



**IT IS ORDERED** as set forth below:

**Date: March 12, 2007**

**Paul W. Bonapfel**  
**U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: R05-42458-PWB
	:	
BRANDON DAVID CARLUCCI	:	
and KRISTI A. CARLUCCI,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtors.	:	BANKRUPTCY CODE
	:	
_____	:	
BASKIN & BASKIN, P.C.,	:	
	:	
Plaintiff	:	ADVERSARY PROCEEDING
	:	NO. 05-5007
v.	:	
	:	
BRANDON DAVID CARLUCCI,	:	
	:	
Defendant.	:	

**ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Carol S. Baskin of Baskin & Baskin, P.C., served as guardian ad litem for the Debtor's minor children in a custody dispute between the Debtor and his former spouse in *Carlucci v. Carlucci*, Civil Action No. 04-1-4300-34, in the Superior Court of Cobb County, Georgia. Baskin

& Baskin, P.C. (“Plaintiff”) seeks a determination that guardian ad litem fees awarded by the Superior Court of Cobb County, Georgia against the Debtor are nondischargeable pursuant to 11 U.S.C. § 523(a)(5).<sup>1</sup> The Debtor has not filed a response to the Plaintiff’s motion for summary judgment.

This case was filed on July 1, 2005, and, therefore, is governed by the Bankruptcy Code prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act. Pre-BAPCPA § 523(a)(5) provides that section 727 does not discharge an individual debtor from a debt

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 . . . ; 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.

Since guardian ad litem fees are not necessarily owed or paid “to a spouse, former spouse, or child of the debtor,” such a fee does not fall squarely within the exception of § 523(a)(5). Nevertheless, courts have found that guardian ad litem fees assessed against a debtor payable to a guardian ad litem, not a child, were nondischargeable under § 523(a)(5) because they arise in a child custody proceeding. In *Dvorak v. Carlson (In re Dvorak)*, 986 F.2d 940 (5<sup>th</sup> Cir. 1993), the

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<sup>1</sup>Although the Superior Court Order (attached as Exhibit A to the Motion for Summary Judgment and Statement of Material Facts [Doc. No. 10]) refers to Carol Baskin as the guardian ad litem and directs payment to be made to her at “Baskin & Baskin, P.C.,” this complaint names Baskin & Baskin, P.C. as the plaintiff in this nondischargeability action. The Debtor’s schedules list Baskin & Baskin as an unsecured creditor in the amount of \$3,213 and the Debtor has not disputed Baskin & Baskin’s standing to proceed as the plaintiff in this action. Accordingly, the Court will presume that Baskin & Baskin is a proper plaintiff in this action.

debtor sought custody of her minor child following a divorce. In the custody litigation, a guardian ad litem was appointed to represent the interests of the minor child. Following a jury trial, debtor's parental rights were terminated, and debtor was ordered to pay her ex-husband's attorney fees and a portion of the fees charged by the guardian ad litem. The Fifth Circuit affirmed the bankruptcy and district court's orders holding the guardian fees (and attorney fees) nondischargeable under § 523(a)(5). Because the fees charged were incurred during a court hearing that was for the child's benefit and support and because the state court ordered the fees to be paid by the debtor, the court concluded that the fees constituted a nondischargeable debt under § 523(a)(5). *See also Miller v. Gentry (In re Miller)*, 55 F.3d 1487, 1490 (10<sup>th</sup> Cir. 1995) (“[D]ebts to a guardian ad litem, who is specifically charged with representing the child's best interests . . . can be said to relate just as directly to the support of the child as attorney's fees incurred by the parents in a custody proceeding”); *Hack v. Laney (In re Laney)*, 53 B.R. 231, 235 (Bankr. N.D. Tex. 1985) (the services rendered by a guardian ad litem are “so inextricably intertwined with the welfare of the children . . . that it would be unreasonable to characterize the fee award as anything other than an obligation in the nature of support”); *cf. Madden v. Staggs (In re Staggs)*, 203 B.R. 712, 720 (Bankr. W.D. Mo. 1996) (guardian ad litem fees are not per se nondischargeable because court must determine whether the award of such fees was “intended to serve as support for the minor child of the debtor”).

The Eleventh Circuit has stated that the determination under § 523(a)(5) "requires nothing more than a simple inquiry as to whether the obligation can legitimately be characterized as support." *In re Strickland*, 90 F. 3d 444, 447 (11<sup>th</sup> Cir. 1996). The focus of the court's determination as to the nature of the obligation is on the “intent underlying the award.” *Engram v. MacDonald (In re MacDonald)*, 194 B. R. 283, 287 (Bankr. N.D.Ga. 1996). Under Georgia law,

the “role of the guardian ad litem is to protect the interests of the child and to investigate and present evidence to the court on the child’s behalf.” *Padilla v. Melendez*, 228 Ga.App. 460, 462, 491 S.E.2d 905, 908 (1997). Thus, the guardian’s role relates directly to the welfare and support of the minor child in the context of a custody dispute. As such, the Court concludes that the guardian ad litem fees at issue here are in the nature of support and the fact that the award was made to the guardian ad litem and not “to a spouse, former spouse, or child of the debtor” is immaterial for purposes of a nondischargeability determination.

Based on the foregoing, the Court concludes that the guardian ad litem fees awarded to the Plaintiff and assessed against the Debtor are nondischargeable pursuant to 11 U.S.C. § 523(a)(5). It is

ORDERED that the Plaintiff’s motion for summary judgment is granted. A separate judgment shall be entered contemporaneously herewith.

Distribution List

William M. Bristow  
132 Forest Avenue  
Marietta, GA 30060-1614

Brandon David Carlucci  
68 Lomborne Court  
Hiram, GA 30141

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