

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

In Re: WD69615

|                          |   |                                |
|--------------------------|---|--------------------------------|
| ROBERT D. CAIN., ET AL., | ) |                                |
|                          | ) |                                |
| v.                       | ) | Circuit Court No.: 0516CV24383 |
|                          | ) |                                |
|                          | ) | Appeal No.: WD69615            |
|                          | ) |                                |
| SHERRI PORTER,           | ) |                                |
|                          | ) |                                |
| Appellant.               | ) |                                |

---

Appeal from the Circuit Court of Jackson County, Missouri

The Honorable Thomas C. Clark  
Circuit Court Judge

---

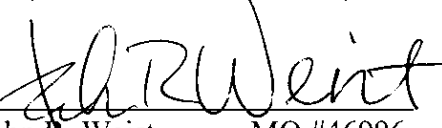
**APPELLANT'S BRIEF**

---

Respectfully submitted,

**LONG, LUDER & GORDON, P.A.**

By:

  
John R. Weist      MO #46996  
Robert J. Luder      MO #42926  
9401 Indian Creek Pkwy., Suite 800  
P.O. Box 26287  
Overland Park, Kansas 66225-6287  
(913) 491-9300  
(913) 491-9323 Facsimile  
[JWeist@LLGLaw.com](mailto:JWeist@LLGLaw.com)  
[BLuder@LLGLaw.com](mailto:BLuder@LLGLaw.com)

**ATTORNEYS FOR APPELLANT  
SHERRI PORTER**

## TABLE OF CONTENTS

|   |    |
|---|----|
| TABLE OF CASES AND AUTHORITIES .....  | 3  |
| JURISDICTIONAL STATEMENT .....  | 5  |
| STATEMENT OF FACTS .....  | 6  |
| POINT RELIED ON.....  | 12 |
| ARGUMENT AND AUTHORITY .....  | 13 |
| POINT RELIED ON.....  | 12 |
| A. Standard of Review.....  | 13 |
| B. The Automatic Stay and its Effect.....   | 13 |
| C. The Trial to the Court Below and the Entry of Judgment Against<br>Porter Were in Violation of the Automatic Stay Such That the<br>Judgment of September 11, 2006 is Void <i>Ad Initio</i> and Must Be<br>Set Aside ..... | 14 |
| D. The Trial Court's Finding of <i>Res Judicata</i> is Erroneous Because<br>There was No Collateral Attack of the Judgment, and Because<br>a Judgment That is Void Cannot Sustain a Claim of <i>Res Judicata</i> .....      | 15 |
| E. The Trial Court's Finding That Porter had Waived the Automatic<br>Bankruptcy Stay is Erroneous as a Matter of Law Because the<br>Circuit Court Action was Void <i>Ab Initio</i> .....                                    | 16 |
| CONCLUSION.....   | 19 |
| CERTIFICATE OF SERVICE .....  | 21 |

## TABLE OF CASES AND AUTHORITIES

### Cases

|   |          |
|---|----------|
| <u>Carver v. Carver</u> .....   | 16       |
| 673 S.W.2d 92 (Mo.App. 1984)  |          |
| <u>Flanary v. Rowlett</u> .....   | 15       |
| 612 S.W.2d 47 (Mo.App.W.D.1981)   |          |
| <u>In re: EBG Health Care II, Inc.</u> .....  | 12,13,14 |
| 303 B.R. 626 (W.D.Mo. 2003) (Federman, C.J.)  |          |
| <u>In re: Estate of Shaw</u> .....  | 14       |
| 256 S.W.3d 72 (Mo. 2008)  |          |
| <u>In re: Hopkins</u> .....   | 12,13    |
| 266 B.R. 872 (W.D. Mo. 2001)  |          |
| <u>In re: Marriage of Dooley</u> .....  | 16       |
| 15 S.W.3d 747 (Mo.App.2000)   |          |
| <u>In re: Marriage of Mitchell</u> .....  | 14,16    |
| 756 S.W.2d 949 (Mo.App.1988)  |          |
| <u>In re: Marriage of Southard</u> .....  | 14,15    |
| 733 S.W.2d 867 (Mo.App.1987)  |          |
| <u>In re: United Imports Corp</u>   |          |
| 200 B.R. 234 (Bankr.D.Neb.1996) .....   | 13       |
| <u>In re: Vierkant</u> .....  | 12,13    |
| 240 B.R. 317 (8 <sup>th</sup> Cir. BAP 1999)  |          |
| <u>Louisville and Jefferson Country Metro. Sewer Dist. v. Excel Engineering, Inc.</u> ..... | 13       |
| 244 B.R. 582 (Bankr.W.D.Ky.1998)  |          |
| <u>McIntosh v. Wiggins</u> .....  | 15       |
| 356 Mo. 926, 204 S.W.2d 770 (1947)  |          |
| <u>Murphy v. Carron</u> .....   | 18       |
| 536 S.W.2d 30 (Mo. banc 1976)   |          |
| <u>Noakes v. Noakes</u> .....   | 16       |
| 168 S.W.3d 589 (Mo.App.2000)  |          |

**Other Authorities**

|   |             |
|---|-------------|
| <u>11 U.S.C. §362(a)</u> .....  | 12,13,14,16 |
| <u>9B Am. Jur.2d Bankruptcy §1932</u> .....   | 17          |
| <u>9B Am. Jur.2d Bankruptcy §1944</u> .....   | 17          |
| <u>Rule 4001-1 U.S. Bankruptcy Court for the Western District of Missouri</u> ..... | 17          |

### JURISDICTIONAL STATEMENT

This appeal is taken from a final judgment entered January 8, 2008 in the Jackson County Circuit Court denying appellant's motion to set aside as void an earlier judgment of September 11, 2006 entered by the same court against appellant. (LF, 195). This appeal does not involve the validity of a treaty or statute of the United States, or of a Missouri statute or a provision of the Constitution of Missouri, the construction of revenue laws of this state, or the title to any office, nor is it a case where the punishment imposed is death, or any of those other areas exclusively reserved for the Missouri Supreme Court. This appeal involves the question of whether, as a matter of law, the trial court lacked authority to enter a judgment against appellant on September 11, 2006 during the pendency of an automatic stay that arose when she filed a Chapter 13 bankruptcy petition, which question is within the jurisdiction of the Missouri Court of Appeals, Western District, pursuant to MO. CONST. art. V, §3, §512.020 and §477.070, RSMo.

## STATEMENT OF FACTS

Although the legal issues in this appeal are, appellant submits, straightforward, this case has unusual and somewhat detailed facts.

This appeal arises from a circuit court action that was filed against appellant Sherri Porter ("Porter") by plaintiffs/respondents Robert and Elizabeth Cain ("the Cains") *after* Porter's Chapter 13 Petition for Bankruptcy was filed in the United States District Court for the Western District of Missouri and *while* the automatic stay created by her Chapter 13 Petition was in effect. (LF, 7; 140.) Prior to the filing of the Cains' circuit court Petition, they had not been listed as creditors in the bankruptcy action; but once the Cains filed their circuit court Petition, they were not only named as creditors in the Chapter 13 bankruptcy action and given notice of Porter's bankruptcy, but their counsel was also given notice of Porter's bankruptcy. (LF, 173, 175.)

No attempt was made by the Cains to lift the bankruptcy stay. The circuit court case appeared on a trial docket on September 11, 2006 in the Jackson County Circuit Court before the Honorable Jon Gray. (LF, 69.) On the day of trial, the case was administratively reassigned to the Honorable Thomas Clark in Division 3. (LF, 69.) The Cains and their counsel appeared for the trial in Judge Clark's division, but Porter and her counsel did not. (LF, 71; Transcript, 2.) Porter's counsel at the time later asserted that she had not received notice of the trial setting and was, in fact, across the hall from Judge Clark's division in trial in another case when the instant case was called for trial by Judge Clark. (Tr., 32.) Porter's prior counsel, in a Motion to Set Aside Default Judgment, later asserted that the Cains' counsel, James Thompson, knew she was across the hall in another division in trial but did not advise Judge Clark of this fact. (LF., 86.)

When Judge Clark called the instant case for trial, the Cains waived trial by jury and tried their claims to the court, with the Cains themselves serving as the only witnesses. (Tr., 2-29.) At that time, after a short trial to the bench, Judge Clark entered a Judgment in favor of Robert and Elizabeth Cain in the amounts of \$146,018.99 and \$54,081.25, respectively (including pre-judgment interest). (LF, 72.)

Subsequently, Porter filed a Motion for Relief from Void Judgment pursuant to Rule 74.06(b) on the basis that the court's action of entering judgment against Porter violated the automatic stay of §362(a) of the Bankruptcy Code (11 U.S.C. §362(a)). (LF, 132.) On January 8, 2008, Judge Clark denied the motion, ostensibly on the bases that the motion was barred on the basis of res judicata and waiver. (LF, 196.) This appeal was timely filed thereafter. (LF, 203.)

For the Court's assistance in trying to follow the events of this case, appellant Porter offers the following timeline of facts from the record on appeal:

03/05/04      *Porter files a Chapter 13 Voluntary Petition in the United States District Court for the Western District of Missouri, Bankruptcy Petition 04-41276 (LF, 140) ("the bankruptcy action");<sup>1</sup>*

05/03/04      *The Bankruptcy Court enters an Order confirming Porter's bankruptcy plan (LF, 140);*

08/24/05      The Cains filed in the Jackson County Circuit Court their Petition for Damages against Porter asserting claims for personal injury arising from a November 29, 2000 motor vehicle accident (LF, 7) ("the circuit court

---

<sup>1</sup> Because the facts reference two separate court actions (the bankruptcy action and the circuit court action) the events relating to the bankruptcy action have been italicized so that the two actions can be more readily distinguished by the court.

action”); at the same time, the Cains file a waiver of their right to jury trial in the action (LF, 16);

10/01/05 Porter is personally served with process in the circuit court action (LF, 22);

01/03/06 The circuit court action is assigned to Judge Jon R. Gray (LF, 24);

01/10/06 *An Amended Schedule of Creditors Holding Unsecured Nonpriority Claims is filed in the bankruptcy action naming the Cains, and identifying James Thompson as their counsel (LF, 103-105, 140, 172-173); on the same date, counsel for Porter in the bankruptcy action files a certification that he has served notice on the Cains and their counsel of the addition of the Cains as creditors (LF, 175);*

03/17/06 The Cains file a Motion for Continuance of Trial in the circuit court action, noting in their motion that Porter was insured with Allstate, but that counsel for Porter had not yet entered an appearance (LF, 26); on the same date, through counsel, Porter files an Answer and Cross-Claim against Robert Cain (LF, 32)

03/20/06 Despite the fact that counsel for Porter had filed a Designation as Lead Counsel three days earlier (LF, 37), the circuit court issues an Order setting the case for trial September 11, 2006, and serves the Order on Porter and Porter’s insurance adjuster, but not on Porter’s counsel (LF, 39-40);



05/02/06 Porter's counsel (Jennifer Rose) withdraws from the case, and new counsel (Robert Smith) enters an appearance for Porter in the circuit court action (LF, 42);

09/11/06 An Order is entered in the circuit court action reassigning the case from Judge Gray to Judge Thomas Clark for trial (LF, 69); the Cains and their counsel appear for trial, and Judge Clark proceeds with a trial without Porter or her counsel finding that "the court's records indicate that this matter was duly noticed for trial this date" (LF, 71); no mention is made by the Cains or their counsel to the trial court that Porter had filed for Chapter 13 bankruptcy, or that the Cains had been identified in the bankruptcy action as one of Porter's unsecured nonpriority creditors (Transcript, 2-29); no mention is made to Judge Clark by the Cains' counsel that he was aware that counsel for Porter (Tracey Chappell) was, at the same time, in trial on another case across the hall from Judge Clark's division (Tr., 32); Judgment is entered against Porter, *in absentia*, after a short trial to the bench in favor of Robert and Elizabeth Cain for \$146,018.99 and \$54,081.25, respectively (LF, 71-72);

09/26/06 Motion to Set Aside the Judgment filed by Porter (LF, 78);

10/04/06 Amended Motion to Set Aside the Judgment filed by Porter (LF, 84);

11/01/06 Hearing held on Porter's Motion to Set Aside the Judgment (Tr., 30);

11/17/06 Judge Clark denies the motion (in part based on a finding that attorney Chappell failed to appear for trial and the hearing on the Motion to Set

Aside, despite evidence that attorney Chappell was in trial in another case on both occasions) (LF, 93);

11/30/06 Motion to Reconsider Motion to Set Aside Default Judgment filed by Porter, pointing out that the court's judgment was void as violative of the automatic bankruptcy stay, and that the Cains and their counsel had continued litigation in violation of the automatic bankruptcy stay after they had been given notice of the bankruptcy action (LF, 96);

03/13/07 The circuit court denies the Motion to Reconsider without a hearing stating it did not "state a sufficient basis upon which this court may grant the relief sought . . . ." (LF, 111);

03/23/07 Undersigned counsel enters an appearance for Porter, and files a Notice of Appeal of the circuit court Judgments (LF, 114, 127);

04/13/07 Porter files a Motion for Relief from Void Judgment in the circuit court on the basis that the circuit court lacked subject matter jurisdiction to enter judgment against appellant in light of the automatic bankruptcy stay (LF, 132);

04/16/07 Pursuant to Porter's Motion for Dismissal, the Court of Appeals dismisses the direct appeal of the Judgment (LF, 180);

07/26/07 Hearing held pursuant to Rule 74.06(c) on Porter's Motion for Relief from Void Judgment (Tr., 56);

- 12/07/08 *Porter is granted a discharge under section 1328(a) of the Bankruptcy Code in the bankruptcy action, which discharge was served on the Cains and their counsel (Supp., 239)<sup>2</sup>;*
- 01/08/08 *The circuit court enters a Judgment denying appellant's Motion for Relief from Void Judgment (LF, 195);*
- 01/10/08 *The trustee in the bankruptcy action files a Final Report showing no disbursement had been made to the Cains on their claim because no proof of claim had been filed by the Cains (Supp., 249);*  
*Order entered by the bankruptcy court approving the trustee's final account and closing the bankruptcy estate (Supp., 247);*  
*Notice and Order issued by the bankruptcy court approving the Final Report and closing the bankruptcy estate, with notice of the same given to the Cains and their counsel (Supp., 248-249);*
- 02/13/08 *Porter timely files a Notice of Appeal of the circuit court's 01/08/08 Judgment (LF, 203).*

---

<sup>2</sup> Porter filed a Motion to Supplement the Record on Appeal to add to the record certain certified court documents from the bankruptcy action that were no otherwise part of the court file in the circuit court. That motion was granted by this court. Porter references the supplemental legal file as "Supp."

**POINT RELIED ON**

**THE TRIAL COURT ERRED IN DENYING PORTER'S MOTION TO SET  
ASIDE VOID JUDGMENT BECAUSE THE UNDERLYING JUDGMENT OF  
SEPTEMBER 11, 2006 WAS ENTERED AGAINST PORTER IN VIOLATION OF  
THE AUTOMATIC BANKRUPTCY STAY OF 11 U.S.C. § 362(a) IN THAT ANY  
ACTION BY THE CIRCUIT COURT WAS VOID AS A MATTER OF LAW.**

*In re: EBG Health Care II, Inc.*, 303 B.R. 626, 630 (W.D. Mo. 2003)

*In re: Hopkins*, 266 B.R. 872, 875-876 (W.D. Mo. 2001)

*In re: Vierkant*, 240 B.R. 317 (8<sup>th</sup> Cir. BAP 1999)

*11 U.S.C. §362(a)*

## **ARGUMENT AND AUTHORITY**

### **POINT RELIED ON**

**THE TRIAL COURT ERRED IN DENYING PORTER'S MOTION TO SET ASIDE VOID JUDGMENT BECAUSE THE UNDERLYING JUDGMENT OF SEPTEMBER 11, 2006 WAS ENTERED AGAINST PORTER IN VIOLATION OF THE AUTOMATIC BANKRUPTCY STAY OF 11 U.S.C. § 362(a) IN THAT ANY ACTION BY THE CIRCUIT COURT WAS VOID AS A MATTER OF LAW.**

#### **A. Standard of Review**

"[T]he applicability of the automatic stay to a pending matter is an issue of law within the competence of an appellate court." *In re Vierkant*, 240 B.R. 317, 320 (8<sup>th</sup> Cir. BAP 1999).

#### **B. The Automatic Stay And Its Effect**

The general principles of the automatic stay of 11 U.S.C. § 362(a)(1) were discussed in *In re: Hopkins*, 266 B.R. 872, 875-876 (W.D. Mo. 2001):

Section 362(a) of the Bankruptcy Code provides that "the commencement or continuation . . . of a judicial . . . proceeding against the debtor that was . . . commenced before the commencement of the case under [title 11]" is stayed when the debtor files a bankruptcy petition. 11 U.S.C. § 362(a)(1). "The automatic stay is broad in scope and applies to almost every formal and informal action against the debtor or property of the debtor, except as set forth under (b) of Section 362." *In re: United Imports Corp.*, 200 B.R. 234, 236 (Bankr.D.Neb.1996). "Once the stay is in effect, the parties cannot undertake any judicial action material to the claim against the debtor without relief from the automatic stay." *Id.* at 237. "As a general rule, the §362 automatic stay enjoins virtually all efforts by a creditor to collect on debts, take possession of collateral, enforce or create a lien, or set-off a debt against the debtor." *Louisville and Jefferson County Metro. Sewer Dist. v. Excel Engineering, Inc. (In re: Excel Engineering, Inc.)*, 224 B.R. 582, 592 (Bankr.W.D.Ky.1998) (citations omitted).

"In the Eighth Circuit, actions taken in violation of the automatic stay are void *ab initio*." *In re: EBG Health Care II, Inc.*, 303 B.R. 626, 630 (W.D. Mo. 2003) (Federman, C.J.). In *In re: EBG*, a creditor filed suit against the debtor after the debtor's bankruptcy

Petition was filed and after the debtor's Discharge Plan had been entered. The court in that case found the lawsuit filed in violation of the automatic stay to be void. *Id.*

C. **The Trial to the Court Below and the Entry of Judgment Against Porter Were in Violation of the Automatic Stay Such That the Judgment of September 11, 2006 is Void *Ab Initio* and Must be Set Aside.**

The facts in this case establish clearly that the underlying circuit court action (filed on August 24, 2005) was filed in violation of the automatic stay that arose under §362(a) of the Bankruptcy Code when Porter filed her Petition for Bankruptcy on March 5, 2004. The bankruptcy code states plainly that the filing of Porter's bankruptcy Petition operated as an automatic stay as to:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. §362(a)(1).

Because the circuit court action was filed while the automatic stay was in place the circuit court action is void. See *In re: EBG*, 303 B.R. at 630.

Here, there is no question that the Cains' circuit court personal injury action was filed after Porter's bankruptcy Petition and in violation of the automatic stay. As a result, the entire lawsuit is void "from the beginning," most specifically with regard to the trial and Judgment entered against Porter on September 11, 2006 in her absence.

Because the circuit court entered a Judgment that is void, the judgment is considered "colorable and subject to being reviewed and reversed on appeal." *In re: Estate of Shaw*, 256 S.W.3d 72, 77 (Mo. 2008) (citing *In re Marriage of Southard*, 733 S.W.2d 867, 869 (Mo.App.1987)). Accordingly, as a matter of law, this Court must set

aside the judgment of September 11, 2006, and remand this case to the circuit court with instructions to dismiss the circuit court action. *Id.*

**D. The Trial Court's Finding of *Res Judicata* is Erroneous Because There Was No Collateral Attack of the Judgment, and Because a Judgment That is Void Cannot Sustain a Claim of *Res Judicata*.**

One of the two reasons offered by the trial court for denying Porter's Motion to Set Aside Void Judgment was *res judicata*. Although not entirely clear from the trial court's Judgment of January 8, 2008 (LF, 195), it appears the trial court made this ruling based on a finding that "Defendant raised the issue of her Chapter 13 bankruptcy in her Motion for Reconsideration filed November 30, 2006, which the court denied on March 13, 2007." (LF, 195.) The trial court further noted that Porter had filed an appeal to the Missouri Court of Appeals following the trial court's March 13, 2007 decision, and subsequently dismissed that appeal (when Porter took up for consideration her Motion to Set Aside Void Judgment).

"Where a judgment is attacked in other ways than by proceedings in the original action to have it vacated or reversed or modified or by a proceeding in equity to prevent its enforcement, the attack is a 'collateral attack.'" *Flanary v. Rowlett*, 612 S.W.2d 47, 49 (Mo.App. W.D.1981) (quoting Restatement of Judgments, Section 11, Comment a). In other words, attacking a judgment in the original action through a motion to have the judgment vacated is not a "collateral attack." Because Porter's Motion for Relief from Judgment was a proceeding in the original action to have trial court's prior Judgment vacated, it was not a "collateral attack", and collateral estoppel does not apply. See also *McIntosh v. Wiggins*, 356 Mo. 926, 204 S.W.2d 770, 772 (1947) (A judgment that is void is a nullity that has no force or effect and cannot support a claim of *res judicata*).

Clearly, the trial court erred as a matter of law in finding that Porter's Motion to Set Aside Judgment was barred by *res judicata*.

**E. The Trial Court's Finding That Porter Had Waived the Automatic Bankruptcy Stay is Erroneous as a Matter of Law Because the Circuit Court Action Was Void *Ab Initio*.**

The trial court also made a finding that Porter had waived her right to the automatic bankruptcy stay under §362(a)(1) of the Bankruptcy Code. (LF, 196.) Such a finding is erroneous as a matter of law because, as already established, any court action (even service of process) in violation of the automatic bankruptcy stay is void *ab initio*. On the contrary, it is well settled that lack of subject matter jurisdiction "may not be waived and it may be raised at any stage of the proceedings." *Carver v. Carver*, 673 S.W.2d 92, 96 (Mo.App. 1984). See also *Noakes v. Noakes*, 168 S.W.3d 589, 596 (Mo.App. 2005) (*res judicata* not applicable where original order was invalid on its face or the court lacked subject matter jurisdiction); *In re Marriage of Dooley*, 15 S.W.3d 747, 754 (Mo.App.2000); *In re Marriage of Mitchell*, 756 S.W.2d 949, 951 (Mo.App.1988).

Even if the underlying circuit court action had been voidable, as opposed to void, because of the violation of the automatic bankruptcy stay by the Cains and the circuit court, the trial court still committed error in failing to set aside the judgment of September 11, 2006. Several points must be addressed here.

First, the vast majority of courts have held that actions taken in violation of the automatic stay of § 362(a)(1) are void and not merely voidable (including the Missouri federal court cases cited above). Even in those few cases that have held a violation of the automatic stay to be voidable, the circumstances in which courts have applied such a rule have involved cases; for instance, where the debtor unreasonably withholds notice of the



stay. See, e.g., 9B Am. Jur. 2d Bankruptcy § 1944. Such is not the case here. The facts are undisputed that the Cains and their counsel received ample notice of the bankruptcy action well before the trial court's action of September 11, 2006.

Second, the trial court's finding that the Cains and Porter "agreed to lift the automatic bankruptcy in this matter before the entry of the September 11, 2006 judgment" is misleading because the parties' agreement had no juridical effect. Although the parties had each signed a stipulation to allow the bankruptcy court to lift the automatic stay, the fact is that the stipulation was never presented to the bankruptcy court by the Cains, nor was any relief from the stay ever granted by the bankruptcy court. (Tr., 80-81; Supp., 226-238.) "A motion for stay relief is not a mere formality that may be ignored at the party's discretion." 9B AmJur2d Bankruptcy §1932. Even the applicable local rules for the U.S. Bankruptcy Court make clear that relief from an automatic stay must be made by motion, and it is contrary to the plain language of those rules to suggest that an agreement of the parties has any effect without court action. See Rule 4001-1, U.S. Bankruptcy Court for the Western District of Missouri.

Third, in support of its waiver ruling, the trial court made a finding that Porter made a "conscious decision" to proceed with the litigation and then wait after trial to raise the automatic bankruptcy stay issue. (LF, 196.) The court's finding is unsupported and makes little sense under the facts of this case. This is not a situation where Porter appeared and defended against the Cains' claims at trial and then, after losing the trial, decided to raise the bankruptcy issue. Rather, it is clear that Porter was not present at trial, either personally or by counsel (and for good reasons as cited in the statement of facts, *supra*). The trial court's reasoning is inherently flawed, because there is no

evidence at all that Porter chose to stay away from the trial in some attempt to gain advantage. A decree or judgment of a trial court will only be sustained by this Court when there is substantial evidence to support it. *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). A trial court's judgment must be reversed if it is against the weight of the evidence, erroneously declares the law, or erroneously applies the law. *Id.* The trial court's Judgment of September 11, 2006 does all of those things.

## CONCLUSION

The trial court did not have authority to enter Judgment against Porter on September 11, 2006. The trial court's actions that day were in violation of the automatic bankruptcy stay that arose when Porter filed her Petition for Bankruptcy in the United States Bankruptcy Court for the Western District of Missouri. No relief from that stay was ever sought or obtained before the trial court's Judgment of September 11, 2006. As a result, the underlying circuit court Judgment of September 11, 2006, as well as all proceedings in that case, are void *ab initio* and are a nullity. This Court must set aside the Judgment of September 11, 2006 as a matter of law, and remand this case to the circuit court for a dismissal pursuant to the automatic stay.

Respectfully submitted,

**LONG, LUDER & GORDON, P.A**

By 

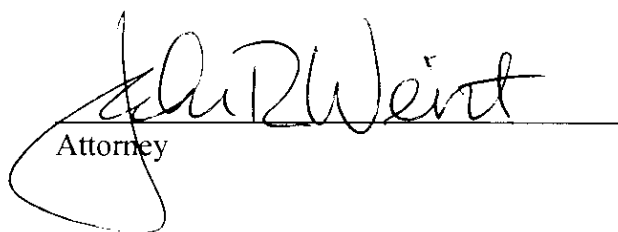
John R. Weist MO #46996  
Robert J. Luder MO #42926  
9401 Indian Creek Pkwy., Suite 800  
P.O. Box 26287  
Overland Park, Kansas 66225-6287  
(913) 491-9300  
(913) 491-9323 Facsimile  
[JWeist@LLGLaw.com](mailto:JWeist@LLGLaw.com)  
[BLuder@LLGLaw.com](mailto:BLuder@LLGLaw.com)

**ATTORNEYS FOR APPELLANT  
SHERRI PORTER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served via U.S. mail, postage prepaid, this 11<sup>th</sup> day of September, 2008 to:

James H. Thompson, Jr.  
The Thompson Law Office, LLC  
One Town Square  
North Kansas City, Missouri 64116  
(816) 471-3414  
(816) 471-3417 (facsimile)  
[jhtjr@linkcity.org](mailto:jhtjr@linkcity.org)  
**ATTORNEYS FOR RESPONDENTS**  
**ROBERT D. CAIN, et al.**

  
Attorney

**CERTIFICATE OF COMPLIANCE**

80511

I hereby certify that the brief herein:

- (1) Includes the information required by Rule 55.03;
- (2) Complies with the limitations contained in Rule 84.06(b); and
- (3) Includes 4,197 words according to the word count of the word-processing software system used to prepare the brief, Microsoft Office Word 2007.

**Respectfully submitted,**

**LONG, LUDER & GORDON, P.A**

By 

John R. Weist MO #46996  
Robert J. Luder MO #42926  
9401 Indian Creek Pkwy., Suite 800  
P.O. Box 26287  
Overland Park, Kansas 66225-6287  
(913) 491-9300  
(913) 491-9323 Facsimile  
[JWeist@LLGLaw.com](mailto:JWeist@LLGLaw.com)  
[BLuder@LLGLaw.com](mailto:BLuder@LLGLaw.com)

**ATTORNEYS FOR APPELLANT  
SHERRI PORTER**