

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

IN RE:	:	
	:	CASE NO. G11-21155-REB
LAUREN DENISE ESPINOSA,	:	
	:	
Debtor.	:	
<hr style="width: 50%; margin-left: 0;"/>		
LARRY H. TATUM,	:	ADVERSARY PROCEEDING
	:	NO. 11-2130
Plaintiff,	:	
	:	
v.	:	CHAPTER 7
	:	
LAUREN DENISE ESPINOSA,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE

**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT**

Plaintiff named above commenced this adversary proceeding through the filing of a complaint herein on June 30, 2011 to which Defendant failed to respond. Following entry of a default by the Clerk, Plaintiff filed a motion for entry of default judgment on September 12, 2011. The matter came on for hearing as continued, and counsel for Plaintiff agreed to submit a memorandum in support of the motion that was filed on December 20, 2011.

In his complaint, Plaintiff seeks a determination that a certain indebtedness in the amount of \$4,370.00 owed to Plaintiff by Defendant based on fees arising from Plaintiff's service as a guardian *at litem* to Defendant's minor children should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(5). The record reflects that Plaintiff was appointed as guardian *at litem* for the minor children of Defendant-Debtor and her former spouse by the Superior Court of Gwinnett

County, Georgia in a custody, visitation, and child support modification action styled *Lauren D. Espinosa v. Peter J. Stapleton*, Civil Action File No. 09-A-03100-1. Debtor was responsible for one half of such fees, and ordered to pay \$2,000.00 to Plaintiff based on a supplemental order dated February 22, 2010. In an order of contempt dated February 25, 2011, Debtor was ordered to pay Plaintiff the amount of \$4,370.00.<sup>1</sup>

Under 11 U.S.C. § 523(a)(5), a debt that constitutes a “domestic support obligation” is excepted from discharge. This term is defined in Section 101(14A) as an obligation that accrues prepetition and 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 government unit;

(B) 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;

(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....

11 U.S.C. § 101(14A). As evidenced by the case authority cited by Plaintiff, courts have looked

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<sup>1</sup> Copies of these orders are attached to the complaint herein.

to pre-BAPCPA cases in analyzing whether guardian *at litem* fees are nondischargeable under this provision concluding that the amendment to the Bankruptcy Code in 2005, including the addition of the term “domestic support obligation,” did not substantially change the prior language for analyzing such obligations under Section 523(a)(5).<sup>2</sup>

For instance, in *Baskin & Baskin, P.C. v. Carlucci (In re Carlucci)*, \_ B.R. \_, 2007 WL 7132275, Case No. 05-42458-PWB, Adversary Proceeding No. 05-5007 (Bankr. N.D.Ga. Mar. 13, 2007), the court analyzed Georgia law in guiding its analysis of the intent of the award consistent with the inquiry into whether the debt “can legitimately be characterized as support” as called for by *In re Strickland*, 90 F.3d 444, 447 (11<sup>th</sup> Cir. 1996). The court in *Carlucci* concluded that guardian *at litem* fees were in the nature of support, irrespective of whether they were awarded “to a spouse, former spouse, or child of the debtor,” because the function of a guardian *at litem* directly concerns the welfare and support of a minor child in a custody matter in speaking for the best interests of the child. See also *Guerra v. Ampel (In re Ampel)*, Case No. 05-94878-MHM, Adversary Proceeding No. 05-6462 (Bankr. N.D.Ga. Sept. 27, 2006); accord *Miller v. Gentry (In re Miller)*, 55 F.3d 1487 (10<sup>th</sup> Cir. 1995) (analysis of nature of award controls over strict identity of payee); *Dvorak v. Carlson (In re Dvorak)*, 986 F.2d 940 (5<sup>th</sup> Cir. 1993).

Further, as determined in the case of *Kelly v. Burnes (In re Burnes)*, 405 B.R. 654 (Bankr. W.D.Mo. 2009), cited by Plaintiff herein, Plaintiff’s award in the present case was similarly established by court order and has not been assigned. As in that case, the award also appears to be in the nature of support, which is a question of federal law, since it is intended as compensation for

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<sup>2</sup> The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”).

services provided by Plaintiff that benefitted Debtor's minor children. The court in *Kelly* recognized that with respect to Section 101(14A)(A), a guardian *at litem* is not an entity specifically identified in that subsection. The court determined, however, and this Court agrees, that the underlying logic in cases excepting from discharge fees paid to the attorney of a spouse in a custody matter likewise applies and extends to those fees owed to a guardian *at litem* for services performed in connection with such a proceeding. 405 B.R. at 658. *See also Madden v. Staggs (In re Staggs)*, 203 B.R. 721 (Bankr. W.D.Mo. 1996), cited in *Carlucci, supra*. *See also Levin v. Greco*, 415 B.R. 663 (N.D.Ill. 2009) (court reversed holding in 397 B.R. 102 (Bankr. N.D.Ill. 2008), that guardian *ad litem* fees were not within the scope of domestic support discharge exception).

Accordingly, based upon a review of the record, statutory provisions at issue, and applicable case authority, it is

**ORDERED** that Plaintiff's motion for default judgment on the complaint be, and the same hereby is, **granted**; and, it is

**FURTHER ORDERED** that the debt owed to Plaintiff as guardian at litem in the amount of \$4,370.00 be, and the same hereby is, determined to be **nondischargeable** herein as a domestic support obligation under 11 U.S.C. § 523(a)(5).

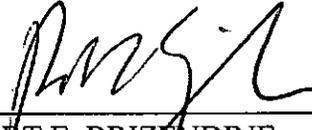
A separate written judgment is entered contemporaneously herewith.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, Defendant-

Debtor, the Chapter 7 Trustee, and the United States Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 31<sup>st</sup> day of January, 2012.



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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE