

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re:

DOUGLAS FALGOUST and
MELISSA FALGOUST,

Debtors.

Case No. A00-00689-DMD
Chapter 7

Filed On
2/21/06

CORRECTED MEMORANDUM REGARDING RECONSIDERATION¹

This contested matter was initiated by the debtors, who filed a “Motion to Declare Personal Liability Extinguished.” By their motion, the debtors sought a declaratory judgment that their personal liability for child abuse or neglect to minors A.J. and D.D. was discharged. Allstate Insurance Company joined in the motion. The debtors subsequently withdrew their motion and settled with A.J. and D.D. Allstate, however, demanded a ruling on the merits of the debtors’ motion. I found abstention under 28 U.S.C. § 1334(c)(1) appropriate, and denied Allstate’s joinder. Allstate has moved for reconsideration. I will grant its motion for reconsideration but deny its joinder on the merits.

The Ninth Circuit has endorsed twelve factors to determine whether permissive abstention should be invoked.² A key factor is whether the controversy involves state law issues which predominate over bankruptcy issues. I agree with Allstate that the issues raised by the current proceeding are federal bankruptcy issues rather than state law issues. I

¹This corrected memorandum is being entered to change the erroneous reference in the last footnote from “Allvest” to the proper party in this controversy, “Allstate.”

²*Tucson Estates, Inc. v. Christensen (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166-1167 (9th Cir. 1990), citing *In re Republic Reader’s Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S. D. Tex. 1987).

therefore reconsider my decision to abstain and will determine Allstate's joinder on the merits.

Allstate contends it has independent standing to pursue the debtors' motion. Allstate says it "has an independent interest in ensuring, and a right to demand that, the debtors receive all of the protection that is available to them under bankruptcy law."³ I disagree.

Allstate bases its standing argument on A.S. 21.89.100(g), which provides, in part, "If an insured selects independent counsel under this section, both the counsel representing the insurer and independent counsel representing the insured shall be allowed to participate in all aspects of the civil action." The "civil action" described in this statute is a state law tort claim, not a bankruptcy case. It applies to the related state court proceeding, *A.J. and D.D. v. State of Alaska, et al.*, Case No. 3AN-04-4085 CI, now pending in state superior court. But Congress has not passed a similar statute. States have ceded to Congress the power to establish uniform laws on bankruptcy.⁴ A.S. 21.89.100(g) does not grant Allstate the standing it asserts here.

Allstate also contends that it has standing by virtue of 11 U.S.C. § 105. Again, I disagree. Section 105 grants bankruptcy courts the power to issue orders necessary to carry

³See Allstate's Resp. to the Falgoust's Withdrawal of Their Mot. and Reply to A.J. and D.D.'s Resp. to Allstate's Request for An Order Declaring the Falgousts' Personal Liability Extinguished, filed Jan. 9, 2006 (Docket No. 71) at p. 2.

⁴U. S. CONST. art. I, § 8.

out the provisions of Title 11. Nothing in Title 11 gives standing to Allstate to pursue the declaratory judgment it seeks here.⁵ Allstate's standing arguments are meritless.

The long and short of it is that the debtors themselves, with the benefit of their own legal counsel, are satisfied with the protection they have negotiated with A.J. and D.D. It is not for Allstate to champion the debtors' rights. Allstate's joinder will be denied with prejudice.

DATED: February 21, 2006.

BY THE COURT

/s/ Donald MacDonald IV
Donald MacDonald IV
United States Bankruptcy Judge

Serve: S. Shamburek, Esq.
R. Copeland, Esq.
C. Christianson, Esq.
E. LeRoy, Esq.
L. Compton, Trustee
U. S. Trustee
2/21/06

⁵Allstate concedes that the discharge of a debt in bankruptcy does not affect the liability of any other entity for such debt. *See* 11 U.S.C. § 524(e). Section 105 cannot be employed to give standing to an insurance company seeking to establish the impact of a debtor's discharge upon its own liability.