

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
TERRY PAUL BARTLETT ) CASE NO. 12-11484  
)  
)  
Debtor )

**DECISION ON OBJECTION TO CLAIM**

On November 26, 2014

This matter is before the court following trial of the issues raised by the debtor’s objection to the claim filed by his ex-wife, Susan Bartlett Montgomery. The dispute centers around whether the claim is a “domestic support obligation.” 11 U.S.C. §§ 101(14A). If so, it constitutes a priority claim which must be paid in full under the debtor’s confirmed chapter 13 plan. See, 11 U.S.C. §§ 507(a)(1) (listing priority claims); 1322(a)(2) (plan shall “provide for full payment . . . of all claims entitled to priority . . .”). See also, 11 U.S.C. § 1328(a)(2) (domestic support obligations excepted from discharge).

Terry Bartlett and Susan Bartlett Montgomery were divorced on January 4, 2011. The decree dissolving their marriage also addressed issues involving the custody and support of their children, but not the division of their marital assets. That did not occur until over a year later when, after an evidentiary hearing, the state court issued its Order Dividing Marital Assets and Debts. The present controversy arises out of paragraph six of that order which states:

To equalize the division of the marital estate, Father shall pay to Mother the sum of \$50,000.00. This sum is hereby reduced to judgment and shall be collectible by means of proceedings supplemental. In addition, the Court finds this judgment to be in the nature of child support and maintenance.

It is the last sentence of this paragraph that Claimant contends entitles her claim to priority status.

Whether an obligation is in the nature of alimony, maintenance, or support is a question of federal law, and the court is “not bound by the labels attached to the obligation.” Kolodziej v. Reines, 142 F.3d 970, 972 (7th Cir. 1998); In re Maitlen, 658 F.2d 466, 469 (7th Cir. 1981). The court must look beyond the label to examine the obligation’s true nature. In re Gianakas, 917 F.2d 759, 762 (3rd Cir. 1990). Because the statutory definition of “domestic support obligation” derives from determinations of non-dischargeability of debts for alimony, maintenance and support under § 523(a)(5), decisions discussing that section are helpful in determining priority status under § 507(a)(1). See, In re Poole, 383 B.R. 308, 313 (Bankr. D. S.C. 2007). In making the determination, the court should attempt to find and enforce the intent of the divorce court and/or the parties in imposing the obligation. See e.g., Reines, 142 F.3d at 973; In re Coil, 680 F.2d 1170, 1172 (7th Cir. 1982). The Seventh Circuit has identified various factors to assist the bankruptcy court in this regard. Among them are: the language and substance of the agreement (or decree), the financial circumstances of the parties at the time the obligation was imposed, and the function served by the obligation. See generally, Reines, 142 F.3d 970; Coil, 680 F.2d 1170; Maitlen, 658 F.2d 466; Matter of Woods, 561 F.2d 27 (7th Cir. 1977). See also, Gianakas, 917 F.2d at 762-63; In re Balvich, 135 B.R. 327 (Bankr. N.D. Ind. 1991). Nonetheless, the different factors that courts have identified over the years are not meant to be an exhaustive or a determinative list; they are, instead, merely illustrative of appropriate and relevant considerations. Coil, 680 F.2d at 1172. See also, In re Brody, 3 F.3d 35, 38 (2nd Cir. 1993); In re Harden, 351 B.R. 643, 647 (Bankr. C.D. Ill. 2006); 3 Norton Bankr. L. & Prac. 3d § 57.35.

Here, as in so many cases, the evidence points in different directions. The statement in the court’s decree that “the court finds [the] judgment to be in the nature of child support and

maintenance” clearly supports the creditor’s position. Nonetheless, when that statement is placed in context, which includes the circumstances under which it was made and the nature of the obligation itself, a much different impression arises.

The document in which the statement was made is titled, “Order Dividing Marital Assets and Debts,” and the introductory paragraph states that “the issues of child custody, child support, and parenting time were agreed upon, and adjudicated in full on January 4, 2011.” Exhibit A. Furthermore, that introduction also indicates that the parties and their counsel appeared “for a hearing on the division of the marital estate.” Nothing presented to this court suggests that the state court proceedings which resulted in the order of February 17, 2012 were designed to address anything other than the appropriate, equitable division of the marital assets. That also is the function the award was to serve. Although the state court made no specific findings regarding valuation, after setting aside real and personal property to the parties and allocating various debts to each of them, the order decreed: “To equalize the division of the marital estate, Father shall pay to Mother the sum of \$50,000.” Consequently, it appears that the amount awarded was determined, not by the creditor’s need or circumstances (which would be indicative of support or maintenance, see e.g., In re Busch, 369 B.R. 614, 623 (10th Cir. BAP 2007)), but by the value of the assets and debts which had been allocated to each of the parties (something which is indicative of property settlement, see e.g., In re Uzaldin, 418 B.R. 166, 172 (Bankr. E.D. Va. 2009); In re Wright, 184 B.R. 318, 322 (Bankr. N.D. Ill. 1995)).

Not only is the way the amount of the obligation was determined indicative of a property settlement, but the circumstances under which it is to be paid also lead to that conclusion. Obligations for support and maintenance are usually based upon some type of need or particular

circumstances, and they terminate when the need ends or when the circumstances have been fulfilled. See e.g., In re Evert, 342 F.3d 358, 369 (5th Cir. 2003); Balvich, 135 B.R. at 334; In re Goodman, 55 B.R. 32, 35 (Bankr. D. S.C. 1985). Since it is difficult to predict the future and one does not know when, whether, or if the requirements for termination will occur, obligations for support or maintenance are not usually reducible to a specific sum. See e.g., Poole, 383 B.R. at 314-15. Instead, they are paid periodically, on some type of regular basis, and terminate (or change) when the need or circumstances the support or maintenance was designed to address no longer exist (or change). See e.g., Maitlen, 658 F.2d at 469-70. Here, the debtor's obligation to his former wife is established in a fixed amount of \$50,000; it is not payable upon any particular terms; but is, instead, collectable by means of proceedings supplemental. See, Poole, 383 B.R. at 314. This indicates something other than a domestic support obligation. Furthermore, the obligation does not directly satisfy a basic need of the creditor, as when the debtor is obligated to make the regular installment payments due on account of liened property awarded to the former spouse, such as the monthly mortgage or car payment, or provide for medical care. See, Gianakas, 917 F.2d at 764; Busch, 369 B.R. at 623; Balvich, 135 B.R. at 335. While the court recognizes that money is fungible and that any sum which may be paid to a former spouse, regardless of whether it is support, maintenance or property settlement, can readily be used to satisfy basic needs, the fact that the former spouse would like to and can use a property settlement award for that purpose does not change it into support. See, In re Hale, 289 B.R. 788, 797 (1st Cir. BAP 2003); In re Brody, 120 B.R. 696, 701 (Bankr. E.D. N.Y. 1990).

Looking at the substance and the entirety of the order, the "Order Dividing Marital Assets and Debts" is what it says it is – a division of the parties' marital assets and debts – and nothing

more. It is not a domestic support obligation and it is not a priority claim. The debtor's objection to Susan Montgomery's claim will be sustained. An appropriate order will be entered.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court