

Recent Decisions of the Bankruptcy Court of the Middle District of Alabama

NOTE: The following case summaries are intended solely to assist the local bankruptcy bar in identifying cases with pertinent issues and facts. They are not official court summaries and are not intended to be used as binding authority in briefs or oral argument. These summaries do not include or reflect any subsequent case history or appeals. It is the user’s responsibility to examine the full opinion to determine the Court’s holding. Later changes in the Bankruptcy Code, state laws, or case law may also render cases obsolete.

Date of order	Case Number	Case Name/Title	Summary
05/10/2024 <i>(on appeal as of 6/11/2024)</i>	19-11575 (BPC)	<i>In re Brown</i>	After an order reimposing the stay entered in October 2023 (<i>see below</i>), Creditor filed a Notice of Default citing a default in the December plan payment. Debtors did not filed any response, and Creditor subsequently filed a Notice of Termination. Given the facts and history of the case, the Court shared Creditor’s frustration that Debtors, again, did not file a response to Creditor’s Notice of Default. However, the Court ultimately found that the “said default” in Creditor’s Notice of Default was cured by Debtors and that the Notice of Termination entered improperly. Accordingly, the Court struck the Notice of Termination and reimposed the stay. Creditor appealed.
5/2/2024	23-08005 (BPC)	<i>Mooney v. Mooney</i>	The Court denied Plaintiff’s Motion for Summary Judgment seeking a determination that the divorce obligation was non-dischargeable pursuant to § 523(a)(5). Plaintiff provided affidavits, a deposition of Defendant, and the underlying Settlement Order from the divorce. However, the documents provided contained opposing accounts regarding the parties’ intent. Because domestic support obligations are highly factual determinations, and the intent of the parties remained a genuine issue, the Court found that Plaintiff failed to meet her burden for summary judgment.
4/30/24	23-80977 (BPC)	<i>In re Franklin</i>	The Bankruptcy Administrator sought dismissal of Debtors’ Chapter 7 case pursuant to 11 U.S.C. §§ 707(b)(2) and (b)(3). Specifically, the BA took issue with the following deductions: vehicle operating expenses, tax expenses, and charitable contribution. The Court found Debtors’ testimony supported their vehicle and charitable deductions and that the Debtor’s student loan payment constituted a special circumstance under the facts of this case which rebutted the presumption of abuse. As to the BA’s § 707(b)(3) argument, the Court concluded that the totality of the circumstances did not suggest that Debtors are trying to abuse the bankruptcy system and Debtors’ expenses did not indicate abuse. The Court denied the Motion to Dismiss.
4/4/24	23-32271 (BPC)	<i>In re Gioiosa</i>	Debtor filed a motion requesting to stay the bankruptcy proceedings to protect his Fifth Amendment rights. The Court denied the Motion because it found that Debtor’s arguments were too speculative. Without more information to show that there was similarity of issues in the underlying civil and criminal actions, the Court’s interest in the efficient administration of the bankruptcy case prevailed.

3/19/2024	19-80967	<i>In re Billingsley</i>	The Court denied Debtor’s Motion to Reconsider an order granting relief from stay. Debtor argued a lack of notice for the first time at the hearing on the Motion to Reconsider—she stated her Counsel had not updated her phone and address information after she provided it. The Court pointed out there was ample opportunity for Counsel to advise Debtor and correct the communication, payment, and notice issues prior to the final hearing on the motion for relief. While the situation was unfortunate, it was not “exceptional” such that Rule 60(b) relief was appropriate, and “the belated efforts to cure a known default are not enough to disturb the finality of [the] Court’s prior order.”
10/25/2023	19-11575 (BPC)	<i>In re Brown</i>	The Court granted Debtors’ Motion to Impose the Automatic Stay following Creditor’s Notice of Termination of Stay. Debtors settled a motion for relief and submitted an Agreed Order that included a 21-day notice of default provision based on Debtors plan payments. Following that Agreed Order, Debtor’s Employer failed to remit funds withheld from Debtor’s paycheck through an Income Withholding Order to the Trustee’s office. Creditor filed a Notice of Default and Right to Cure based on Debtors’ failure to make plan payments under the Agreed Order. Debtors did not file a response to the notice, though Debtors’ counsel stated he sent an email to Creditor’s counsel after the Notice was filed. After 21 days passed without a filed response or cure, Creditor filed a Notice of Termination of Stay and Debtors filed a Motion to Impose the Automatic Stay. The Court construed Debtors’ motion as one under FED. R. CIV. P. 60(b), as made applicable in bankruptcy proceedings under FED. R. BANKR. P. 9024, because it sought to relieve Debtors from the automatic termination provision of the Agreed Order. The Court concluded that Debtors should not be punished for Employer’s delay in remitting payments and that extraordinary circumstances in the case justified granting Debtors relief from the Agreed Order. The Court granted Debtors’ motion, re-imposed the stay as to Creditor, and stated that the Agreed Order remained in effect.
10/10/2023	23-10493 (BPC)	<i>In re Ebikake</i>	After a show cause hearing, the Court denied confirmation and dismissed Debtor’s case with an injunction against refiling for 180 days. Prior to the initial confirmation hearing, Trustee objected to confirmation of Debtor’s plan because Debtor had not made a plan payment, Debtor failed to provide the Trustee with copies of his tax returns, Debtor failed to provided for various claims in his proposed plan, and Debtor failed to make required amendments to his Schedules. Additionally, this case was Debtor’s fourth Chapter 13 filing since 2020. At the confirmation hearing, Debtor’s plan was not ready to be confirmed, and Debtor did not have a defense to dismissal. The Court set a hearing for Debtor to appear and show cause why the case should not be dismissed with an injunction. Finding that the history and facts of the case warranted an injunction, the Court dismissed Debtor’s case with a 180-day injunction against refiling.

9/11/2023	23-30551 (BPC)	<i>In re Holmes</i>	The Court granted Creditor’s motion to dismiss pursuant to § 109(g)(2). In his prior case, Debtor voluntarily dismissed his case one week after Creditor filed a motion for relief. In this case, Trustee and Creditor argued Debtor was ineligible to be a debtor in bankruptcy for 180 days after the voluntary dismissal under. Debtor argued that the application of § 109(g)(2) against him would be an absurd result. Looking to the plain text of the statute, the Court found the language unambiguous and that strictly applying the statute here did not lead to an absurd result. While stating that some situations may result in the application of § 109(g)(2) being absurd, the Court did not find that was the case when Debtor admitted to voluntarily dismissing his case after the motion for relief to “stretch out” payments in a new case. The Court concluded § 109(g)(2) rendered Debtor ineligible to be a debtor in bankruptcy for 180 days following the dismissal of his prior case and dismissed the case.
8/10/2023	23-80397	<i>In re Boykin</i>	The Court granted Movant’s motion for relief and modified the stay in order for Movant to proceed with a state court action. Debtor and Movant agreed on a rent-to-own residential lease agreement; after the lease term ended, Movant attempted to purchase the property and continued to reside on the property. Movant filed a <i>lis pendis</i> against Debtor, and Debtor thereafter filed a lawsuit in Circuit Court seeking a declaratory judgment that Debtor was the owner of the property. Movant countersued seeking specific performance of the rent-to-own agreement and other remedies. While state court litigation between Debtor and Movant was pending as to the ownership of a real property, Debtor filed for bankruptcy. Thereafter, Movant filed a motion for relief seeking to continue that state court litigation. Debtor argued that paying two lawyers (counsel in Circuit Court and Debtor’s counsel) at once would be too expensive, but she did not offer evidence or testimony to support how litigating the same issues in bankruptcy court would be more cost efficient or less burdensome for her. The Court considered the factors laid out in <i>In re Marvin Johnson’s Auto Service, Inc.</i> , 192 B.R. 1008, 1014 (Bankr. N.D. Ala. 1996). Based on the totality of those factors, the Court found that the automatic stay was due to be modified to permit the action to continue in state court.
7/5/2023	23-10150 (BPC)	<i>In re Devaughan</i>	The Court conducted a <i>Kitchens</i> analysis, denied confirmation, and dismissed Debtor’s case because Debtor failed to meet his burden in establishing good faith in filing the petition and plan as required by 11 U.S.C. §§ 1325(a)(3) and (7). Debtor filed a Chapter 13 petition two months after Creditor obtained a judgment against him and initiated garnishment proceedings. Yet, Debtor did not initially list Creditor, disclose the judgment, or disclose the garnishment despite the judgment being his second largest debt. While filing a bankruptcy petition to avoid a judgment debt or stop a garnishment is not per se bad faith, the Court dismissed the case due to Debtor’s failure to initially

			disclose the judgment or to offer a sufficient explanation for his failure to disclose.
5/22/2023	22-32001 (BPC)	<i>In re All About Kidz, LLC</i>	The Court granted Bankruptcy Administrator’s motion and dismissed the Chapter 11, Subchapter V case. The United States Internal Revenue Service (“IRS”) opposed confirmation of the Subchapter V plan but proposed that the Court should remove the Debtor-in-Possession and expand the duties of the Subchapter V Trustee rather than dismiss the case. IRS also argued that the Court should grant a charging order to pursue collections against Debtor’s principal. At the confirmation hearing, Debtor’s counsel withdrew from the case and informed the Court that Debtor no longer wished to continue in bankruptcy. Subsequently, the Bankruptcy Administrator filed a Motion to Dismiss based on lack of counsel and lack of compliance with Chapter 11 requirements. Weighing removal versus dismissal, the Court determined that dismissal was in the best interest of the estate, as no evidence was presented that reorganization was possible or that the Subchapter V Trustee could successfully run the LLC. The Court therefore granted the Bankruptcy Administrator’s Motion to Dismiss noting that Debtor could not proceed pro se as a corporation and that, in addition to gross mismanagement, there was no reasonable likelihood of reorganization or rehabilitation. The case’s dismissal mooted the application for a charging order.
3/16/2023	21-30731, 21-31026, 21-31053 (BPC)	<i>In re Roby,</i> <i>In re Arnett,</i> <i>In re Smith</i> (On appeal <i>In re Roby</i> and <i>In re Arnett</i> were affirmed by Chief District Judge Marks on 10/18/2023. <i>In re Smith</i> was dismissed on 4/14/2023 shortly after the appeal to District.)	On remand, the Court conducted a <i>Kitchens</i> analysis, found Debtors met their burden of good faith, and confirmed Debtors’ plans over objections from Creditor, a title pawn lender. Creditor argued that Debtors acted in bad faith by renewing their pawn agreements shortly before filing bankruptcy petitions. Alternatively, Creditor argued that the pawn agreements were voided/breached because Debtors intended to file bankruptcy when they renewed the pawn agreements contrary to a specific paragraph in the agreement. The Court construed this argument as an allegation of bad faith in filing the petition. Creditor also generally alleged fraud but did not set forth or address the necessary elements. The Court focused on Creditor’s lack of good faith argument because a general allegation of fraud or breach of contract is not a typical basis for an objection to confirmation and because determining a pre-petition contract is void on any basis is a legal determination distinct from plan confirmation. Despite the timing of the filings after the agreements, the Court found that pre-petition conduct may be overcome by other factors when the overall filing of the petition and the plan were done in good faith. The Court concluded that the totality of the circumstances supported Debtors filed their petitions and plans in good faith and confirmed the plans.
11/28/2022	18-30766 (BPC)	<i>In re Calloway</i>	The Court granted Creditor’s motion for relief and modified the stay for the limited purpose of allowing Creditor to proceed with a state court quiet title action. Creditor sought stay relief to join Debtor in a quiet title action in state court. Debtor opposed the motion, noting that it would be expensive to defend and unfair to

			force her to defend her ownership interest in property with minimal value. The Court considered the factors laid out in <i>In re Marvin Johnson's Auto Service, Inc.</i> , 192 B.R. 1008, 1014 (Bankr. N.D. Ala. 1996). The quiet title action involved intricate state law and intestacy-related property issues. Weighing the potential prejudice against the Debtor against the prejudice against Creditor and other potential heirs, the Court determined that delaying the action for the duration of the bankruptcy proceeding would merely prolong the matter for all parties and that permitting the action to proceed was in all parties' best interest. The Court found cause to modify the stay to permit the Movant to proceed with the state court quiet title action.
11/1/2022	21-80564 (BPC)	<i>In re Patrick</i>	The Court granted Debtor's Motion to Determine Mortgage Fees and Expenses. Debtor agreed the mortgage agreement provided for fees, but argued the fees were unreasonable. The Court stated that because a Rule 3002.1(c) Notice does not enjoy the same prima facie validity as a proof of claim, it is the Creditor's burden to substantiate fees, expenses, and charges. Here, the parties rested only on the hearing. Because Creditor attached no documentation and offered no "detail, description, or justification for the charges," Debtor's Motion was granted, and the fees claimed by Creditors were disallowed.
10/21/2022	22-03019 (BPC)	<i>Jones, et al., v. Bell</i>	The Court granted in part Defendant's motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6), as made applicable in bankruptcy proceedings by FED. R. BANKR. P. 7012, and denied it in part. In Plaintiffs' Amended Complaint, they set forth three counts: first, Plaintiffs alleged that the debt owed to them by Defendant resulting from a state court default judgment was non-dischargeable pursuant to § 523(a)(2); second, that Defendant should be denied a discharge pursuant to § 727(a)(2); and third, that Defendant should be denied discharge pursuant to § 727(a)(3). The Court concluded that Plaintiffs failed to state a claim under § 523(a)(2), because they failed to sufficiently plead facts that supported an inference that Defendant intended to deceive Plaintiffs. However, the Court concluded that Plaintiffs had set forth plausible claims under § 727(a)(2) and (a)(3). Accordingly, Defendant's motion to dismiss was granted as to the first count but denied as to the second and third count.
8/4/2022	22-08002 (BPC)	<i>Semantha Santangelo vs. Richard Clarvit and Lilas Ayundeh</i>	Pro se Plaintiff initiated an action against Defendants asserting FDCPA claims and alleging a violation of the discharge injunction. Defendants moved to dismiss and argued their actions were not in violation of the discharge injunction because the settlement proceeds were held in trust and were subject to a charging lien. The Court converted Defendant's Motion to Dismiss to one for summary judgment, requested briefs and materials, and ultimately granted the Motion for Summary Judgment because the undisputed facts supported that Plaintiff could not establish the essential elements to her claims. Moreover, the Court found it lacked jurisdiction over the FDCPA claims. Plaintiff's complaint was dismissed with prejudice.

2/12/2021	20-8006 (BPC)	<i>Pruitt, Jr., Pruitt & Pruitt vs. Wilson</i>	The Court granted Defendant's Motion to Dismiss because the Amended Complaint was filed nearly five months after an already extended deadline and Defendant was prohibited from raising objections to discharge or dischargeability not previously brought prior to the expiration of that deadline. The Court found the Second Amended Complaint did not relate back and, as a result, was time-barred because new legal theories were presented under §§ 523(a)(2)(A) and (a)(6), and because those theories depended on facts and critical details not previously asserted or raised in the Amended Complaint.
1/13/2021	19-11083 (BPC)	<i>In re Baum</i>	The Court sustained Trustee's objection to Creditor's Amended Claim. Prior to confirmation, Debtor objected to Creditor's claim. The objection was sustained and claim disallowed. At that hearing, Creditor requested and was granted 90 days leave for to file a deficiency claim. Debtor's plan was confirmed. Before expiration of the deadline to file a deficiency claim, Creditor sought and was granted an extension to file a deficiency claim. Seven days after the deadline, Creditor filed an amended claim to reflect a deficiency balance. Trustee objected to the amended claim. Creditor failed to file a response to Trustee's objection and it was sustained. Creditor moved to reconsider and the Court vacated the order, allowing the parties to brief the issue. After viewing the totality of the circumstances, the Court disallowed Creditor's amended claim. In disallowing the amended claim, the Court stated a finding of excusable neglect was not warranted and that Creditor knew how to seek timely extensions of the deadline as it had done so twice previously; thus the Court must insist on finality at some point.
8/17/2020	16-10767 (BPC)	<i>In re Dorminey</i>	The Court sustained Trustee's objection to Creditor's Amended Claim. Prior to confirmation of Debtor's chapter 13 plan, Creditor was awarded stay relief and sold the vehicle/collateral. Approximately one month later, with no amendments to claim or objections to confirmation from Creditor, Debtor's plan was confirmed. Three years after confirmation, Creditor filed an amended claim seeking a deficiency balance. In applying the factors set forth in <i>In re Durango Georgia Paper Co.</i> , 314 B.R. 885, 888 (Bankr. S.D. Ga. 2004), the Court found that the totality of the circumstances weighed in favor of disallowing the amended claim. The Court concluded that such a late claim was an indication of negligence with no excuse or justification, and disallowed the amended claim.
7/27/2020	19-12064 (BPC)	<i>In re Axtell</i>	The Court sustained Debtor's objection to Creditor's amended claim and disallowed the claim as amended. Creditor timely filed two proofs of claims in Debtor's Chapter 13 case. Then, after the bar date, Creditor filed a third claim to which Debtor objected to as late. The Court sustained that objection and disallowed the

			<p>post-bar date and post-confirmation claim as untimely. Then, Creditor filed another claim asserting it was not a mere amendment of the previously disallowed claim and arguing it should be allowed as a “new theory of recovery” due to the cross-collateralization language in the note, whereas Debtor argued that the claim amendment was an attempt to receive payment on a late-filed claim that was previously disallowed. The Court cited <i>In re Int’l Horizons, Inc.</i> 751 F. 2d 1213, 1216 (11th Cir. 1985) and stated: “Post-bar date amendment are subject to careful scrutiny as an untimely claim should not be allowed if it represents only an “attempt to file a new claim under the guise of amendment.”” The Court found that because Creditor timely filed two proofs of claims and didn’t object to confirmation, that the late claim amendment was more akin to an “end around” the Court’s prior order disallowing the claim. The “new theory of recovery” exception did not apply here, and Creditor’s amended claim was disallowed.</p>