

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
RICK ANKNEY,) BANKRUPTCY NO. 06-60973 JPK
) Chapter 13
Debtor.)

ORDER ON DEBTOR'S OBJECTIONS TO CLAIMS

Before the Court as contested matters in this chapter 13 case are the following:

1. Objection to Amended Chapter 13 Plan filed on August 25, 2006 by creditors Carolyn S. Gundy and Jennifer M. Steinmetz;¹

2. The Debtor's Objection to Claim with respect to the claim of Jennifer M. Steinmetz, filed on October 17, 2006; and

3. The Debtor's Objection to Claim with respect to the claim of Carolyn S. Gundy, filed on October 17, 2006.

The controversy between the parties arose from the Objection to Amended Chapter 13 Plan filed on August 25, 2006. By order entered on September 12, 2006, a pre-hearing conference was scheduled with respect to this objection on October 11, 2006. On October 12, 2006, the Court entered a docket order following the pre-hearing conference which stated in part that the debtor was to file an objection to the claims of Jennifer M. Steinmetz and Carolyn S. Gundy by October 25, 2006, and which further provided that the parties would file a stipulation of facts pertinent to the contested matters concerning the debtor's claim objection, and any brief either desired to submit on the legal issues of that contested matter, by November 17, 2006. As

¹ This objection should have been filed separately on behalf of each creditor, and therefore should have given rise to two separate contested matters. However, given the course of proceedings between the parties – and the nearly identical issues asserted by each of the creditors with respect to their treatment under the debtor's plan – the Court has elected to forego formality and will deal with the objections in one determination. Although not consolidated for any purpose, the decision entered by the Court with respect to each objection will be linked to each objection separately, and that decision – combined though it be – will be a separate decision with respect to each of the objections.

stated previously, the debtor filed his objections to the creditors' claims on October 17, 2006. The parties filed the required Stipulation of Facts on November 14, 2006. The claimants filed their collaborative brief on November 15, 2006, and the debtor filed a brief in response on November 27, 2006. Also on November 27, 2006, the debtor filed a Motion to Strike Claimants Brief.

By order entered on December 7, 2006, the Court denied the debtor's motion to strike. That order further determined – based upon the parties' statements at a pre-hearing conference held on November 30, 2006 – that the amount of the claim of Carolyn S. Gundy (claim no. 10-1) should be reduced by \$83.13 and the amount of the claim of Jennifer M. Steinmetz (claim no. 11-1) should be reduced by the amount of \$59.38² – to reflect attorney's fees asserted to have been incurred, but not awarded by the state trial court. As stated in that order, the parties further agreed that attorney's fees in the amount of \$1,536.25 designated in the state court decree concerning Carolyn S. Gundy's action against the debtor were attributable to discovery sanctions, and that this portion of the award of attorney's fees in that decree presented a sub-issue with respect to Carolyn S. Gundy's claim.

The claimants, Carolyn S. Gundy and Jennifer M. Steinmetz, conceded that any claims for attorney's fees regarding enforcement of obligations asserted by them against the debtor which had not yet been reduced to judgment as of the date of the debtor's petition did not comprise an allowable portion of their claims against the debtor.³

The contested matters to which this determination relates are the debtor's objections to the claims of Carolyn S. Gundy and Jennifer M. Steinmetz. Based upon the submissions in the

² The amount is correctly stated as \$69.38; the \$59.38 stated in the December 7, 2006 order is the Court's error.

³ Amounts constituting "domestic support obligations" which may accrue subsequent to the petition date, while not subject to a claim within 11 U.S.C. § 507(a)(1)(A), are excepted from discharge; 11 U.S.C. § 1328(a)(2), § 523(a)(5) and § 101(14A).

record before the Court, there is very little for the Court to determine apart from that which is already delineated by the parties.

As stated in the Debtor's Objection to Claim with respect to claim no. 10-1 filed by Carolyn S. Gundy, and as stated in the Debtor's Objection to Claim filed with respect to claim no. 11-1 filed by Jennifer M. Steinmetz, the sole focus of those objections was to any assertion made in those claims for "accruing attorney's fees," i.e., attorney's fees which might be incurred by either claimant in future enforcement actions regarding either claimant's assertions of continuing obligations by the debtor to them. The claimants, by counsel, have eschewed any portion of their claims which asserts a continuing obligation on the part of the debtor to reimburse them for attorney's fees, as well they should. The function of a claim is to assert against the debtor the amount of indebtedness owed as of the date of the debtor's filing of a petition under the Bankruptcy Code. Any indebtedness incurred by the debtor subsequent to the filing of the petition is either not a claim cognizable at all in the debtor's case, or is only cognizable as a claim entitled to the status of an "administrative claim" under 11 U.S.C. § 503(b). While obligations owed by the debtor to other parties may arise subsequent to the petition date, those obligations cannot be asserted against the debtor as a pre-petition claim, particularly in the context of proceedings between the debtor and a third party with respect to divorce, dissolution, or child support obligations; See, 11 U.S.C. § 502(b)(5).

In his Debtor's Brief Regarding Claims, the debtor does not dispute that the amount of the claim of \$3,388.75 stated in Claim 11-1, plus interest at the rate of 8% on that judgment from the date of its entry to the date of the filing of the petition, constitutes a "domestic support obligation" as defined in 11 U.S.C. § 101(14A). The debtor's objection solely challenged the assertion of "accruing attorney's fees" with respect to that judgment. The claimant's counsel conceded that the claimant's claim does not seek to assert attorney's fees accrued after the date of entry of that judgment, and thus there is actually no dispute between the parties. The Court

finds that the debtor's objection should be sustained as to the claim of Jennifer M. Steinmetz to the extent that said claim seeks to assert obligations of the debtor subsequent to the date of the filing of the petition for attorney's fees which might be incurred by the claimant in enforcing any "domestic support obligation" or other obligation asserted by the claimant against the debtor. The Court further finds that the claim of Jennifer M. Steinmetz in the amount of \$3,496.75, by stipulation of her counsel, should be reduced by the amount of \$69.38. The claim of Jennifer M. Steinmetz is thus allowed in the amount of \$3,427.37. Based upon the statements of the debtor in the record, said claim is a claim entitled to priority pursuant to 11 U.S.C. § 507(a)(1)(A), and it is also a claim within the provisions of 11 U.S.C. § 523(a)(5).⁴

We next come to objection to the claim of Carolyn S. Gundy [Claim No. 10-1]. As was true with the claim of Jennifer M. Steinmetz, the amount of the claim of Carolyn S. Gundy has been determined by documents filed by the parties and discussions with the Court. The amount of the claim as asserted by Carolyn S. Gundy is \$23,214.00. In the Debtor's Brief Regarding Claims, the debtor concedes that the portion of the claim for \$15,583.67 plus interest from October 25, 2005 at 8% per annum on that amount to March 15, 2006 – comprises the claim entitled to priority pursuant to 11 U.S.C. § 507(a)(1), and thus the amount of \$16,099.43 (\$15,583.67 plus \$515.76 interest) is both a claim entitled priority under 11 U.S.C. § 507(a)(1)

⁴ The matter before the Court is an objection to a claim. As stated in the Court's order entered on December 6, 2006, further proceedings with respect to the claimant's objection to confirmation of the debtor's plan are subject to further determination of the Court. The Court's determination regarding the debtor's objection to Claim No. 11-1 results in the circumstance that Claim No. 11-1 is a claim within the provisions of 11 U.S.C. § 507(a)(1), which invokes the treatment in the debtor's plan required by 11 U.S.C. § 1322(a)(2). However, by so deciding, the claim is also a claim excepted from discharge by operation of 11 U.S.C. § 1328(a)(2) and 11 U.S.C. § 523(a)(5). Customarily, claims within the provisions of 11 U.S.C. § 1322(a)(2) may be paid without the accrual of additional interest on those claims from the date of the filing of the petition; debts which are nondischargeable continue to accrue interest from the date of the petition until paid in full. Whether or not the allowed claim of Jennifer M. Steinmetz may be provided for under the debtor's plan and discharged without the payment of post-petition interest on that claim, as post-petition interest is determined by applicable law, is a subject for the contested matter arising from the claimant's objection to the debtor's plan, an issue not decided by this determination.

and is a claim excepted from discharge pursuant to 11 U.S.C. § 1328(a)(2)/11 U.S.C. § 523(a)(5). The debtor challenges the allowance of attorney's fees under the State court judgment of \$6,677.00 as a claim entitled to priority under 11 U.S.C. § 507(a)(1).

The judgment of the St. Joseph Superior Court entered on March 15, 2006, attached to Claim No. 10-1, establishes that Carolyn S. Gundy was awarded "a judgment against Rick A. Ankney in the amount of \$6, 677.00 for attorney's fees." As stated in the judgment, a portion of these fees – in the amount of \$1,536.25 – was awarded to counsel for Carolyn S. Gundy with respect to "seeking discovery sanctions." In the objection to the claim of Carolyn S. Gundy, the debtor raises the following issues:

1. Are attorney's fees awarded to a spouse or former spouse with respect to the obtaining of, or enforcement of, a "domestic support obligation" within the definition of "domestic support obligation" provided by 11 U.S.C. § 101(14A); and
2. Are attorney's fees awarded to a spouse or former spouse in an action seeking to obtain, or enforce, a "domestic support obligation" with respect to the debtor's failure to comply with a court order in that action – here, specifically, failure to comply with discovery orders issued by the court – includable in attorney's fees which might otherwise be included in the parameters of a "domestic support obligation" under 11 U.S.C. § 101(14A).

11 U.S.C. § 507(a)(1)(A) provides that claims for "domestic support obligations" have first priority, stating:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

11 U.S.C. § 101(14A) defines “domestic support obligation” as follows:

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

For the purposes of this matter, in order to constitute a “domestic support obligation,” a “debt” must accrue before, on or after the date of the debtor’s filing of a bankruptcy petition (including interest that accrues on that debt as provided by non-applicable bankruptcy law to the date of the petition), and in addition must satisfy the following conditions:

- a. The debt must be “owed to or recoverable by ‘a spouse, former spouse . . .’”;
- b. Be “in the nature of alimony, maintenance or support . . . of such spouse, former spouse or child of the debtor or such child’s parent, without regard to whether such debt is expressly so designated . . .”; and
- c. Have been “established by reason of applicable provisions of . . . an order of a court of record.”

The issue is whether attorney's fees – including the sanction for failure to comply with discovery – established by the St. Joseph Superior Court's order entered on March 15, 2006 are within this provision.

The asserted debt clearly "accrued before" the date of the debtor's filing for bankruptcy, and the interest accruing on the judgment accrued prior to the filing of the debtor's filing of bankruptcy. The debt asserted for attorney's fees was recoverable by the debtor's "former spouse." The asserted obligation for attorney's fees was "established . . . before . . . the order for relief in [the debtor's case] . . . by reason of applicable provisions of an order of a court of record."

The issue is whether the award of attorney's fees is within the provisions of 11 U.S.C. § 101(14A)(B), i.e., whether the award of attorney's fees was "in the nature of alimony, maintenance or support."

11 U.S.C. § 101(14A) essentially mirrors the provisions of 11 U.S.C. § 523(a)(5) prior to BAPCPA. 11 U.S.C. § 523(a)(5) as in effect prior to October 17, 2005 stated the following concerning the types of support obligations excepted from discharge:

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that –

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

Under the foregoing provisions of pre-BAPCPA law, courts uniformly held – a holding with which this Court agrees – that obligations incurred by a debtor to pay attorney's fees to a

spouse or former spouse of the debtor, in conjunction with an action for obtaining or enforcing an obligation “in the nature of alimony, maintenance or support” constituted an indebtedness within the provisions of 11 U.S.C. § 523(a)(5); See, In re Balvich, 135 B.R. 327 (Bankr. N.D.Ind. 1991). There is nothing in the amendment to 11 U.S.C. § 523(a)(5) in conjunction with the definition now provided by 11 U.S.C. § 101(14A) of “domestic support obligation” which changes this view. An obligation imposed upon a debtor for the payment of attorney’s fees to a “spouse” or “former spouse” in conjunction with that party’s seeking, obtaining, or enforcing an obligation “in the nature of alimony, maintenance or support” is as much within the definition of “domestic support obligation” provided by 11 U.S.C. § 101(14A) as was a similar obligation within the definition of an obligation subject to the provisions of 11 U.S.C. § 523(a)(5). Thus, attorney’s fees awarded by the St. Joseph Superior Court pursuant to IC 31-16-11-1 in favor of Carolyn S. Gundy in the amount of \$5,140.75 are clearly within the provisions of 11 U.S.C. § 101(14A), and thus constitute a debt entitled to priority under 11 U.S.C. § 507(a)(1).

The St. Joseph Superior Court’s award of \$1,536.25 in attorney’s fees was made “[u]nder authority of Ind. Trial Rule 34(A)(4) and 37 (B)2)” rather than under IC 31-16-11-1. However, the fees were awarded due to the debtor’s failure to comply with an order compelling discovery, an order which *ipso facto* related to discovery concerning matters relating to support, as the entire matter before that tribunal related solely to support obligations.

If in seeking to obtain or enforce a “domestic support obligation,” a person is awarded attorney’s fees for time expended by her attorney in obtaining discovery of matters pertinent to the action, based upon conduct which a judicial tribunal deems to be abusive of the discovery process, those fees constitute fees incurred in order to seek or obtain a court’s ultimate decision regarding entitlement to an award constituting a “domestic support obligation.” In this case, the St. Joseph Superior Court determined that the debtor’s conduct justified an award of \$1,536.25 with respect to Carolyn S. Gundy’s ultimate pursuit of the court’s determination as to her

entitlement to an obligation which this Court has defined as a “domestic support obligation.” It would be anomalous indeed if this Court were to hold that a separately awarded sanction for attorney’s fees incurred by a litigant in obtaining an ultimate decision regarding a “domestic support obligation” is not within the parameters of 11 U.S.C. § 101(14A), but that attorney’s fees otherwise incurred by that litigant in obtaining that determination are within the scope of that section. It would be even more anomalous to hold that fees incurred to undertake discovery are within § 101(14A), but that fees incurred to force a party to comply with discovery requests are not. In the context of this case, and based upon the record before it, the Court determines that the separately identified award of \$1,536.25 as a discovery sanction – because it is so integrally related to the claimant’s “domestic support obligation” as determined by the St. Joseph Superior Court in its order entered on March 15, 2006 – is also entitled to the status of a “domestic support obligation” under 11 U.S.C. § 101(14A).

Based upon the foregoing, the Court finds that the debtor's objection to Claim No. 10-1 of Carolyn S. Gundy is sustained in part, and is denied in part. The Court further finds that the debtor's objection to Claim No. 11-1 of Jennifer M. Steinmetz is sustained in part, and is denied in part.

IT IS ORDERED that the claim of Carolyn S. Gundy is allowed as a claim entitled to priority pursuant to 11 U.S.C. § 507(a)(1)(A) in the amount of \$23,130.87.

IT IS FURTHER ORDERED that the claim of Jennifer M. Steinmetz is allowed as a claim entitled to priority pursuant to 11 U.S.C. § 507(a)(1)(A) in the amount of \$3,427.37.

Dated at Hammond, Indiana on February 7, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor, Trustee, US Trustee, Attorney for Creditors