

MAY 27 2015

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No.	NV-14-1482-JuKuPa
)		
7	DEBORAH LYNN PARTIDA,)	Bk. No.	2:13-bk-11710-LED
)		
8	Debtor.)		
)		
9	DEBORAH LYNN PARTIDA,)		
)		
10	Appellant,)		
)		
11	v.)	O P I N I O N	
)		
12	UNITED STATES, DEPARTMENT OF)		
	JUSTICE,)		
13)		
)		
14	Appellee.)		
)		

Argued and Submitted on May 14, 2015
at Sacramento, California

Filed - May 27, 2015

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Laurel Elizabeth Davis, Bankruptcy Judge, Presiding

Appearances: Christopher P. Burke argued for appellant Deborah
L. Partida; Roger W. Wenthe argued for appellee
United States.

Before: JURY, KURTZ, and PAPPAS, Bankruptcy Judges.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 JURY, Bankruptcy Judge:
2

3 This appeal arises from the bankruptcy court's order
4 denying the chapter 13¹ debtor's motion for contempt for
5 violation of the automatic stay. We conclude as a matter of law
6 that the enforcement provision of the Mandatory Victims
7 Restitution Act overrides the operation of the automatic stay
8 under § 362(a) and in so doing, authorizes the enforcement of
9 criminal restitution obligations against debtor and property of
10 the bankruptcy estate. We AFFIRM.

11 **I. FACTS**

12 No facts are in dispute. Before filing bankruptcy, Deborah
13 L. Partida (Debtor) was convicted of embezzlement and theft of
14 labor union assets. A criminal judgment was entered, sentencing
15 Debtor to serve eighteen (18) months in federal prison and to
16 pay criminal restitution penalties in the amount of \$193,337.33.
17 As of March 5, 2013, when Debtor filed this chapter 13 case,
18 Debtor satisfied her term of incarceration but had not paid her
19 restitution obligation. Debtor listed the restitution
20 obligation in her schedules and the United States Department of
21 Justice (the Government) received notice of the bankruptcy
22 filing. Debtor's chapter 13 plan was confirmed on March 6,
23 2014.

24 After Debtor received a notice of intent to offset and an
25

26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
28 and "Rule" references are to the Federal Rules of Bankruptcy
Procedure.

1 "Overdue Debtor Statement," the Government garnished \$272.47
2 from Debtor's pension and \$467.85 from her retirement benefits
3 on March 1, 2014. Debtor then filed a motion for contempt for
4 violation of the automatic stay against the Government in
5 bankruptcy court. On July 29, 2014, the bankruptcy court heard
6 oral arguments on the matter. On September 8, 2014, in an oral
7 ruling, the bankruptcy court denied the motion for contempt on
8 the ground that the Government's actions were excepted from the
9 automatic stay under § 362(b)(1). The order denying Debtor's
10 motion was entered on September 22, 2014, and Debtor filed a
11 timely notice of appeal.

12 **II. JURISDICTION**

13 The bankruptcy court had jurisdiction over this proceeding
14 under 28 U.S.C. § 157(b)(2)(G). We have jurisdiction under 28
15 U.S.C. § 158.

16 **III. ISSUE**

- 17 1. Whether the enforcement provision of the Mandatory Victims
18 Restitution Act overrides the operation of § 362(a) as to
19 the enforcement of criminal restitution orders; and
- 20 2. Whether the post-conviction enforcement of criminal
21 restitution orders is excepted from the automatic stay
22 under § 362(b)(1).

23 **IV. STANDARD OF REVIEW**

24 Questions of statutory interpretation are reviewed *de novo*.
25 United States v. Youssef, 547 F.3d 1090, 1093 (9th Cir. 2008).

26 We may affirm on any ground supported by the record.
27 Siriani v. Nw. Nat'l Ins. Co. (In re Siriani), 967 F.2d 302, 304
28 (9th Cir. 1992).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. DISCUSSION

A. Notwithstanding the automatic stay under § 362(a), the Mandatory Victims Restitution Act authorizes the enforcement of criminal restitution orders against Debtor and property of the bankruptcy estate.

Although the bankruptcy court based its decision on the exception to the automatic stay provided by § 362(b)(1), the significant threshold issue is whether the operation of the automatic stay under § 362(a) is superseded by the subsequent enactment of the Mandatory Victims Restitution Act (the MVRA) as to the enforcement of restitution orders against Debtor and property of the bankruptcy estate.

Section 362(a) details the various stays triggered upon a bankruptcy filing. Subsection (2) provides that entities are stayed from the enforcement of a prepetition judgment "against the debtor or against property of the estate," while subsection (3) stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." These two subsections of § 362(a) were enacted as part of the Bankruptcy Act of 1978.

In direct conflict, the 1996 enactment of the MVRA provides in relevant part that "[n]otwithstanding any other Federal law (including section 207 of the Social Security Act)" the United States may enforce a judgment imposing criminal fines "against all property or rights to property of the person fined." 18 U.S.C. § 3613(a), made applicable to criminal restitution awards by 18 U.S.C. §§ 3664(m)(1)(A) and 3613(f). Debtor argued to the bankruptcy court and reiterates here that the automatic stay

1 provided in § 362(a) trumps the MVRA. We disagree.

2 To answer whether Congress intended the MVRA to override
3 the effect of § 362(a), our analysis must start with the plain
4 language of the statute. Children's Hosp. & Health Ctr. v.
5 Belshe, 188 F.3d 1090, 1096 (9th Cir. 1999). The Ninth Circuit
6 held that inclusion of the "all property or rights to property"
7 phrase in the enforcement provision of the MVRA clearly
8 articulates Congress' intent to make all of a defendant's assets
9 available to restitution orders. United States v. Novak, 476
10 F.3d 1041, 1046 (9th Cir. 2007) (en banc).

11 In Novak, the broad reach of the MVRA conflicted with the
12 preceding anti-alienation provision of ERISA. Id. In order to
13 square the two statutes, the Ninth Circuit found the MVRA
14 statutory language provided "guidance on how to resolve [the
15 statutory conflict], by specifying that all property is covered
16 '[n]otwithstanding any other Federal law.'" Id. (citing 18
17 U.S.C. § 3613(a)). The use of a "notwithstanding" clause
18 connotes an intention to supersede preceding conflicting
19 statutory provisions. Id. (citing Cisneros v. Alpine Ridge
20 Grp., 508 U.S. 10, 18 (1993)). However, the full reach of the
21 "notwithstanding" language is determined "by taking into account
22 the whole of the statutory context in which it appears." Id.;
23 Consejo de Desarrollo Economico de Mexicali, A.C. v. United
24 States, 482 F.3d 1157, 1168 (9th Cir. 2007).

25 In finding that the structure of the MVRA expressed a
26 general intention to override federal anti-alienation
27 provisions, the Ninth Circuit noted that the MVRA enforcement
28 provision's specific inclusion of § 207 of the Social Security

1 Act served to give full effect to the "notwithstanding clause."
2 Novak, 476 F.3d at 1047. Section 207 of the Social Security Act
3 protects Social Security benefits from debt collection actions
4 and "the operation of any bankruptcy or insolvency law"; no
5 other provision may be construed to "limit, supersede, or
6 otherwise modify the provisions of this section except to the
7 extent that it does so by express reference to this section."
8 42 U.S.C. § 407. Cognizant of this, Congress clearly intended
9 the reach of the "notwithstanding" clause of the MVRA
10 enforcement provision to include any conflicting statutory
11 provisions, even making express reference where explicitly
12 required. Novak, 476 F.3d at 1047. It follows that there was
13 no need to specify other statutes because the sweeping breadth
14 of "all property or rights to property of the person fined"
15 taken together with the wide reach of "[n]otwithstanding any
16 other Federal law" was an unambiguous statement that the MVRA
17 enforcement provision overrides all conflicting federal
18 statutes. Id. at 1047-48.

19 By allowing restitution obligations to be enforced against
20 Social Security benefits, Congress prioritizes the enforcement
21 of restitution orders by making available moneys traditionally
22 protected from creditors in bankruptcy. The rationale then
23 follows that the MVRA authorizes the Government to reach
24 Debtor's sources of income regardless of her bankruptcy and the
25 automatic stay.

26 Debtor makes two arguments in support of § 362(a) trumping
27 the MVRA: first, in not adding the MVRA as an exception under
28 § 362(b) as part of the 2005 BAPCPA amendments, Congress

1 implicitly expressed an intent that the MVRA would not override
2 the operation of the automatic stay; and second, the 2005 BAPCPA
3 amendments to certain subsections of § 362 reenacted all of
4 § 362(a) such that § 362(a) should be characterized as being
5 enacted after the MVRA. These arguments are not compelling.
6 First, the broad sweeping language of the MVRA enforcement
7 provision already accomplished an effective override of
8 § 362(a). As such the addition of the MVRA as an exception to
9 the stay under § 362(b) would be superfluous. Second, the
10 concept that an amendment to one part of a broad, multi-faceted
11 statute would make the entire statute deemed enacted on the
12 amendment date is supported by neither case law nor statutory
13 interpretation. The relevant parts of § 362(a), subsections (2)
14 and (3), were not amended. The MVRA was clearly adopted after
15 them and its enforcement provision was intended to override "any
16 other Federal law." 18 U.S.C. § 3613(a).

17 Accordingly, by garnishing Debtor's retirement and pension
18 the Government did not violate the automatic stay. Moreover,
19 because the MVRA enforcement provision precludes the application
20 of § 362(a) in this case, we need not decide whether § 362(b)(1)
21 provides an exception to the stay in this case.

22 VI. CONCLUSION

23 For this reason, we AFFIRM the bankruptcy court's denial of
24 the motion for contempt.