

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
DAMON ALLEN CAMPBELL,)	CASE NO. 05-34175 HCD
)	CHAPTER 7
DEBTOR.)	
)	
TONYA CAMPBELL,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 05-3083
)	
DAMON ALLEN CAMPBELL,)	
)	
DEFENDANT.)	

Appearances:

Jamie C. Woods, Esq., attorney for plaintiff, Thorne Grodnik, LLP, Post Office Box 1210, Mishawaka, Indiana 46546-1210; and

Damon Allen Campbell, pro se, 6 South Wabash Street, Apartment A, Peru, Indiana 46970.

MEMORANDUM OF DECISION

At South Bend, Indiana, on May 2, 2006.

Before the court is the Motion for Summary Judgment filed by the plaintiff, Tonya Campbell, on December 23, 2005. She seeks summary judgment of her Complaint to Determine Dischargeability of Debt, which had been filed on September 15, 2005. The defendant, Damon Allen Campbell, did not respond to the summary judgment motion. For the reasons that follow, the court grants the Motion for Summary Judgment.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(I) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and

1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

On December 7, 2004, the Miami Circuit Court entered the Court's Decree dissolving the marriage of Tonya Campbell and Damon Allen Campbell, plaintiff and defendant in this case. *See* R.1, Ex. A. Among the provisions of the divorce decree was a \$10,000 judgment against Damon and in favor of Tonya.

Although the Petitioner's balance sheet shows that there should be a cash award granted to the Petitioner of \$35,029.28 to evenly distribute the assets and debts, the Court finds that Petitioner is requesting only the sum of \$10,000.00 cash award. The Court, therefore, grants Petitioner the sum of \$10,000.00 to be paid by Respondent, Damon Campbell, which sum shall be a judgment in favor of the Petitioner.

Id., ¶ 6.

Damon Allen Campbell filed a chapter 7 bankruptcy petition on July 28, 2005. On September 15, 2005, his former spouse Tonya Campbell filed the Complaint now pending before the court. In her Complaint, she alleged that the state court judgment against the defendant was nondischargeable under 11 U.S.C. § 523(a)(15) and that the attorney fees and costs she incurred in connection with the adversary proceeding were also nondischargeable. *See* R. 1 at 2. The defendant filed a timely response to the Complaint. In it, he asserted that the "judgment was unfairly awarded by her counsels inappropriate juggling of numbers" and should be reversed. R. 4 at 1. However, he did not respond to the plaintiff's requests for admissions; nor did he submit pretrial disclosures.

The plaintiff then filed her Motion for Summary Judgment, Memorandum of Law, and Statement of Material Facts. *See* R. 11-13. She asserted that the \$10,000 judgment obligation is a property settlement debt and not a support debt. *See* R. 12 at 6. She also claimed that the defendant has the ability to pay the debt and that

the benefit of discharge to the defendant is not greater than the detriment to her. *See id.* The defendant did not respond to the motion.

Discussion

In considering whether the plaintiff's Motion for Summary Judgment should be granted, the court begins with the bedrock principle that 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* Fed. R. Bankr. P. 7056; *see also 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 248.

If the moving party meets its burden, the burden then shifts to the nonmoving party. "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 real factual disputes exist, the nonmovant must produce evidence of the disputes 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. Nevertheless, summary judgment must be "appropriate" under Rule 56(e); it is appropriate only when the moving party has met its initial burden of producing evidence in support of the motion, as required under Rule 56(c). *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160-61, 90 S. Ct. 1598, 1610, 26 L.Ed.2d 142 (1970) (stating that Rule 56(c) requires that summary

judgment first must be properly supported); *Johnson v. Gudmundsson*, 35 F.3d 1104, 1112 (7th Cir. 1994) (stating that Rule 56(e) permits judgment for the moving party only “‘if appropriate – that is, if the motion demonstrates that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law’”) (citations omitted). As the Seventh Circuit Court of Appeals made clear in *Johnson v. Gudmundsson*, the nonmovant’s failure to file a response to a summary judgment motion does not automatically result in the granting of summary judgment for the moving party, but it does result in the admission of the material facts presented by the movant and the nonmovant’s forfeiture of the opportunity to respond or “to elaborate on the legal theories presented in his complaint or to raise any new ones.” *Id.*; see also *Reed v. Bennett*, 312 F.3d 1190, 1194 (10th Cir. 2002) (setting forth the principle that summary judgment is appropriate “only when the moving party has met its initial burden of production under Rule 56(e)”).

Underscoring the requirement of Rule 56(e) that a nonmoving party present some evidence to demonstrate that there are triable issues before the court, Rule B-7056-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Indiana requires a nonmovant’s response.

. . . Any party opposing the motion [for summary judgment] shall, within thirty (30) days of the date the motion is served upon it, serve and file a “Statement of Genuine Issues” setting forth all material facts as to which it is contended there exists a genuine issue, supported with appropriate citations to discovery responses, affidavits, depositions or other admissible evidence, together with any affidavits or other documentary material controverting the movant’s position. The “Statement of Genuine Issues” may either be filed separately or as a part of the responsive brief

N.D. Ind. L.B.R. B-7056-1; see *Barber*, 236 B.R. at 663 (citing earlier local rule and Seventh Circuit case law supporting trial court’s discretion concerning strictness of the rule). Under this local rule, “if a summary judgment respondent fails to file a timely statement of disputed material facts, uncontroverted statements in the moving party’s statement in support of summary judgment are deemed admitted.” *Barber*, 236 B.R. at 663 (citing *Giannopoulos v. Brach & Brock Confections, Inc.*, 109 F.3d 406, 412 (7th Cir. 1997)). Indeed, courts generally treat all material facts as admitted when no response is filed and the facts are thereby uncontroverted. See, e.g., *West v. Grindstaff (In re Grindstaff)*, 254 B.R. 706, 708 (Bankr. S.D. Ohio 2000); *Novartis Corp. v. Luppino (In re Luppino)* 221 B.R. 693, 696 (Bankr. S.D. N.Y. 1998). Therefore, as long as the moving party has met its initial

burden of production under Rule 56(c), then a court may enter summary judgment against the nonmovant based on his or her failure to respond.

In this case, the defendant failed to respond to the motion for summary judgment and failed to seek an extension of time for a response. Even as a pro se defendant, the debtor is “not entitled to a general dispensation from the rules of procedure or court-imposed deadlines.” *Downs v. Westphal*, 78 F.3d 1252, 1257 (7th Cir.1996) (quoting *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994)); see also *Jabamoni v. Zordan (In re Zordan)*, 2006 WL 220111 at *3 (Bankr. N.D. Ill. Jan. 26, 2006) (same). The court therefore considers whether summary judgment is appropriate – that is, whether the plaintiff, as the moving party, has met her initial burden of production under Rule 56(c).

The plaintiff asserted that the property settlement obligation, namely the \$10,000 judgment, should be excepted from the defendant’s discharge under 11 U.S.C. § 523(a)(15). Subsection (a)(15) prohibits the discharge of “any marital debt other than alimony, maintenance or support that is incurred in connection with a divorce or separation.” *In re Crosswhite*, 148 F.3d 879, 883 (7th Cir. 1998). Property settlement debts are usually nondischargeable in bankruptcy. However, there are two exceptions to that rule; the debt is dischargeable if the debtor proves (A) that he or she does not have the ability to pay the debt or (B) that the discharge of that debt would benefit the debtor more than it would harm the debtor’s former spouse and children. The plaintiff has the initial burden of proving that she holds a subsection (a)(15) claim against the debtor, and then the burden shifts to the debtor defendant to prove that he falls within either of those two exceptions. See *id.* at 884. In addition, “the party claiming an exception to discharge usually bears the burden of proving by a preponderance of the evidence that the debt is not dischargeable.” *Id.* at 881 (citing *Grogan v. Garner*, 498 U.S. 279, 287, 111 S. Ct. 654, 112 L.Ed.2d 755 (1991)).

The court finds that the plaintiff succeeded in meeting her initial burden of proving that the debt in question was a marital debt that was incurred in connection with her divorce from the defendant and that it was not alimony, maintenance or support. The plaintiff established that the Court’s Decree dissolving the marriage

awarded a cash award of \$10,000 to the plaintiff, as a balance of the marital assets, and declared it to be “a judgment against [Damon Campbell] and in favor of [Tonya Campbell].” The parties and the court clearly understood that the debt constituted a property settlement obligation.

The burden then shifted to the debtor to prove that he fell within either of the exceptions listed under § 523(a)(15). To prevail, the debtor ““must meet the burden on only one of the two prongs of Section 523(a)(15) to prevent the debt from being excepted from discharge.”” *Turner v. McClain (In re McClain)*, 227 B.R. 881, 885 (Bankr. S.D. Ind. 1998) (quoting *Collins v. Florez (In re Florez)*, 191 B.R. 112, 115 (Bankr. N.D. Ill.1995)). Because the defendant did not respond to the motion for summary judgment, he offered no specific facts showing that there was a genuine issue for a trial. Moreover, he did not challenge the plaintiff’s material facts presented in support of her summary judgment motion: (1) that there should have been a cash award of \$35,029.28 awarded to Tonya Campbell, but that she requested only \$10,000; (2) that the defendant failed to make any payments toward the cash award; (3) that the defendant has the ability to pay the plaintiff; (4) that the defendant has the ability to earn substantially more than the plaintiff; and (5) that the benefit of discharging the defendant’s obligations does not outweigh the detriment that it would cause to the plaintiff. The defendant bears the burden of proof on those issues at trial. *See Celotex*, 477 U.S. at 322. His nonresponse constitutes noncompliance with the local bankruptcy rule and the federal rule regarding motions for summary judgment and constitutes an admission of all the plaintiff’s material facts. *See Adler v. Glickman*, 87 F.3d 956, 959 (7th Cir. 1996) (affirming summary judgment in favor of defendant because plaintiff failed to offer any evidence to support his claim); *see also Texaco Inc. v. Duhe*, 274 F.3d 911, 915 (5th Cir. 2001) (“If a party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party bears the burden of proof at trial, there ceases to be a genuine issue as to any material fact, such that the moving party is entitled to judgment as a matter of law.”); *In re Zordan*, 2006 WL 220111 at *4 (“Compliance with Local Bankruptcy Rules . . . is not a mere technicality.”).

The court finds that the plaintiff met her initial responsibility of proving that no genuine issue of material facts exists and that she is entitled to summary judgment as a matter of law. The uncontested facts in the summary judgment motion and supporting documents, now deemed as admitted, lead to the unchallenged conclusion that the defendant has the ability to pay and that the balance of the equities favors the plaintiff. The court finds that summary judgment is proper as a matter of law and is appropriate under Rule 56(e).

The plaintiff also requested that the court find that the attorney's fees and costs incurred in connection with this adversary proceeding are nondischargeable. "Generally, under the 'American Rule' applied in federal litigation, a prevailing litigant may not collect a reasonable attorney's fee from his opponent unless authorized by federal statute or an enforceable contract between the parties." *In re Sheridan*, 105 F.3d 1164, 1166 (7th Cir. 1997) (citing *Alyeska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240, 247, 257, 95 S. Ct. 1612, 1616-17, 44 L.Ed.2d 141 (1975)) (noting that the rule applies to litigation in bankruptcy courts). Subsection (a)(15) of the dischargeability statute "does not contain or contemplate a provision for an award of attorney's fees to a prevailing party." *Taylor v. Taylor*, 191 B.R. 760, 765 n.2 (Bankr. N.D. Ill. 1996) (quoting *In re Florez*, 191 B.R. at 115-16); *cf. In re Sheridan*, 105 F.3d at 1167 (affirming lower courts, concluding that debtor's counsel is not entitled to award of fees in a federal dischargeability action). The state court decree of dissolution did not provide for such an award, and the plaintiff has not identified a contractual agreement or a state statute allowing for the payment of fees to her. *Cf. In re Weinschneider*, 395 F.3d 401, 404 (7th Cir. 2005) (affirming bankruptcy court's denial of fees to debtor's attorney who successfully defended trustee's turnover complaint). Consequently, the court denies the request for attorney's fees and costs.

Conclusion

Having found that no material facts remain for trial and that the plaintiff is entitled to judgment as a matter of law, the court grants the Motion for Summary Judgment brought by the plaintiff Tonya Campbell against the defendant debtor Damon Allen Campbell. However, it denies the plaintiff's request for attorney's fees and costs.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT