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U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:)	Chapter 7
DARELL W. JOHNSTON SR. and)	No. 4-04-bk-05703-JMM
COLEEN D. WISDOM,)	Adversary No. 4:05-ap-00109-JMM
_____ Debtors.)	MEMORANDUM DECISION
BETSY FOSTER-JOHNSTON,)	(Opinion to Post)
Plaintiff,)	
vs.)	
DARELL W. JOHNSTON SR. and)	
COLEEN D. WISDOM (JOHNSTON),)	
_____ Defendants.)	

The trial in this adversary proceeding was held on January 10, 2006. The Plaintiff was present with her attorney, Michael H. Gottesman; the Debtors appeared *pro se*. After consideration of the evidence and the law, the court now rules.

PROCEDURE

The Plaintiff filed this action on March 13, 2005. It sounded in §§ 523(a)(5) and (15) of the Bankruptcy Code. The Defendants answered on April 15, 2005, denying the § 523 allegations and referring to a violation of the automatic stay of § 362(a). Damages under § 362(h) were not specified.

1 FACTS

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3 The parties were divorced, in Colorado, on July 17, 2001. Child support was awarded to
4 the Plaintiff in the monthly amount of \$894.74. (Ex. 1, p. 8, para. 20.) Property and debts were also
5 divided. (Ex. 2.) Spousal maintenance was not awarded to the Plaintiff.

6 In February, 2002, the parties returned to court, on contempt proceedings initiated by the
7 Plaintiff, concerning arrearages for child support. In those hearings, the court found that Debtor, Darell
8 W. Johnston, was behind in child support payments by \$4,341.92. (Ex. 8 at 2, para. 5.) The court found
9 Mr. Johnston to be in contempt, and awarded attorneys' fees to Plaintiff in the sum of \$2,275.23. (Order
10 of March 6, 2002, Ex. 3.) Later, Mr. Johnston paid the delinquent child support portion, but did not pay
11 the attorney fee award. (See Exs. A and 6.) The balance currently due thereunder, with accrued interest,
12 is \$3,009.28. (Ex. 7.)

13 The parties again returned to court in May, 2003, once more on contempt proceedings.
14 In that action, in addition to acknowledging that the \$2,275.23 award of May 6, 2002 was still unpaid,
15 the court reaffirmed a prior contempt award of \$2,436.01, and entered an additional award of fees. By
16 affidavit dated May 22, 2003, those fees and costs were calculated to be \$2,097.99. (Ex. 4.) That latter
17 sum has now grown, at 8% interest, to \$2,503.55. (Ex. 7.) The previous unpaid award for fees and costs
18 referred to in paragraph 7(a) of Ex. 4 (\$2,436.01), has now grown to \$3,221.93. (Ex. 7.) The court's
19 order was dated June 11, 2003. (Ex. 4.)

20 The Debtors filed this chapter 7 bankruptcy petition on November 11, 2004.

21 After bankruptcy was filed, further hearings were conducted by the Colorado State court,
22 again on contempt proceedings, on December 10, 2004 (Ex. 5). The issue concerned the Debtor, Darell
23 W. Johnson's, failure to comply with the earlier orders. For those wilful infractions, the court ordered
24 a jail sentence, plus the payment of \$1,209.93 in attorneys' fees. (Ex. 5.) The last fee award has grown
25 to \$1,253.25 (Ex. 7).

1 COPIES mailed this 12
day of January, 2006, to:

2 Michael Gottesman
3 P.O. Box 30445
4 Tucson, AZ 85751

5 Darell W. Johnston Sr.
6 Coleen D. Wisdom (Johnston)
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Fowler, CO 81039

7 Office of the United States Trustee
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8 Phoenix, AZ 85003-1706

9
10 By MB Thompson
Judicial Assistant

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