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Bankruptcy Case Law Update --Domestic Support Obligations

Abstention and Jurisdiction

Efron v. Candelario (In re Efron), 535 B.R. 505; 2014 Bankr. LEXIS 1683; 2014 WL 1572750). Bankruptcy Appellate Panel for the First Circuit ("BAP") affirmed the Bankruptcy Court's dismissal of the debtor's Chapter 11 case. Debtor had filed bankruptcy to stay state court proceedings, hoping to end the state court's order that he pay his ex-wife \$50,000 a month. The state court proceedings, and now the bankruptcy court proceedings, were highly contested between the two ex-spouses. The bankruptcy court concluded that the state court's order for \$50,000 monthly was in the nature of a domestic support obligation ("DSO"). Yet, the Debtor did not successively make the payments. Debtor's ex-wife moved to compel payment compliance. In the consequent rounds of pleadings, the bankruptcy court raised the issue of the court's continuing jurisdiction over the case. The bankruptcy court eventually abstained from further hearing the case under 11 U.S.C. §305(a)(1), finding that the Chapter 11 case was nothing more than a two-party dispute between sparring spouses serving no bankruptcy purpose. In the alternative, the bankruptcy court dismissed the case for the Debtor's failure to make the DSO payments. Debtor appealed, arguing that the case should not be dismissed for his failure to pay his domestic support obligations, as it was not in the best interests of his other creditors. Debtor's spouse cross-appealed, asserting the case should have been converted to Chapter 7, as being in the best interests of creditors. The BAP found the record supported the bankruptcy court's decision, and there was no showing that the dismissal neither was an abuse of discretion nor based on improper legal grounds.

Ruddick v. Read (In re Read), 14-ap-01027, 2015 Bankr. LEXIS 2270 (Bankr. D.R.I. Jul. 10, 2015). Where a debtor and her ex-husband challenged the nature of obligations in a property settlement agreement and the effect of that disagreement on the dischargeability of those obligations, the bankruptcy court would abstain so that the dispute could proceed in the family court. Debtor/ex-wife entered into a property settlement agreement whereby a loan from the ex-husband's mother was allocated between them equally. Ex-wife consequently filed a chapter 7 petition. The ex-husband filed an action pursuant to 11 U.S.C. § 523(a)(15) to except the obligation to satisfy half of discharge loan. The bankruptcy court noted that since the 2005 amendments to the Bankruptcy Code, and in particular the amendments to 11 U.S.C. § 523(a)(15), the bankruptcy courts are no longer in the business of adjudicating family law disputes. The court noted, "Following these amendments, 'the reach of subsection (15) [is] to all domestic obligations that are not support in nature Essentially, the combination of section 523(a)(5) and 523(a)(15) excludes from discharge all marital and domestic relations obligations, whether support in nature, property division, or hold-harmless.'" (citations omitted). Because the dispute concerning dischargeability would inevitably turn upon interpretation of an allegedly ambiguous property settlement agreement, the Court explained that the dispute was better suited to the expertise of the Family Court.

Dischargeability

In re Moser, 2015 WL 2328694 (Bankr. D.Ore. 2015). Non-debtor spouse was awarded attorneys' fees in state court litigation to change custody of the minor child from the Debtor to her former spouse. The Debtor attempt to discharge the attorney fee award in her Chapter 13 proceeding. The Court disagreed and, after examining the record in the state court, found that the attorneys' fee award was a non-dischargeable domestic support obligation because they were in the nature of support as they were a determination as to the best interests of the child.

In re Olsson, 532 B.R. 810 (D.C. Oregon 6/17/15). Attorneys' fees incurred fighting a mother's "meritless and misleading" motion regarding parenting time are dischargeable, as such fees are not considered a "domestic support obligation" even though they were incurred in the "context of a custody dispute." The federal district court opined that the award of attorneys' fees to the father was not intended to benefit the parties' child, but rather to punish the mother. Thus the fee award was not in the nature of support and was therefore dischargeable.

In re Saggus, 528 B.R. 452 (Bankr. M.D.Ala. 2015). A debt due in a marital settlement agreement emanating from the section entitled "Property Settlement" and having none of the indicia of alimony or support would not constitute a nondischargeable domestic support obligation under section 523(a)(5) in a chapter 13 proceeding. The Debtor defaulted on his obligations to make this payment to his ex-wife and a consent judgment was entered in state court prior to the bankruptcy filing. The Debtor was in default of the consent judgment at the time of the bankruptcy filing.

In re Trentadue, 527 B.R. 328 (Bankr. E.D.Wis. 2015). Chapter 13 debtor attempted to discharge an attorneys' fee award in favor of his ex-wife entered in their divorce proceeding due to his over-litigation. The Court held that it was a non-dischargeable support obligation because the award was not entered solely to punish the ex-husband for being overly litigious but to compensate the minor children for the detrimental effect the ex-husband's litigation tactics had on them.

Defining Domestic Support Obligation

In re Crane, 2015 WL 1866044 (Bankr. D.N.J. 2015). Even though the property settlement agreement did not clearly designate that health insurance payments that the Debtor was required to make for the benefit of his former spouse were in the nature of support, the agreement did state that they were a "prime consideration", especially for the wife. Accordingly, the Court found that the payments constituted a nondischargeable domestic support obligation.

In re Kimmel, 527 B.R. 215 (Bankr. E.D.N.C. 2015). The Chapter 13 Debtor's grandparents sought a determination that an attorneys' fee award in their favor in connection with litigating with the Chapter 13 Debtor over custody of her children constituted a non-dischargeable domestic support obligation. The Court agreed with the grandparents and determined that the fee award was non-dischargeable

because the grandparents were the sole guardians of the minor children and the debt with compensation to the grandparents for the expenses they incurred in support of the minor children.

In re Millner, 2015 WL 1395923 (Bankr. N.D.Ga. 2015). A psychologist appointed in the Chapter 7 Debtor's divorce proceedings to evaluate child custody and visitation sought to have the Debtor's debt to her for the evaluation deemed a non-dischargeable domestic support obligation. The Debtor filed a motion to dismiss claiming that the psychologist was not a parent, guardian, responsible relative or governmental unit entitled to protection under (a)(5). The Court disagreed and denied the motion to dismiss holding that it was the nature of the debt that was determinative and not the recipient and that, nevertheless, the debt would be non-dischargeable under (a)(15).

In re Moy, 2015 WL 1585525 (Bankr. N.D.Ill. 2015). A Debtor's failure to make mortgage and tax payments for residence in which his ex-spouse was living were not non-dischargeable domestic support obligations because the ex-spouse ultimately did not have to make the payments herself.

In re Okrepka, No. 13-21559, 2015 WL 1014906 (Bankr. D. Kan. Mar. 4, 2015) The matters before the court were the creditor/ex-husband's objection to confirmation of the debtor/ex-wife's chapter 13 plan and the debtor's objection to the secured claim filed by the ex-husband's claim. The underlying divorce decree provided for an "equalization payment" of \$55,000 to be made by the ex-wife to the husband within the earlier of 90 days of the ex-wife's graduation from college or 12 months. The ex-wife filed her chapter 13 petition during state court proceedings resulting from her failure to make the "equalization payment" which filing stayed those proceedings. The court first held that the "equalization payment" was a debt that arose in the course of the parties' divorce, and that it was part of a property division settlement that was dischargeable under Code section 523(a)(15) and not a "domestic support obligation" that was non-dischargeable under Code section 523(a)(5). The court gave weight to the fact that the "equalization payment" was in that part of the divorce decree referencing division of the parties' assets, as well as the purpose of the payment which was to offset the award of the marital residence to the ex-wife and given the ex-husband's significantly greater income. Next the court concluded that, given the ex-husband's lien on the marital residence to secure the ex-wife's obligation to make the "equalization payment," and net monthly income of \$100 to fund the 48 month plan which did not provide for treatment of the ex-husband's lien, there was not a reasonable likelihood that the ex-wife could propose a confirmable plan and sustained the creditor-ex-husband's confirmation objection.

In re Wylly, 525 B.R. 644 (Bankr. N.D.Tex. 2015). In a Chapter 11 proceeding, the Debtor had agreed in his divorce to act as a financial manager and investment advisor for his ex-wife and to guarantee a minimum return on the funds she had invested with him. The Debtor was required to make up any shortfall from his guaranteed minimum return. The Court held that this obligation constituted a non-dischargeable domestic support obligation as it was clearly intended to assist in her support, even though it was a contractual obligation.

Fraudulent Dissolution

Fernandez v. Fernandez, 358 P.3d 562 (AK 8/28/15). An Alaska trial court did not abuse its discretion in setting aside a couple's 1986 dissolution and child support judgment, along with the husband's child support arrears, after it found that the divorce was a sham intended to shield marital property from his bankruptcy creditors and that the family continued to live together after the marriage was dissolved. Agreeing with the lower court that the parties' dissolution "used the court system as a tool to defraud creditors and thus undermined the court's integrity," the Alaska Supreme Court affirmed its determination that the dissolution was a fraud upon the court. Thus upholding its grant of relief to the father pursuant to Rule 60(b)(6), the high court said that the wife was not entitled to collect arrears under the 1986 support order after the parties separated for good in 2007.

Misconduct and Sanctions

In re Young, 789 F.3d 872 (8th Cir. 2015) (Melloy, J.). In this case, counsel for a chapter 13 debtor intentionally mischaracterized the debtor's past due postpetition domestic support obligations as past due prepetition obligations in order to avoid dismissal, and falsely certified that the debtor was current on the obligations, and misleadingly represented that the debtor would "continue" to remain current on the obligations, in order to trick the chapter 13 trustee into withdrawing his objection to confirmation. The ruse succeeded and the debtor's plan was confirmed. The bankruptcy court discovered the false and inaccurate statements, entered a show cause order, and ultimately entered sanctions, including barring the attorney from practicing in Arkansas bankruptcy courts for six months and a fine of \$1,000. The court also imposed a concurrent suspension and separate \$1,000 fine for misrepresentations during the show cause hearing, but the BAP reversed those additional sanctions because the attorney was not provided notice and an opportunity to defend against those sanctions. On appeal the BAP otherwise affirmed the sanctions, and the Eighth Circuit also affirmed. The court noted the preferential provisions and significant consequences in the Code regarding domestic support obligations, especially in chapter 13 cases. In reviewing the award of 47 sanctions, the court examined the facts and agreed that the attorney's misconduct was "calculated and disingenuous" such as to justify the sanctions imposed. The court agreed that the attorney had "no basis in law or in fact for her assertions" and "obtained an impermissible benefit" for the debtor as a result of her manipulation of "the Code, the court, and the bankruptcy system." The court opined that "Rule 9011 is critical for the bankruptcy system to function because," due to high volume caseloads and time limitations, "the bankruptcy judge must rely on counsel to act in good faith." The court rejected the "pure-heart-and-empty-head defense," in favor of the Rule 9011 requirement that attorneys must conduct reasonable inquiries into facts and law to support representations made to the court because the "potential for mischief to be caused by an attorney who is willing to skirt ethical obligations and procedural rules is enormous." The court concluded that the sanction in this case was appropriate because it was commensurate with the severity of the attorney's deception and limited to what was sufficient to "deter repetition of comparable conduct." Notably, the court found that the bankruptcy court was authorized to impose the sanction of suspension from practice of law not only because a local rule so provided, but also pursuant to Rule 9011(c)(2).

Priority Claims

In re Barker, 2015 WL 2208356 (Bankr. N.D.Ala. 2015). The Chapter 7 Debtor's ex-wife objected to payment of the interim fee applications of the estate's professionals because she was not receiving a payment. The Court overruled objection because the ex-wife failed to articulate which fees should not be paid and recognized that the professionals were entitled to compensation ahead of the domestic support obligations for fees and expenses incurred in administering assets for payment of her claim.

Standing

Tobkin v. Florida Dept. of Rev. (In re Tobkin) 2015 U.S. Dist. LEXIS 35095 (S.D. Fla. Mar. 20, 2015) A Chapter 13 debtor's former spouse and the Florida Department of Revenue filed claims in the debtor's bankruptcy case for domestic support obligations. The debtor filed numerous objections and adversary proceedings related to these claims, arguing that he was not responsible for the domestic support obligations. After the debtor continually failed to present a confirmable Chapter 13 plan, the former spouse and the Department of Revenue moved to have the debtor's bankruptcy case converted to a Chapter 7 case. The bankruptcy court granted this motion. The bankruptcy court then took up the debtor's many objections to the former spouse's and Department of Revenue's domestic support obligation claims. Thereafter, the bankruptcy court entered an order referring the dispute to Florida state court for valuation of the claims. After the state court entered an order on the claims, which was later addressed by a state appeals court, the Department of Revenue filed a motion in the debtor's bankruptcy case asking the bankruptcy court to allow the claims, which the bankruptcy court granted. The debtor then appealed to the district court. As to the debtor's first argument—that the Department of Revenue did not have standing to file a claim—the district court explained that, under 11 U.S.C. § 501(a) and state law, the former spouse conferred standing upon the Department when she called upon it to assist her in collecting the outstanding domestic support obligations from the debtor. As to the debtor's second argument—that the domestic support obligations are no longer valid because his former spouse is remarried and his children are no longer minors—the district court explained that domestic support obligations vest at the time they are due. Thus, the change in circumstances—a new marriage and children growing in age—does not absolve his obligation to pay the ordered domestic support. In addition, the validity of the outstanding domestic support obligations was properly considered in Florida state court. It would have been improper, the district court noted, for the bankruptcy court to revisit that determination.