

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION**

**IN RE:           JANNA FAYE WITHERS, Debtor**

**4:06-bk-11691 E  
CHAPTER 13**

**ORDER DENYING MOTION FOR EXTENSION OF  
THIRTY DAY AUTOMATIC STAY PENDING NEGATIVE NOTICE AND  
ORDER DENYING MOTION TO EXTEND AUTOMATIC STAY**

Now before the Court is the Debtor's *Motion for Extension of Thirty Day Automatic Stay Pending Negative Notice* filed on June 5, 2006 (the "**Motion for Extension**"). The Debtor filed bankruptcy under Chapter 13 on May 4, 2006. The Debtor previously filed bankruptcy on September 30, 2003. That case was dismissed on April 17, 2006.

Pursuant to 11 U.S.C. § 362(c)(3)(A), if a debtor has had a pending case dismissed in the one-year period prior to filing the current case, the automatic stay terminates with respect to such debtor on the 30<sup>th</sup> day after the filing of the later case with respect to a debt or property securing such debt (unless the prior case was dismissed under 11 U.S.C. § 707(b)). Upon motion of a party in interest, the automatic stay may be extended "after notice and a hearing *completed before the expiration of the 30-day period*" if certain conditions are met. 11 U.S.C. § 362(c)(3)(B) (emphasis added). The Debtor filed such a motion on May 18, 2006,<sup>1</sup> along with a *Notice and Opportunity to Object* giving creditors and parties in interest 20 days to object. As Counsel noted in its Motion for Extension, the last day of

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<sup>1</sup>According to Debtor's counsel, a motion to extend the automatic stay was not filed sooner because the debtor's file was "unavoidably misplaced" and not located until May 18, 2006.

the twenty days extended beyond the expiration of the thirty day stay (as limited by § 362(c)(3)(A)). Counsel explained that “such situation was not detected until today.”

In this case, the thirtieth day after the Debtor’s current bankruptcy case was filed fell on Saturday, June 3, 2006. Accordingly, the automatic stay expired (as limited by § 362(c)(3)(A)) on Monday, June 5, 2006.<sup>2</sup> However, Debtor’s *Notice and Opportunity to Object* gave creditors until June 7, 2006, to file objections to the Debtor’s *Motion to Extend Automatic Stay* filed on May 18, 2006. Accordingly, no order was entered extending the automatic stay before it expired, and it is now gone, at least to the extent provided by § 362(c)(3).<sup>3</sup>

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<sup>2</sup>Rule 9006(a) provides, in part:

In computing any period of time prescribed or allowed by these rules or . . . by any applicable statute, the day of act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, . . . in which event the period runs until the end of the next day which is not one of the aforementioned days.

<sup>3</sup>Some bankruptcy courts have examined the meaning of § 362(c)(3) and determined to what extent the stay expires on the thirtieth day following the bankruptcy filing. *See e.g., In re Harris*, \_\_\_ B.R. \_\_\_, 2006 WL 1195396 (Bankr. N.D. Ohio 2006) (concluding that § 362(c)(3)(A) does not terminate the entire automatic stay but only any action taken with respect to a debtor and any action taken with respect to any lease of the debtor); *In re Bell*, 2006 WL 1132907 (Bankr. D. Colo. 2006) (not intended for publication) (“Its termination of the automatic stay after thirty days is limited to actions taken against the Debtors, not property of the estate. Furthermore, it is applicable only to a prepetition ‘action taken with respect to a debt or property securing such debtor or with respect to any lease.’ Thus, it applies only to the continuation of actions commenced against a debtor prepetition.”); *In re Paschal*, 337 B.R. 274 (Bankr. E.D.N.C. 2006) (holding same as *Bell*); *In re Moon*, 339 B.R. 668 (Bankr. N.D. Ohio 2006) (concluding that the automatic stay only expires as to debts or property of the debtor and not with respect to property of the estate); *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006) (“To summarize, the court holds that § 362(c)(3)(A) terminates the stay with respect to actions taken against the debtor and against property of the debtor, but does not terminate the stay with respect to property of the estate.”); *In re Johnson*, 335 B.R. 805, 806

It is Debtor's responsibility to provide an appropriate response time to a Motion to Extend the Automatic stay so that the automatic stay does not expire before the response time runs.<sup>4</sup> There was no requirement that the Debtor use a twenty day response time; in fact, the notice on the Court's website ([www.areb.uscourts.gov](http://www.areb.uscourts.gov)) informing parties that they may "negative notice" a motion to extend the automatic stay specifically provides: **"In the case of motions filed under § 362(c)(3), which must be heard within 30 days of the bankruptcy filing, such motions should be filed with the bankruptcy petition and should provide a 15 day response time."** (Emphasis added.)

Debtor's counsel failed to take the necessary actions to keep the stay in place – his failure is the only basis he offers as either factual or legal authority for the court to disregard the specific statutory requirements of § 362(c)(3)(A) and enter an order extending the stay. The court can not grant the relief requested. It has no authority to extend the stay or to re-impose it.<sup>5</sup>

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(Bankr. W.D. Tenn. 2006) ("[w]hen read in conjunction with subsection (1), . . . the plain language of § 362(c)(3)(A) dictates that the 30-day time limit only applies to 'debts' or 'property of the debtor' and not to 'property of the estate.'"). This Court has not yet determined this issue.

<sup>4</sup>See e.g., *In re Ziolkowski*, 338 B.R. 543 (Bankr. D. Conn. 2006) (holding that movants bear ultimate burden to insure that their § 362(c)(3)(B) motion is timely scheduled); *In re Thomas*, 2006 WL 278544 (Bankr. E.D. Mich. 2006) (section 362(c)(3)(B) motion denied because not timely filed under local rule and not otherwise scheduled for hearing within thirty days).

<sup>5</sup>Although this Court has held that a stay may be imposed under § 362(c)(4) even if the Debtor has only had one other bankruptcy pending in the prior year, a motion to impose the stay under § 362(c)(4) must be filed within thirty days of the bankruptcy filing. *In re Beasley*, 339 B.R. 472 (Bankr. E.D. Ark. 2006) (Evans, J.); *In re Wright*, 339 B.R. 474 (Bankr. E.D. Ark. 2006) (Evans, J.). See also *In re Berry*, 340 B.R. 636 (Bankr. M.D. Ala. 2006).

For these reasons, it is hereby

**ORDERED** that both the Debtor's Motion for Extension and the Debtor's Motion to Extend Automatic Stay filed on May 18, 2006, are hereby **DENIED**.

**IT IS SO ORDERED.**



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HONORABLE AUDREY R. EVANS  
UNITED STATES BANKRUPTCY JUDGE

DATE: June 8, 2006

cc: Thomas W. Byarlay, attorney for debtor  
Chapter 13 Trustee  
U.S. Trustee  
all creditors per matrix

Entered on Docket  
6/8/06 by  
LaTrese Martindale