

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In re:

ABBY RENE MCVICKER and ZACHARY
ADAM MCVICKER,

Debtors.

Case No. 26-00222-BRW

Chapter 13

**SUMMARY ORDER RE: EMERGENCY MOTION TO EXTEND THE AUTOMATIC
STAY AS TO DEBTOR ZACHARY ADAM MCVICKER**

Pro se chapter 13 debtors Abby R. McVicker and Zachary A. McVicker (collectively, the “Debtors”) have filed an *Emergency Motion to Extend the Automatic Stay as to Debtor Zachary Adam McVicker Pursuant to 11 U.S.C. § 362(c)(3)(B)* (Doc. No. 24) (the “Motion”) on April 20, 2026. This chapter 13 case was filed on March 20, 2026.

The Motion seeks an extension of the automatic stay with respect to Mr. McVicker under 11 U.S.C. § 362(c)(3)(B) because he had a pending bankruptcy case within the last year (the “Prior Case”), which was dismissed by this Court for failure to file required documents. *See* Bankr. Case No. 25-00545-NGH. The Prior Case, as the Debtors point out in the Motion, did not include Mrs. McVicker as a co-debtor.

In the Motion, the Debtors seem principally concerned with a potential action against their real property located in Meridian, Idaho (the “Property”). *See* Motion at ¶ 9. The Debtors claim they both have an interest in the Property. *See id.*

Based on the dismissal of the Prior Case, the Debtors acknowledge that the automatic stay, with respect to Mr. McVicker and pursuant to 11 U.S.C. § 362(c)(3), expired 30 days after the petition was filed, or April 19, 2026. As that date was a Sunday, the deadline would be extended to the next day, Monday, April 20, 2026. *See* FED. R. BANKR. P. 9006(a)(1)(C)

(providing that when computing time, if a deadline falls on a Sunday it is continued until the next day that is not a Saturday, Sunday, or legal holiday).

The Debtors seek an order extending the automatic stay with respect to Mr. McVicker or a determination that the automatic stay has not terminated as to the Property, which is property of the bankruptcy estate under 11 U.S.C. § 362(c)(3). Further, in the Motion the Debtors seek confirmation by this Court that the automatic stay is in effect with respect to Mrs. McVicker because she has not had a pending bankruptcy case that was dismissed within the last year.

Generally, in order to extend the automatic stay under 11 U.S.C. § 362(c)(3), the party seeking the extension must show that the current bankruptcy case is filed in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(3)(B). However, there is a presumption that the case was not filed in good faith as to all creditors if the previous case was dismissed after the debtor failed to file documents required by the Bankruptcy Code. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). This presumption may be rebutted by a party seeking to impose the automatic stay “by clear and convincing evidence to the contrary[.]” 11 U.S.C. § 362(c)(3)(C).

Applying these statutes, this Court has taken the position that rebutting the presumption by clear and convincing evidence requires evidence before the Court, which is not satisfied by mere statements or argument in a motion. *See, e.g., In re Hart*, 2012 WL 6644703, at *4–*5 (Bankr. D. Idaho Nov. 23, 2012) (declining to extend the automatic stay based upon the debtor’s failure to offer evidence to extend the automatic stay).

Based upon the submissions by the Debtors, the Court will not extend the automatic stay without conducting an evidentiary hearing at which the Debtors will bear the burden of establishing by clear and convincing evidence that this case was filed in good faith.

However, it is appropriate to acknowledge the other requests made by the Debtors in the Motion. First, the Debtors request a confirmation that 11 U.S.C. § 362(c)(3) terminates the automatic stay “with respect to the debtor” only and not to property of the bankruptcy estate, which would include the Property. Finally, the Debtors request an acknowledgment that Mrs. McVicker’s automatic stay has not terminated under 11 U.S.C. § 362(c)(3) because she has not had a prior bankruptcy case pending but dismissed within the last year.

There is disagreement among courts about whether 11 U.S.C. § 362(c)(3) terminates the automatic stay with respect to property of the bankruptcy estate, or only as to the debtor or the debtor’s property that is not property of the estate. *Compare Smith v. State of Maine Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576, 591 (1st Cir. 2018) (holding that § 362(c)(3) terminates the stay as to property of the estate *and* as to the debtor); *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 369 (9th Cir. BAP 2011) (analyzing two views being developed at that time on this issue and adopting the minority view that § 362(c)(3) terminates the stay as to property of the estate and as to the debtor); *with Rose v. Select Portfolio Serv., Inc.*, 945 F.3d 226, 230 (5th Cir. 2019), *cert. denied*, 141 S. Ct. 158 (2020) (holding that the automatic stay under § 362(c)(3) is terminated only with respect to the debtor and not with respect to property of the bankruptcy estate based on the plain language of the statute and comparing that language to that of § 362(c)(4)); *In re Thu Thi Dao*, 616 B.R. 103, 106 (Bankr. E.D. Cal. 2020) (endorsing the “majority view,” and rejecting the analysis of *In re Reswick*, and holding § 362(c)(3) terminates the automatic stay with respect to the debtor only and not as to property of the bankruptcy estate).

After considering the differing interpretations of § 362(c)(3), the Court concludes that the appropriate view is found in the “majority view” as noted by *Rose* and as thoroughly addressed

in *In re Thu Thi Dao*. Therefore, while the automatic stay in this case has expired and terminated as to Mr. McVicker under § 362(c)(3), the automatic stay remains in place with respect to the Property, as it is now property of the bankruptcy estate.

As to Debtors' request for confirmation that the automatic stay is in place as to Mrs. McVicker individually, as well as to her interest in the Property, the Court concludes that is the case.

Nothing in this Order shall prevent a party in interest from filing a motion for relief from the automatic stay.



DATED: April 24, 2026

A handwritten signature in black ink, appearing to read "Brent R. Wilson". The signature is written in a cursive style and is positioned above a horizontal line.

Brent R. Wilson
U.S. Bankruptcy Judge