

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
JOAN LOUISE REID-HAYDEN	)	CASE NO. 10-31217 HCD
	)	CHAPTER 7
	)	
DEBTOR.	)	
	)	
	)	
ROGER W. VAUGHN,	)	
	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 10-3048
	)	
JOAN LOUISE REID-HAYDEN,	)	
	)	
DEFENDANT.	)	

Appearances:

Mark P. Telloyan, Esq., counsel for plaintiff, O'Brien & Telloyan, P.C., P.O. Box 449, South Bend, Indiana 46624-0449; and

Debra Voltz-Miller, Esq., counsel for defendant, 1051 East Fox, South Bend, Indiana 46613.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 22, 2011.

Before the court is the Motion of the defendant Joan Louise Reid-Hayden, chapter 7 debtor (“defendant” or “debtor”), for summary judgment of an adversary Complaint filed by the plaintiff Roger W. Vaughn (“plaintiff”) to determine the dischargeability of a judgment debt he claims the defendant owes him pursuant to 11 U.S.C. § 523(a)(5). After the briefing schedule had passed, the court took the matter under advisement.<sup>1</sup> For the reasons set forth below, the court grants the defendant’s Motion for Summary Judgment.

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<sup>1</sup> The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

## BACKGROUND

The pertinent undisputed facts reveal that the plaintiff and defendant are the father and mother of Nicole, a child born to them on August 20, 1990. The plaintiff and defendant never married. The defendant, a resident of Elkhart, Indiana, filed a voluntary chapter 7 bankruptcy petition in this court on March 24, 2010. The plaintiff, a resident of Cobb County, Georgia, filed the present adversary proceeding now before the court. Nicole, also a resident of Cobb County, Georgia, is not a party to the action.

Five days before Nicole's eighteenth birthday (the age of majority in Georgia and Indiana), the plaintiff filed an action for money judgment against the defendant in the Superior Court of Cobb County, Georgia. Three weeks before the defendant filed bankruptcy, the plaintiff won a \$24,508.00 judgment in that state court action. *See* R. 1, Ex. A ("Final Order" of March 2, 2010). The Final Order required the defendant to reimburse the plaintiff for a portion of certain medical and therapy expenses for Nicole. In its Final Order, the Georgia state court made the following findings:

- (1) that the plaintiff and defendant are the parents of Nicole, a child born on August 20, 1990;
- (2) that Nicole began living with the plaintiff in August 2005;
- (3) that the defendant made several payments of child support to the plaintiff, in the amount of approximately \$250 per month, between August 2005 and April or May 2006;
- (4) that the plaintiff was not seeking child support;
- (5) that the plaintiff expended \$62,765 in uncovered medical and other expenses for Nicole;
- (6) that the defendant did not reimburse the plaintiff for any of those expenses; and
- (7) that, in that matter, the plaintiff incurred \$7,700 in attorney's fees and the defendant incurred \$8,000 in attorney's fees.

R. 1, Ex. A at 1-2. The court held that, under Georgia law, the defendant was required to reimburse the plaintiff \$21,758 for Nicole's medical expenses and therapy fees and \$2,750 in attorney's fees.

The plaintiff's Complaint, filed in this bankruptcy court, sought a ruling that the state court judgment and/or the underlying debt be found nondischargeable. The plaintiff claimed that a judgment for reimbursement of medical and therapy costs for the child of the parties was a nondischargeable obligation in the nature of child support pursuant to 11 U.S.C. § 523(a)(5). The defendant, in her Answer, denied that the obligation was child support.

The defendant then filed a Motion for Summary Judgment, stating that there was no genuine dispute of any material fact and that she was entitled to judgment as a matter of law on the ground that the Final Order money judgment was not a “domestic support obligation” as defined by 11 U.S.C. § 101(14A).

The defendant presented the following facts as undisputed:

- (1) The defendant has had custody of Nicole from birth.
- (2) On February 28, 1992, in the Superior Court, County of Placer, California, the plaintiff acknowledged that he was Nicole’s father and had an obligation to support her.<sup>2</sup> By Order of that court, the plaintiff was obligated to pay child support of \$257 per month and to provide medical insurance coverage. *See* R. 14, Ex. 2.
- (3) By stipulation of the parties, the child support was modified to \$350 per month from September 25, 1997. *See id.*, Ex. 3.
- (4) On February 19, 2004, the St. Joseph Probate Court in St. Joseph County, Indiana, determined that the appointment of a Guardian for Nicole was “necessary as a means of providing care and supervision of the physical person or property of the minor.” *Id.*, Ex. 4, Order Appointing Guardian for Minor, at 1.<sup>3</sup> Janice Nard, Nicole’s aunt, was appointed guardian.
- (5) On January 12, 2010, the Final Order of Legitimation was issued in the Superior Court of Cobb County, Georgia, legitimizing the relationship between the plaintiff and Nicole;
- (6) On March 2, 2010, in the Superior Court of Cobb County, Georgia, the plaintiff was awarded a judgment of \$24,508 for reimbursement for medical costs and attorney’s fees. At the time of the judgment, Nicole had reached the age of majority. *See* R.1, Ex. A, Final Order.
- (7) The state court Final Order stated that the plaintiff was not asking for child support.

R. 15 at 2-3. Based upon the documented facts, the defendant contended that the debt claimed in the state court judgment was not a “domestic support obligation,” as defined in § 101(14A) of the Bankruptcy Code.

The plaintiff responded that, even though Nicole’s guardianship was not terminated by law, it was terminated in fact when Nicole came to live with him and her guardian and mother, the defendant, agreed to release her to the custody to her father, the plaintiff, in the summer of 2005. He also pointed out

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<sup>2</sup> This state court document, entitled URESA Stipulation Finding of Facts, Order, and Judgment, stated that the Superior Court is the proper forum for enforcing the Uniform Reciprocal Enforcement of Support Act (URESAs). In it, Roger Wayne Vaughn, the plaintiff herein, agreed and stipulated to the conditions in that Judgment.

<sup>3</sup> The attached Order was not dated; the defendant provided the date in her brief. *See* R. 15, ¶ 4.

that the defendant verbally agreed to pay \$250 each month and that she paid that support from approximately August 2005 through April or May 2006. In his view, both the court-ordered reimbursement of the child's medical expenses and his attorney's fees were nondischargeable under § 523(a)(5), but he believed that certain facts relevant to the issue of nondischargeability needed to be considered in making that determination. The plaintiff therefore urged the court to set the matter for hearing.

### DISCUSSION

The defendant moves for summary judgment of the plaintiff's Complaint. Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable in this court by Rule 7056 of the Federal Rules of Bankruptcy Procedure, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986). In order to avoid trial, the moving party bears the burden of showing that no genuine issue of material fact is in dispute. See *Anderson*, 477 U.S. at 256; *Celotex*, 477 U.S. at 322. "To avoid summary judgment . . . the nonmoving party [is] required to set forth 'specific facts showing that there is a genuine issue for trial,' Fed. R. Civ. P. 56(e), and, further [has] to produce more than a scintilla of evidence in support of his position." *Silk v. City of Chicago*, 194 F.3d 788, 798 (7th Cir. 1999). In order to demonstrate that a real factual dispute exists, the nonmovant must produce evidence of the dispute rather than relying solely on the allegations or denials in its pleadings. See *Barber v. United States (In re Barber)*, 236 B.R. 655, 659 (Bankr. N.D. Ind. 1998); N.D. Ind. L.B.R. B-7056-1. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

The parties dispute a strictly legal issue: whether the state court money judgment for the reimbursement of medical and therapy expenses and attendant attorney's fees is in the nature of child support and thus is nondischargeable pursuant to 11 U.S.C. § 523(a)(5), which excepts from discharge domestic support obligations. A "domestic support obligation" is defined by § 101(14A) of the Bankruptcy Code.

The statute provides:

(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, . . . , 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.

11 U.S.C. § 101(14A).

"Obligations to pay alimony and child support may not be discharged in bankruptcy." *In re Dorner*, 343 F.3d 910, 912 (7th Cir. 2003). Child support is included in the definition of "domestic support obligation." When determining whether a particular debt constitutes a domestic support obligation, the court turns to federal bankruptcy law rather than state law. *See In re Reines*, 142 F.3d 970, 972 (7th Cir. 1998), *cert. denied*, 525 U.S. 1068 (1999); *see also In re Smith*, 586 F.3d 69, 73 (1st Cir. 2009). The party asking that a debt be considered a domestic support obligation has the burden of proving that it is "in the nature of

support.” The court construes exceptions to discharge strictly against a creditor and liberally in favor of the debtor. *See Goldberg Secs., Inc. v. Scarlata (In re Scarlata)*, 979 F.2d 521, 524 (7th Cir.1992); *Levin v. Greco*, 415 B.R. 663, 665 (N.D. Ill. 2009). Section 523(a)(5) excepts a child support debt from a debtor’s discharge as long as it qualifies as a “domestic support obligation” by satisfying the four factors of § 101(14A). *See Wisconsin Dept. of Workforce Dev. v. Ratliff*, 390 B.R. 607, 613 (E.D. Wis. 2008).

The court first considers whether the state court money judgment – to reimburse the plaintiff father for Nicole’s medical and therapy expenses – is a debt “owed to or recoverable by- (A)(I) a . . . child of the debtor or such child’s parent.” As the defendant pointed out, Nicole was no longer a child when the state court judgment was issued; nevertheless, the action was filed when Nicole was a minor, and the medical and therapy costs were incurred while she was a minor. The judgment specified that \$24,508.00 was owed by the defendant to the plaintiff, Nicole’s father. Thus the first factor is satisfied.

The second element requires that the debt be “in the nature of support” of Nicole. Often the allocation of payment of medical expenses and medical insurance is incorporated into a divorce order or settlement. In this case, Nicole’s parents, who were not married to each other, negotiated two documents concerning the support of Nicole: the “URESAs Stipulation Finding of Facts, Order and Judgment” of February 28, 1992, and the “Stipulation” of September 25, 1997. Pursuant to those stipulated agreements, the plaintiff agreed that he was obligated to provide medical insurance coverage and to pay child support for Nicole, at first in the amount of \$257 per month, and later in the amount of \$350 per month. There is nothing in these agreements, and there is no court order or stipulated agreement on record, that requires the defendant mother to pay anything to the plaintiff father. The documents suggest, without so stating, that the defendant mother had custody of Nicole and all the expenses accompanying the care of a child.

The record raised questions, nevertheless, about Nicole’s custody. It reflected that a guardian was appointed for Nicole on February 19, 2004, and that Nicole went to live with her father in August 2005. The plaintiff argued that those circumstances were material facts requiring a hearing before the court could

make its determination under § 523(a)(5). However, no change was made in the legal status concerning Nicole’s ongoing guardianship or the stipulations holding Nicole’s father, the plaintiff, responsible for child support and medical insurance coverage. The state court label that the defendant’s payment of \$250 a month to the plaintiff was “child support” does not constitute “support” under the Bankruptcy Code. In fact, the Final Order of the Georgia state court also specifically stated that the “Father was not seeking child support.” Final Order, ¶ 1.05.

The court concludes that the Final Order of the Georgia state court, by its own terms, is not a judgment for child support. It is a money judgment given to reimburse the plaintiff father for payments he made to cover Nicole’s medical costs. The judgment does not benefit the child, only the plaintiff father. *See In re Vanhook*, 426 B.R. 296, 301 (Bankr. N.D. Ill. 2010) (finding that money judgment awarded for wrongful payment of child support to the debtor, once it was determined that he was not the father, was not in the nature of child support); *In re Drinkard*, 245 B.R. 91, 94 (Bankr. N.D. Tex. 2000) (finding that a money judgment for reimbursement of overpayment of child support was not in the nature of alimony, maintenance or support under § 523(a)(5)); *cf. In re Nolan*, 2010 WL 3926870 at \*3 (D. Minn. 2010) (affirming bankruptcy court ruling that a cash equalizer is not a domestic support obligation, but rather is in the nature of a property settlement). Accordingly, the court concludes that the state court judgment for reimbursement of Nicole’s medical and therapy expenses and of attorney’s fees is not “in the nature of support” pursuant to § 101(14A)(B) and is not excepted from the defendant debtor’s discharge pursuant to § 523(a)(5).

#### CONCLUSION

For the reasons stated in this Memorandum of Decision, the court grants the Motion for Summary Judgment of the defendant Joan Louise Reid-Hayden, chapter 7 debtor, and holds that the monetary judgment awarded to the plaintiff Roger W. Vaughn and against the defendant Joan Louise Reid-Hayden

in the Final Order of the Superior Court of Cobb County, State of Georgia, is dischargeable in the debtor's bankruptcy pursuant to 11 U.S.C. § 523(a)(5).

SO ORDERED.

/s/ HARRY C. DEES, JR.  
HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT