jurisdiction. *See also* *Simms v. Simms*, 175 U.S. 162, 167 (1899) ("the Circuit Courts of the United States have no jurisdiction, either of suits for divorce, or of claims for alimony, whether made in a suit for divorce, or by an original proceeding in equity, before a decree for such alimony in a state court") (citing *Barber v. Barber*, 62 U.S. (21 How.) 582 (1859) and *In re Burrus*, 136 U.S. 586, 593-94 (1890)); *De la Rama v. De la Rama*, 201 U.S. 303, 307 (1906) ("It has been a long established rule that the courts of the United States have no jurisdiction upon the subject of divorce, or of the allowance of alimony . . .").

²¹ For recent reiterations of the domestic relations limitation by the Court, see *Trammel v. United States*, 445 U.S. 40, 50 (1980); *Sosna v. Iowa*, 419 U.S. 393, 404 (1975).

²² *E.g.*, *Wilkins v. Rogers*, 581 F.2d 399 (4th Cir. 1978); *Overman v. United States*, 563 F.2d 1287 (8th Cir. 1977); *Bossom v. Bossom*, 551 F.2d 474 (2d Cir. 1976); *Solomon v. Solomon*, 516 F.2d 1018 (3d Cir. 1975).

²³ See notes 19-21 and accompanying text *supra*.

²⁴ See *Crouch v. Crouch*, 566 F.2d 486, 487 (5th Cir. 1978) (court acknowledged limitation but refused to apply it in suit to enforce separation agreement made long after actual separation); *Phillips, Nizer, Benjamin, Krim & Ballon v. Rosenstiel*, 490 F.2d 509, 514-15 (2d Cir. 1973) (court acknowledged limitation but refused to apply it where law firm sued ex-husband for fees for services rendered to ex-wife during marital dispute). *See also* *Solomon v. Solomon*, 516 F.2d 1018, 1025 (3d Cir. 1975) (court applied limitation where ex-wife filed diversity suit to enforce separation agreement; dictum that if factors differed, limitation would be inapplicable).

caused by a spouse's tortious conduct, to determine the invalidity of a divorce decree on grounds of fraud or lack of jurisdiction, and to remedy failure to give full faith and credit to a previous decree.²⁵

Moreover, the domestic relations limitation has been criticized as being ill-founded and based on inaccurate historical grounds.²⁶ Consequently, federal courts generally weigh all the factors involved before invoking this limitation.²⁷

The expansive scope of the new bankruptcy jurisdiction conflicts with the traditional domestic relations limitation on federal court jurisdiction.²⁸ But the domestic relations limitation is not absolute; it is meant to apply only when state interests are strong enough to compel federal abstention. Thus, resolution of this conflict involves a balancing of interests. The next section examines federal bankruptcy policy considerations that call for bankruptcy courts to exercise their jurisdiction over alimony modification in chapter 13 cases. It then balances these interests against traditional state concerns which underly the domestic

²⁵ *Sutton v. Leib*, 342 U.S. 402 (1952) (enforcement of alimony decree); *Spindel v. Spindel*, 283 F. Supp. 797 (E.D.N.Y. 1978) (tort action); *McNeil v. McNeil*, 78 F. 834 (C.C.N.D. Cal. 1897), *aff'd*, 170 F. 289 (9th Cir. 1909) (fraud); *Rapoport v. Rapoport*, 416 F.2d 41, 43 (9th Cir. 1969), *cert. denied*, 397 U.S. 915 (1970) (lack of jurisdiction); *Williams v. North Carolina*, 325 U.S. 226 (1945) (full faith and credit). *See also* WRIGHT *et al.*, *supra* note 4, at § 3609.

²⁶ *See Spindel v. Spindel*, 283 F. Supp. 797, 808-11 (E.D.N.Y. 1968) where the court made several arguments against the limitation: English Chancery had jurisdiction over some divorce and alimony matters, so there is a historical basis for equity jurisdiction; even though the Supreme Court has said jurisdiction is limited, this was dictum in cases where the Court enforced divorce decrees or heard divorce appeals from territorial courts; federal courts would not be interfering with state law but following it; and a unitary administration of law requires federal courts to exercise jurisdiction in some matters. *See also* *Solomon v. Solomon*, 516 F.2d 1018, 1031 (3d Cir. 1975) (Gibbons, J. dissenting); *Vestal & Foster, Implied Limitations on the Diversity Jurisdiction of Federal Courts*, 41 MINN. L. REV. 1, 23-31 (1956); 35 BROOKLYN L. REV. 313 (1969); 72 DICK L. REV. 692 (1968); 54 IOWA L. REV. 390 (1968); 28 MD. L. REV. 376 (1968); 14 N.Y.L.F. 363 (1968); 44 N.Y.U.L. REV. 631 (1969).

²⁷ *See Crouch v. Crouch*, 566 F.2d 486 (5th Cir. 1978) (where none of the rationales for the limitation apply, it should not be invoked); *Solomon v. Solomon*, 516 F.2d 1018, 1025 (3d Cir. 1975) (dictum that different balance of factors could render limitation inapplicable); *Brandtscheit v. Britton*, 239 F. Supp. 652, 654 (N.D. Cal. 1965) (application of the limitation should be based on "sound policy considerations in the light of the circumstances within which litigants find themselves"); Note, *Federal Jurisdiction of "Domestic Relations" Cases*, 7 J. FAM. L. 309 (1967) (discusses several factors that could outweigh the limitation).

²⁸ *Compare Cox*, *supra* note 17, at 1182 (1980) ("The Bankruptcy Court now has concurrent jurisdiction with the state courts of marital dissolution proceedings if the proceedings are filed after the bankruptcy case is begun."), *with* J. TROST *et al.*, *supra* note 10, at 47 ("No doubt the bankruptcy court . . . still cannot grant a debtor a divorce or otherwise act with respect to his personal relationships of a non-bankruptcy related nature . . ."), and 1 COLLIER ON BANKRUPTCY ¶ 3.01, at 3-46, 3-72 (15th ed. 1979).

relations limitation.

II. BALANCING FEDERAL BANKRUPTCY POLICY AND STATE INTEREST IN ALIMONY MODIFICATION

A. *The Case for Bankruptcy Court Jurisdiction*

Congress enlarged the scope of bankruptcy jurisdiction so that the judiciary could effectively implement federal bankruptcy policy. The objectives of federal bankruptcy law include resolving the debtor's financial difficulties, providing the debtor with an economic fresh start, and promoting judicial efficiency and economy. Where a chapter 13 debtor has future alimony obligations, these policy objectives are frustrated unless the bankruptcy court has jurisdiction over any alimony modification proceedings.

1. *Congressional intent to expand bankruptcy jurisdiction*—The bankruptcy court has jurisdiction over any civil proceeding "related to" the bankruptcy case. Other than the "related to" standard, the statute places no express or implied limitation on the court's jurisdiction. The legislative history of the Bankruptcy Reform Act of 1978 reveals that the new jurisdictional language was intended to grant bankruptcy courts whatever personal and *in rem* jurisdiction they require in order to handle bankruptcy cases fairly and expeditiously, along with the power to grant effective relief by disposing of matters related to the case.²⁹ The reform's purpose is to eliminate the great cost and delay that resulted under the old jurisdictional standard and to achieve the prompt return of the debtor to financial equilib-

²⁹ H.R. REP. No. 595, *supra* note 6, at 48-49, 52, 445.

Bankruptcy jurisdiction was previously distinguished as summary or plenary. Summary jurisdiction consisted of matters relating to the administration of the estate, issues dealing with property actually or constructively in the court's possession, and issues in which the parties had consented to jurisdiction. Bankruptcy courts exercised summary jurisdiction. Federal district or state courts exercised plenary jurisdiction which consisted of all other matters. Identifying those matters in which the bankruptcy court could exercise jurisdiction proved to be one of the most intricate and litigated questions in bankruptcy cases. *Id.* at 43.

It is not the purpose of this article to examine the distinction between summary and plenary jurisdiction. For discussion of the distinction, see 1 COLLIER ON BANKRUPTCY ¶ 3.01 (15 ed. 1979); REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, pt. I, at 88-89 (H.R. Doc. No. 93-137 (1973)), *reprinted in* Appendix 3A COLLIER ON BANKRUPTCY (15th ed. 1979).

rium.³⁰ Judicial decisions have broadly interpreted "related to" to meet these goals.³¹

Thus, when it expanded the scope of bankruptcy jurisdiction, Congress did not expressly or impliedly restrict a bankruptcy court's power to exercise jurisdiction over alimony modification proceedings where such proceedings relate to or affect a chapter 13 case. In fact, congressional intent apparently mandates such action if necessary to effectuate federal bankruptcy policy.

2. *Bankruptcy policy objectives*— Chapter 13 is designed to provide a simple yet effective system for individuals to resolve their financial difficulties and pay their debts under bankruptcy court protection and supervision. Ultimately, the goal is to provide the debtor with an economic fresh start. Corollary objectives are to resolve the debtor's financial difficulties efficiently and inexpensively, and to promote judicial economy. Jurisdiction over alimony modification is essential to the attainment of these objectives in chapter 13 cases.

a. *Fresh start*— One of the most important goals of bankruptcy is to provide the debtor with an economic fresh start.³² The fresh start results from the discharge of most of the debtor's prepetition debts as the final step of the bankruptcy proceedings. The debtor then can begin economic life anew with relative financial stability. In chapter 13, however, the debtor does not

³⁰ H.R. REP. No. 595, *supra* note 6, at 43.

³¹ At least two cases have held that the bankruptcy court has jurisdiction when a reasonable nexus exists between the bankruptcy case and the civil proceeding. *In re Bazan*, 6 Bankr. Rep. 937, 940 (Bankr. Ct. N.D. Ill. 1980); *In re Thompson*, 3 Bankr. Rep. 312, 313 (Bankr. Ct. D.S.D. 1980); see 1 COLLIER ON BANKRUPTCY ¶ 3.01, at 3-46 (15th ed. 1979).

An even broader test was articulated in *In re Tidwell*, 4 Bankr. Rep. 100, 102 (Bankr. Ct. N.D. Tex. 1980), which held that the relationship was met if the debtor was a party to both the state court action and the bankruptcy case. See McNutt, *The New Bankruptcy Court Under the Bankruptcy Reform Act of 1978 — The District Court's Little Brother Grows Up*, 39 FED. B.J. 62, 80 (1980) ("Even if the dispute merely involves the debtor, without being pertinent or essential to the bankruptcy proceeding, or merely relates to a bankruptcy proceeding, the bankruptcy court not only has jurisdiction, it has original jurisdiction."). But see Dunne, *Editor's Headnotes*, 98 BANKING L.J. 3, 3 (1981) (civil proceedings should not be within bankruptcy court jurisdiction "unless presenting the clear and present danger of subverting the historic bankruptcy polestars of expeditious procedure, creditor parity, and debtor fresh start").

³² *Perez v. Campbell*, 402 U.S. 637, 648 (1971) ("This Court on numerous occasions has stated that '[o]ne of the primary purposes of the bankruptcy act' is to give debtors 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.'") (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)); see Kennedy, *Reflections on the Bankruptcy Laws of the United States: The Debtor's Fresh Start*, 76 W. VA. L. REV. 427 (1974); Rendleman, *The Bankruptcy Discharge: Toward a Fresher Start*, 58 N.C. L. REV. 723 (1980). Congress intended the Bankruptcy Code to continue fulfilling this fresh start purpose. See H.R. REP. No. 595, *supra* note, 6 at 118.

receive a discharge when the court confirms the plan. Only when payments under the plan are completed, which may take up to three years,³³ is a discharge granted³⁴ and the fresh start achieved.

The debtor does, however, get an interim fresh start as soon as his chapter 13 plan is confirmed, because if he follows the plan he stands on stable financial terms. His regular income is budgeted to pay his expenses and creditors' claims. If successful, the plan's principles should extend beyond its term.³⁵ Therefore, fresh start in chapter 13 does not just mean discharge, but also the economic stability that accompanies the effective allocation of resources.

By declining to exercise its jurisdiction to modify alimony, a bankruptcy court denies the debtor this economic stability and interim fresh start. Of course, the option of petitioning a state court for alimony modification remains open to a debtor in need of such modification to achieve financial stability; but this alternative involves additional expense and delay for an individual who can afford neither.³⁶

More importantly, the state court's examination of the debtor's financial position depends on the outcome of the bankruptcy proceedings. Because the portion of the debtor's regular income available to meet his needs is determined by the chapter 13 plan, the state court would be unable to determine the debtor's available income until after the bankruptcy court confirmed the plan. If the state court modifies the debtor's alimony payments after confirmation of the plan, this would upset the assumptions on which the plan was based. As a result, the debtor might be forced to modify his plan.³⁷ When the bankruptcy court fails to exercise jurisdiction the debtor becomes trapped in a vicious circle of modification and his interim fresh start disappears in this jurisdictional maze.

b. Effective resolution of the debtor's financial circumstances— Wage earner relief has been available to consumer debtors since 1938, when Congress added chapter XIII to the

³³ See 11 U.S.C. § 1322(c) (Supp. III 1979) (payment period of up to three years allowed, or five years if cause shown).

³⁴ *Id.* § 1328.

³⁵ See Note, *The Wage Earner Plan — A Superior Alternative to Straight Bankruptcy*, 9 UTAH L. REV. 730, 737 (1965).

³⁶ A purpose of the new law was to end "needless and expensive" litigation over jurisdiction in "an area of law in which time is of the essence." H.R. REP. NO. 595, *supra* note 6, at 43; see *In re G. Weeks Securities*, 3 Bankr. Rep. 215, 217-18 (Bankr. Ct. W.D. Tenn. 1980).

³⁷ Modification of a chapter 13 plan is permitted by 11 U.S.C. § 1329 (Supp. III 1979).

Bankruptcy Act of 1898.³⁸ The Bankruptcy Reform Act amended chapter XIII extensively and redesignated it as chapter 13.³⁹ The encouragement of more eligible debtors to opt for wage earner relief and to make chapter 13 a more effective tool of bankruptcy relief provided the motive for the change.⁴⁰

Providing effective bankruptcy relief anticipates complete resolution of the debtor's financial circumstances. Arriving at a comprehensive plan to rehabilitate the debtor and start him on the way to financial stability involves a considerable commitment of time, money, and judicial resources. If one unresolved factor of the debtor's financial circumstances can bring down a plan constructed by the debtor and the court, this effort is wasted and the purpose of the Code not achieved.

When a debtor files a chapter 13 petition, it is likely that his financial circumstances have deteriorated. Such a change in financial circumstances is a probable ground for modification of alimony paid by the debtor.⁴¹ If a state court reviews a request for alimony modification before the debtor's plan is confirmed by the bankruptcy court, then the state court, aware of the bankruptcy proceedings, bases its decision on what the debtor's financial circumstances will be after the plan is confirmed. If, however, the bankruptcy court deviates from the course assumed by the state court, one of two situations will arise. Either the debtor will be unable to make adequate payments to both his creditors and his ex-spouse, or the debtor will receive a windfall at the expense of his creditors. In either case, the work of one of the courts will be frustrated.

The bankruptcy court cannot confirm a chapter 13 plan unless the debtor is able to meet certain minimum-payment requirements.⁴² If the debtor's income is such that he is able to make

³⁸ Chandler Act, ch. 575, 52 Stat. 840, 930 (1938) (repealed 1978).

³⁹ See Merrick, *Chapter 13 of the Bankruptcy Reform Act of 1978*, 56 DEN. L.J. 585 (1979); Pickard, *The New Bankruptcy Code, Part I: A Review of Some of the Significant Changes in Bankruptcy Law*, 10 MEM. ST. L. REV. 177, 202-05 (1980).

⁴⁰ H.R. REP. No. 595, *supra* note 6, at 116-18.

⁴¹ See note 13 *supra*.

⁴² There are minimum requirements with respect to both secured and unsecured debts. With respect to allowed secured claims, unless the holder of the claim accepts a lesser amount in discharge of its claim, the debtor must either surrender the property securing the claim to the holder of the claim, or propose payments under the plan equal to the value, as of the effective date of the plan, of the secured claim, as determined under 11 U.S.C. § 506(a). 11 U.S.C. § 1325(a)(5) (Supp. III 1979). With respect to unsecured claims, the debtor must propose to make payments to unsecured creditors that will equal an amount not less than they would have been paid on their claims if the estate of the debtor were liquidated under chapter 7 as of the effective date of the plan. *Id.* § 1325(a)(4).

the minimum payments with little to spare, the effect of an increase in alimony payments might be to preclude him from obtaining chapter 13 relief. The debtor's only alternative would be liquidation, the least desirable form of bankruptcy relief.⁴³ If, on the other hand, the bankruptcy court approves a plan that provides for payments smaller than the state court anticipated, the state court's goal of setting a reasonable level of alimony is thwarted, because, had it known that the debtor would have more disposable income, it might have allowed a larger increase in alimony.

Similarly, if the state court modifies alimony after the plan is confirmed, the result produces either windfall or hardship for the debtor. If the alimony payments are decreased, the debtor is unlikely to modify his chapter 13 plan to reflect the sudden increase in available income.⁴⁴ No provision allows the debtor's creditors to petition for modification of the plan.⁴⁵ Thus, the creditors receive less than they might have under the circumstances, and the debtor receives more than just effective bankruptcy relief — he gets a windfall.

If, however, the state court increases the debtor's alimony payments after the plan is confirmed, the debtor suffers a hardship. At best, assuming that the debtor's income will allow it, he will be able to modify his plan and avoid liquidation. Nonetheless, because he will have suffered through an additional court case and an unnecessarily prolonged bankruptcy case, the cost to him in terms of expense and delay will be far greater than the drafters of the Code anticipated.⁴⁶ At worst, the debtor's income will not permit him to meet both his increased alimony payments and the chapter 13 minimum payments to creditors, and his only alternative is liquidation.

The crux of the problem is that two courts are trying to resolve one problem, *i.e.*, the debtor's financial situation. Only one court can do so effectively, and that court is the bankruptcy court.

c. Judicial economy— The similarity of fact-finding between the modification case and the bankruptcy case calls for the exercise of expanded bankruptcy jurisdiction. In confirming a chapter 13 plan, a bankruptcy court must consider four factors: the debtor's regular income, assets, regular expenses, and debts.⁴⁷

⁴³ H.R. REP. No. 595, *supra* note 6, at 118.

⁴⁴ 11 U.S.C. § 1329 (Supp. III 1979) allows modification of the plan after confirmation.

⁴⁵ See 5 COLLIER ON BANKRUPTCY ¶ 1329.01[1], at 1329-3 n.12 (15th ed. 1979).

⁴⁶ See note 36 *supra*.

⁴⁷ See H.R. REP. No. 595, *supra* note 6, at 123-25 (discussing the factors that go into

Every chapter 13 plan must realistically budget for these needs and expenses before the court will confirm it.⁴⁸ If the debtor appears unable to meet his own needs and expenses, the court presumes that he will be unable to complete the plan and the court will not confirm it.⁴⁹ Thus, a bankruptcy court exercises broad discretion in examining a debtor's financial and personal situation, as well as the situation of his dependents, to determine the appropriate financial needs of the debtor and his family.⁵⁰

When a state court reviews a request to modify alimony, it conducts a similar review of financial needs and expenses.⁵¹ Therefore, the fact-finding that a bankruptcy court conducts in chapter 13 cases parallels the review it would conduct if it exercised jurisdiction to modify alimony payments. The only difference appears to be that in modification cases the state court also reviews the financial needs and circumstances of the payee spouse, while in bankruptcy cases the court accepts the amount of alimony as representative of the ex-spouse's needs.

This apparent difference vanishes, however, in light of the bankruptcy court's power to modify a claim for prepetition alimony. The bankruptcy court has the power to review creditors' claims to determine whether and to what extent they will be al-

the makeup of a plan).

⁴⁸ 11 U.S.C. § 1325(a)(6) (Supp. III 1979) requires that "the debtor will be able to make all payments under the plan and to comply with the plan."

⁴⁹ See, e.g., *In re Barnes*, 5 Bankr. Rep. 376 (Bankr. Ct. D.D.C. 1980) (debtor had \$749 monthly income and \$658 monthly expenses; plan that proposed \$91 monthly payment to creditors not confirmed because it provided insufficiently for inflation or miscellaneous expenses); *In re Hockaday*, 3 Bankr. Rep. 254 (Bankr. Ct. S.D. Cal. 1980) (plan that provided \$10 monthly cushion for expenses but failed to budget medical expenses and budgeted insufficiently for utilities not confirmed); *In re Lucas*, 3 Bankr. Rep. 252 (Bankr. Ct. S.D. Cal. 1980) (plan that provided \$2 monthly cushion for expenses but budgeted inadequately for medical and clothing expenses not confirmed); H.R. REP. No. 595, *supra* note 6, at 124. See also 5 COLLIER ON BANKRUPTCY ¶ 1325.01[2][F], at 1325-30 (15th ed. 1979).

⁵⁰ The task of examining the debtor's financial situation falls not on the judge, but on the trustee, who has the responsibility for conducting such an examination and appearing at the hearing on confirmation of the plan. 11 U.S.C. §§ 704(3), 1302(b). The trustee is advised that this task cannot be discharged simply by accepting the debtor's version of his financial plight but requires at least a meeting with the debtor and review of his situation. 5 COLLIER ON BANKRUPTCY ¶ 1302.01[1][A][x], at 1302-13 (15th ed. 1979). The task may be performed by a standing trustee whom the court is free to appoint. 11 U.S.C. § 702(d) (Supp. III 1979). The bankruptcy judge remains free to apply his own standard of reasonableness to the plan. See note 49 *supra*.

⁵¹ The review is normally not conducted by the judge, but by an agency that assists the judge in such matters. For instance, in Michigan the Friend of the Court reviews all requests to modify alimony and makes a recommendation to the judge. See 5 MICH. JUDICIAL COUNCIL ANN. REP. 115-17 (1935).

lowed.⁵² The bankruptcy court uses this power to review a debtor's divorce decree to determine what constitutes alimony or a property settlement under the decree.⁵³ A property settlement is dischargeable, but prepetition alimony is not.⁵⁴ If the court finds that a decree grants a property settlement even though it terms the settlement alimony, the court may discharge that debt.⁵⁵ The court bases this determination on federal bankruptcy law, not state law.⁵⁶ In this manner, the bankruptcy court indirectly modifies prepetition alimony when it finds that a portion of the alimony represents a dischargeable property settlement.⁵⁷

The bankruptcy court routinely examines the financial situation of the debtor's ex-spouse when it reviews a claim for prepetition alimony.⁵⁸ Although cases may occur where a debtor seeks

⁵² A party in interest must object to a claim for the court to conduct such a review. 11 U.S.C. § 502(a) (Supp. III 1979).

⁵³ *In re Lovett*, 6 Bankr. Rep. 270 (Bankr. Ct. D. Utah 1980). See also H.R. REP. No. 595, *supra* note 6, at 364; S. REP. No. 989, *supra* note 6, at 79.

⁵⁴ 11 U.S.C. § 523(a)(5) (Supp. III 1979).

⁵⁵ *In re Warner*, 5 Bankr. Rep. 434, 442 (Bankr. Ct. D. Utah 1980); *In re Williams*, 3 Bankr. Rep. 401 (Bankr. Ct. N.D. Ga. 1980); see Branca, *Dischargeability of Financial Obligations in Divorce: the Support Obligation and the Division of Marital Property*, 9 FAM. L.Q. 405 (1975); Loiseau, *Domestic Obligations in Bankruptcy*, 41 N.C.L. REV. 27 (1962); Schiffer, *The New Bankruptcy Reform Act: Its Implications for Family Law Practitioners*, 19 J. FAM. L. 1, 22 & n.93 (1980-81); Swann, *Dischargeability of Domestic Obligations in Bankruptcy*, 43 TENN. L. REV. 231 (1976); Note, *Dissolution of Marriage and the Bankruptcy Act of 1973: "Fresh Start" Forgotten*, 52 IND. L.J. 469 (1977); Note, *The Effect of the Indiana Divorce Law upon the Application of Section 17a(7) of the Bankruptcy Act*, 12 IND. L. REV. 379 (1979).

⁵⁶ See note 53 *supra*.

⁵⁷ A state court determination of dischargeability does not make the dischargeability issue res judicata for the bankruptcy court. See *Brown v. Felsen*, 442 U.S. 127 (1979); *In re Williams*, 3 Bankr. Rep. 401 (Bankr. Ct. N.D. Ga. 1980). But see *In re Peterman*, 5 Bankr. Rep. 687 (Bankr. Ct. E.D. Pa. 1980).

⁵⁸ See *In re Warner*, 5 Bankr. Rep. 434, 442 (Bankr. Ct. D. Utah 1980) (when the court reviews prepetition alimony claims it should examine the changed circumstances of the debtor and ex-spouse since the divorce decree; "unless at the time of filing there exists a present need" of the ex-spouse to receive alimony that is "reasonably necessary" the claim should be discharged); accord, *In re Lovett*, 6 Bankr. Rep. 270, 272 (Bankr. Ct. D. Utah 1980) ("Additionally, evidence of changed circumstances since the entry of the decree and up to the filing of the bankruptcy must be considered to determine whether a debt originally imposed to discharge a support obligation fulfills a present need for support."). See also *In re Fox*, 5 Bankr. Rep. 317 (Bankr. Ct. N.D. Tex. 1980) (court reviewed earning capacity of the parties, their need, timing of the payments, and applicable state law to determine the dischargeability of prepetition alimony); *In re Sturgell*, 7 Bankr. Rep. 59, 62 (Bankr. Ct. S.D. Ohio 1980); *In re Williams*, 3 Bankr. Rep. 401 (Bankr. Ct. N.D. Ga. 1980).

An example of such a review of past alimony was given at the House hearings:

Let us take the situation — let us say that the man was an automobile dealer in an agency handling a fairly large type of automobiles. The trends change. Prior to the change in the trends, the family had certain wealth. Domestic problems

to modify only future alimony because he has satisfied all prepetition claims, the possibility is remote. In modification cases, therefore, the bankruptcy court will most likely review both prepetition and postpetition alimony in relation to the debtor's and ex-spouse's present needs. The bankruptcy court's fact-finding process provides all of the information the court needs to project future needs and incomes for modification of future alimony.

Given this similarity of fact-finding and the authority of the bankruptcy court to modify prepetition alimony, bankruptcy courts should exercise jurisdiction to modify chapter 13 debtors' alimony payments. Judicial economy would be enhanced by lightening the congestion of state court dockets, and the debtor would not be burdened with unnecessary expense and delay.⁵⁹ Additionally, the court would be able to provide the debtor with an effective interim fresh start by resolving his total financial situation. Finally, this expanded jurisdiction would enable the court to accomplish more effectively the principal goal of the Bankruptcy Code, which is to provide adequate relief for consumer debtors.⁶⁰

B. Objections to Bankruptcy Court Jurisdiction of Alimony Modification

There are two significant arguments against bankruptcy court jurisdiction to modify alimony payments. The first is that the Bankruptcy Code itself provides an alternative for chapter 13 debtors who cannot pay their alimony: conversion to chapter 7 liquidation. The second argument, which rests on principles of federalism, is that federal courts should not invade a long-recognized area of special state concern. Analysis of these arguments

come along, and so they get divorced. The usual type of settlement we are talking about is one in which the business is awarded to the husband, and, because that provides a disparity in value, the wife is awarded money payments to make up the difference. Business then changes. The husband goes into bankruptcy. He no longer has the asset that was the source of the wealth. He has an obligation to pay alimony and support. That is what is considered to be needed for the wife's support. But he is also asked to pay, under this new proposal, a share for assets that he no longer has. By and large, with that type of settlement, I think he cannot make the payment

In my view, this is a division of former wealth, of no longer existent wealth. *Bankruptcy Act Revision: Hearings on H.R. 31 and H.R. 32 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, pt. I, 94th Cong., 1st Sess. 303-04 (1975) (testimony of Daniel R. Cowans).

⁵⁹ See note 36 *supra*.

⁶⁰ See H.R. REP. No. 595, *supra* note 6, at 4.

will reveal, however, that neither has substantial merit. Conversion to chapter 7 would frustrate a defined national policy. And, with respect to the second argument, state interests in alimony modification are not overriding, and, in fact, are far outweighed by the benefits to be realized from consolidation of the chapter 13 case and the alimony modification case in one court.

1. *The alternative of liquidation*— It can be argued that if a chapter 13 debtor cannot pay both alimony and the claims of other creditors the chapter 13 case should be converted to a chapter 7 liquidation case to discharge all prepetition debts and to enable full payment of alimony.⁶¹ This argument assumes that the modification request is an attempt to circumvent alimony payments, which are primary, nondischargeable obligations in bankruptcy.⁶² Modification, however, should not be equated with discharge. Bankruptcy discharge releases the debtor from further personal liability on his prebankruptcy debts.⁶³ Alimony modification applies only to future alimony, which is a postpetition debt to which the concept of discharge is inapplicable. As to the primary importance of the debtor paying alimony, the debtor could similarly “avoid” payment by filing for modification in state court.

More importantly, however, mandatory conversion to chapter 7 in lieu of modification in chapter 13 would contravene Congress’ stated policy of encouraging qualified individuals to file in chapter 13 before resorting to chapter 7.⁶⁴ The debtor benefits by filing in chapter 13 rather than chapter 7 through greater protection of his assets and credit standing, the avoidance of the stigma of straight bankruptcy, and the financial stability of a carefully planned budget. Creditors benefit through greater payment of their claims.⁶⁵ Forcing the debtor into chapter 7, where “[b]oth the debtor and his creditors are the losers,”⁶⁶ automatically denies him these benefits and contravenes the pro-chapter 13 policy. It also denies a debtor the benefits of the flexibility of

⁶¹ See *In re Garrison*, 5 Bankr. Rep. 256, 260 (Bankr. Ct. E.D. Mich. 1980).

⁶² See H.R. REP. No. 595, *supra* note 6, at 129; 1977 Hearings, *supra* note 10, at 685 (statement of Bankruptcy Judge Joe Lee). See also H.R. REP. No. 1195, 96th Cong., 2d Sess. 15 (1980) [hereinafter cited as H.R. REP. No. 1195].

⁶³ H. MILLER & M. COOK, A PRACTICAL GUIDE TO THE BANKRUPTCY REFORM ACT 389 (1979).

⁶⁴ H.R. REP. No. 595, *supra* note 6, at 118 (“The premises of the bill with respect to consumer bankruptcy are that use of the bankruptcy law should be a last resort; that, if it is used, debtors should attempt repayment under chapter 13 . . .”).

⁶⁵ *Id.*

⁶⁶ 123 CONG. REC. 35,446 (1977) (remarks of Rep. Edwards).

a chapter 13 plan.⁶⁷

Additionally, fairness dictates that the court consider all factors relevant to the debtor's circumstances. The bankruptcy court has broad discretion in determining the reasonable needs and expenses of the debtor and his dependents. By compelling liquidation in response to a modification request, the court denies itself the right to investigate the debtor's entire financial situation. Consequently, the debtor may go through bankruptcy with his financial problems unresolved. For example, the debtor might be unable to pay unmodified alimony even after liquidation and discharge. By forcing the debtor into liquidation in such circumstances the bankruptcy court would fail to fulfill its statutory obligation of resolving the debtor's entire financial situation and providing adequate relief.⁶⁸

2. *Federalism concerns*— In modifying alimony, bankruptcy courts would have to apply domestic relations law, which has traditionally been reserved for state courts.⁶⁹ The limitation on federal court jurisdiction is far from absolute, however, and a federal court must weigh several variables in determining whether to exercise jurisdiction in this area.⁷⁰ The underlying foundation of the domestic relations limitation rests on policy considerations which include the state interest in the suit, the state court's special competence in domestic relations, other than its presumed ability to interpret state law, and the continuing nature of the controversy.⁷¹

a. *State interest in domestic relations*— Bankruptcy courts have refused to modify alimony or child support payments on the ground that there is an "overriding" state interest in such matters; however, none of these cases has dealt with a chapter

⁶⁷ The plan may divide creditors into separate classes, with each class receiving payment of different percentages of their claims. 11 U.S.C. §§ 1322(a)(3), (b) (Supp. III 1979). A plan that provides for 100% payment of modified alimony but 0% of unsecured creditors' claims is acceptable if made in good faith. Cf. the following cases in which the court confirmed plans paying unsecured creditors nothing while paying secured creditors all or part of their claims: *In re Garcia*, 6 Bankr. Rep. 35 (Bankr. Ct. D. Kan. 1980); *In re Stollenwerck*, 5 Bankr. Rep. 616 (Bankr. Ct. M.D. Ala. 1980); *In re Roy*, 5 Bankr. Rep. 611 (Bankr. Ct. M.D. Ala. 1980). See also *In re Haag*, 3 Bankr. Rep. 649 (Bankr. Ct. D. Ore. 1980) (court approved chapter 13 plan providing for 100% payment of child support and 25% payment of other creditors); H.R. REP. No. 1195, *supra* note 66, at 25-26 (1980). But see Note, *Filing for Personal Bankruptcy: Adoption of a "Bona Fide Effort" Test Under Chapter 13*, 14 U. MICH. J.L. REF. 321 (1981).

⁶⁸ See notes 59-60 and accompanying text *supra*.

⁶⁹ See notes 19-22 and accompanying text *supra*.

⁷⁰ See notes 23-26 and accompanying text *supra*.

⁷¹ See *Crouch v. Crouch*, 566 F.2d 486, 487-88 (5th Cir. 1978).

13 debtor who requests modification of alimony payments.⁷³ At any rate, the argument that state interest in alimony modification is "overriding" lacks merit.

First, uniform bankruptcy law is a strong federal interest expressed in the Constitution.⁷³ With the Bankruptcy Reform Act, Congress has mandated that bankruptcy courts exercise the broadest possible jurisdiction to implement bankruptcy law.⁷⁴ Effective implementation of chapter 13 cannot be achieved unless bankruptcy courts exercise such jurisdiction.

Second, state law guides bankruptcy judges in their actions, preventing modification "willy-nilly."⁷⁵ The bankruptcy judge, in confirming the chapter 13 plan, applies a bankruptcy test of needs and expenses; but the judge would have to apply a state test for alimony modification. The fear that the federal standard

⁷³ See *In re Garrison*, 5 Bankr. Rep. 256 (Bankr. Ct. E.D. Mich. 1980) (court held it lacked jurisdiction to modify child support payments of a chapter 13 debtor; dictum that same was true for alimony payments); *In re Universal Profile, Inc.*, 6 Bankr. Rep. 194 (Bankr. Ct. N.D. Ga. 1980) (court held it lacked jurisdiction to modify alimony and child support payments of third-party defendant in chapter 11 case who made modification motion in counterclaim against non-debtor defendant); *Hernandez v. Borgos*, 343 F.2d 802 (1st Cir. 1965) (under the Bankruptcy Act court held it could not modify support payments and refused to confirm plan of chapter XII debtor that provided for monthly amount less than that needed to cover support payments). See also *In re Daiker*, 5 Bankr. Rep. 348, 352 (Bankr. Ct. D. Minn. 1980), a proceeding to determine dischargeability of debts under a divorce decree, in which the court stated:

Additionally, presenting evidence bearing upon the relative equities of the parties' economic positions by including facts relating to the present income of one of the parties addresses an issue beyond that which this court must determine; such proof is more relevant to the modification of the state court's decree and should be addressed to the proper forum, the [local] County Court.

Similar objections were raised in Congress. A dissenter to the House Report said: The balance between federal and state jurisdiction should not lightly be brushed aside [sic], not only in the interests of federal-state comity, but also due to the relative inelasticity of [the] federal judicial system. The federal system has only one pyramid, the states have together fifty. As presently drafted, the bill pours all sort of litigation into the federal system that belongs in the state courts, and the bankruptcy courts would, in addition, end up deciding all kinds of cases only tangentially related to the bankruptcy laws. In the latter event, bankruptcy expertise is irrelevant and bankruptcy judges are not likely to be well trained in these other fields.

H.R. REP. NO. 595, *supra* note 6, at 544 (Separate Additional Views of Hon. George E. Danielson) (quoting Judge Shirley M. Hufstedler).

⁷³ U.S. CONST. art. I, § 8, cl. 4.

⁷⁴ See H.R. REP. NO. 595, *supra* note 6, at 445.

⁷⁵ See *In re Garrison*, 5 Bankr. Rep. 256, 260 (Bankr. Ct. E.D. Mich. 1980) (court refused to modify chapter 13 debtor's child support obligation), in which the court states:

Nor was it the intent of the new Bankruptcy Code to convert the bankruptcy courts into family or domestic relations courts—courts that would in turn, willy-nilly, modify divorce decrees of state courts insofar as these courts had previously fixed the amount of alimony and child support obligations of debtors.

would swallow the state standard is unfounded if bankruptcy judges balance the two standards based on the best interests of the debtor, his dependents, the ex-spouse receiving alimony, and the creditors. This balancing can be achieved effectively only by one judge; and the bankruptcy judge is in the better position to do it.⁷⁶ This is because the bankruptcy judge would have jurisdiction over the entire bankruptcy proceeding, whereas the state court would not. If the bankruptcy and state courts both participate, either a vicious circle of modification results or one court effectively preempts action by the other.⁷⁷

A third reason why state interest is not overriding is that alimony is becoming increasingly contractual in nature. Although marriage itself is a contract, courts have long held that it creates a relationship between the parties that is more than merely contractual.⁷⁸ Consequently, alimony has traditionally been viewed as a general duty of support based on the special relationship between husband and wife, rather than a contractual obligation.⁷⁹ While this may have been an appropriate policy when society regarded the husband as the head of the family,⁸⁰ the growing role of women outside the home, changing property law, and the movement for women's equality are causing modern jurisprudence to reject this concept of women's subordinate role.⁸¹ As a result, the traditional alimony rationales of the husband's duty of support and punishment for fault are also being rejected.⁸² Replacing these outdated notions is the standard that alimony is to be awarded only if the needs of the payee spouse warrant, and then only because the spouse needs time to or cannot support herself or himself.⁸³ The modern policy is to en-

⁷⁶ See text following note 44 *supra*.

⁷⁷ See notes 36-37 and accompanying text *supra*.

⁷⁸ *E.g.*, *Maynard v. Hill*, 125 U.S. 190, 210-11 (1888); UNIFORM MARRIAGE AND DIVORCE ACT § 201. *But see* Glendon, *Marriage and the State: The Withering Away of Marriage*, 62 VA. L. REV. 663 (1976); Weitzman, *Legal Regulations of Marriage: Tradition and Change*, 62 CALIF. L. REV. 1169 (1974).

⁷⁹ *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904) (holding alimony nondischargeable in bankruptcy because not a contractual debt); *accord*, *Dunbar v. Dunbar*, 190 U.S. 340 (1903).

⁸⁰ See Weitzman, *supra* note 66, at 1172-97.

⁸¹ *Orr v. Orr*, 440 U.S. 268 (1979); see Note, *Financial Equality in Marriage and Parenthood: Sharing the Burdens as Well as the Benefits*, 29 CATH. U.L. REV. 733 (1980).

⁸² See, *e.g.*, UNIFORM MARRIAGE AND DIVORCE ACT § 308(b); Gillman, *Alimony/Spousal Support: From Punishment to Rehabilitation*, 7 COMMUNITY PROP. J. 135 (1980); Weitzman & Dixon, *The Alimony Myth: Does No-Fault Divorce Make a Difference?*, 14 FAM. L.Q. 141, 148 (1980).

⁸³ *E.g.*, *In re Marriage of Morrison*, 20 Cal. 3d 437, 451-53, 537 P.2d 41, 50-52, 143 Cal. Rptr. 139, 148-50 (1978); see L. FOLEY & T. McMILLIAN, *FAMILY LAW* 111 (1976); Glen-

courage alimony based on a separation agreement, which can be enforced as a contract.⁸⁴ The result of these factors is that alimony is no different from other contractual obligations that the bankruptcy court must examine and enforce. Thus, the court should treat alimony no differently when considering the extent of its jurisdiction.

b. The state court's special competency in domestic relations— The argument that state courts have special competency to adjudicate modification of alimony payments of chapter 13 debtors is without merit. Bankruptcy courts routinely engage in fact-finding that is virtually identical to the fact-finding involved in a modification proceeding.⁸⁵

Bankruptcy judges are specialists in resolving the financial affairs of petitioners, whether they be individual debtors, corporations, partnerships, or municipalities. Although bankruptcy judges do not deal with intrafamily disputes to the same extent as do judges in state domestic relations courts, they are experienced in uncovering assets and determining the validity of claims against those assets. Since alimony modification is basically a financial issue and bankruptcy judges have expertise in such matters, the decisionmaking required would not be beyond their expertise.

c. Continuing nature of the controversy— The argument for federal abstention is strongest where it can be expected that the case will require continuing supervision over an extended period of time. If custody, parental rights, or child support are involved, the debtor's request for alimony modification might be only one in an extended series of requests as the circumstances of the debtor's family evolve. After investigating the case, deference to the continuing role of the state court would probably call for the bankruptcy court's not exercising jurisdiction in such circumstances.⁸⁶ In the same way, if an agreement exists to litigate the modification question in the state courts, the bankruptcy court should refrain from exercising jurisdiction until it can determine the reasons for the agreement and whether such restraint is in the best interests of the parties.

don, *supra* note 78, at 706-07; Weitzman & Dixon, *supra* note 82, at 148-50.

⁸⁴ See UNIFORM MARRIAGE AND DIVORCE ACT § 306 & Commissioners' Note.

⁸⁵ See notes 47-60 and accompanying text *supra*.

⁸⁶ As an example of a continuing role with regard to child support payments, in Michigan child support payments are collected and supervised by the Friend of the Court, who has the authority to petition the state court for a modification of support if changed economic or financial conditions warrant modification. MICH. COMP. LAWS §§ 552.251, .252a (1970).

In these types of cases the line between the bankruptcy court's not acting because it lacks jurisdiction and not acting because it is following the abstention principle often blurs.⁸⁷ Specifically, the court may hold that the continuing nature of the other controversy precludes a finding that the connection between that proceeding and the bankruptcy case is sufficient to bring it within the court's jurisdiction. On the other hand, the court may decide that it has jurisdiction but the controversy's continuing nature requires it to abstain. Thus, courts have abstained where the bankruptcy petition was filed while simultaneous state proceedings were being followed and the unstated threat existed that the debtor was seeking to play one court against the other.⁸⁸

The preceding discussion leads to the conclusion that the domestic relations limitation on federal court jurisdiction should not bar a bankruptcy court from modifying a chapter 13 debtor's alimony payments. Federal interests in providing uniform, efficient and effective bankruptcy relief clearly outweigh state interest in maintaining exclusive jurisdiction to modify alimony. In addition, the bankruptcy court is the proper forum for modification of a chapter 13 debtor's alimony because the bankruptcy court, unlike the state court, is competent to deal with the debtor's total financial situation. However, in a situation where it can be expected that continuing court supervision will be required beyond the life of the debtor's plan, *e.g.*, where child support or custody is involved, the bankruptcy court might properly choose to defer jurisdiction to the state court.⁸⁹

⁸⁷ 28 U.S.C. §1471(d) (Supp. III 1979). This section codifies the decision in *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478 (1940), where no statutes nor previous decisions were clearly applicable to the property question involved. The Court held that it was more appropriate for the state court to decide the issue. See H.R. REP. No. 595, *supra* note 6, at 446.

⁸⁸ *Cf. In re Moore*, 5 Bankr. Rep. 67 (Bankr. Ct. N.D. Tex. 1980) (State court awarded a wife farm land in a divorce settlement, but her husband appealed and entered the land. The wife sought a restraining order, but the husband filed a chapter 13 petition and sought removal. The bankruptcy court stated it had jurisdiction but would abstain on the basis of comity and federalism.); *In re Jewel Terrace Corp.*, 3 Bankr. Rep. 36 (Bankr. Ct. E.D.N.Y. 1980) (debtor bought apartment building with knowledge of tenants' strike and state court proceeding; court found it in best interests of all concerned not to oust state court of jurisdiction and therefore abstained).

⁸⁹ But even child support is based on financial considerations, and these may be so crucial to the bankruptcy case that they could outweigh any continuing state interest.

CONCLUSION

Bankruptcy courts now have jurisdiction over all matters "related to" the bankruptcy case. Alimony modification is sufficiently connected to a chapter 13 case to satisfy this jurisdictional standard. Although state concerns regarding the intrusion of federal courts are valid, they do not outweigh the federal interest in uniform and efficient bankruptcy relief. Giving effective relief to the debtor and promoting judicial economy require the bankruptcy court to exercise its jurisdiction over alimony modification proceedings related to a chapter 13 case.

—*Peter Swiecicki*