IT IS ORDERED as set forth below:

Date: April 23, 2015

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CASE NO. 14-62557-WLH
REID WATSON MILLNER,	)	CHAPTER 7
Debtor.	)	JUDGE WENDY L. HAGENAU
DR. NANCY C. ALDRIDGE,	)	
Plaintiff,	)	
v.	)	ADV. PROC. NO. 14-5315
REID MILLNER,	)	
Defendant.	)	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on the Motion for Summary Judgment of Dr. Nancy Aldridge [Docket No. 7] in the above-styled matter ("Motion"). The Debtor/Defendant did not respond to the Motion. The Court has jurisdiction over this matter pursuant to 28 U.S.C.

§§ 1134 and 157, and this is a core proceeding under 28 U.S.C. § 157(b)(2)(I) as a complaint to determine the dischargeability of debt.

UNDISPUTED FACTS

Plaintiff Dr. Nancy Aldridge ("Aldridge") included with the Motion a statement of undisputed facts. The Debtor/Defendant Reid Millner ("Debtor") did not respond to the Motion. Even if a party fails to respond to a motion for summary judgment, the movant "must still show from the pleadings and the evidence that there is no genuine issue of material fact." Caslin v. Bi-Lo, LLC, 2008 WL 4830008, at *1 (S.D. Ga. Nov. 5, 2008) (citation omitted); Bouchard v. Magnusson, 715 F. Supp. 1146, 1148 (D. Maine 1989) ("[T]he practical consequence of Plaintiff's failure to respond to Defendant's motion for summary judgment is that the Court accepts as true all material facts set forth by Defendant that are supported in the record by materials of evidentiary quality."); see also Le v. Krepps (In re Krepps), 476 B.R. 646, 649 (Bankr. S.D. Ga. 2012).

The record supports that Aldridge is a licensed psychologist who was appointed by the Superior Court of DeKalb County to evaluate the Debtor, his now ex-wife and their children, and to file a report to assist the DeKalb County court in determining custody and setting conditions of visitation. It is also undisputed that the Debtor was ordered to pay Aldridge $8,749 in fees for her work in providing this report to the DeKalb Superior Court. Finally, the Debtor does not dispute that he has not paid that sum. Aldridge also alleges in the Motion that she is entitled to additional fees of $2,250 for having testified against the Debtor in a related state court contempt action and she seeks fees for filing this dischargeability action. Aldridge seeks summary judgment that these sums are due to her and are not dischargeable pursuant to 11 U.S.C. § 523(a)(5).

LAW

Summary judgment is appropriate when "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". Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056(c). "The substantive law [applicable to the case] will identify which facts are material." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party moving for summary judgment has the burden of proving there are no disputes as to any material facts. Hairston v. Gainesville Sun Pub. Co., 9 F.3d 913, 918 (11th Cir. 1993). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. When reviewing a motion for summary judgment, a court must examine the evidence in the light most favorable to the nonmoving party and all reasonable doubts and inferences should be resolved in favor of the nonmoving party. Hairston, 9 F.3d at 918.

Section 523(a)(5) excepts from discharge any debt for a "domestic support obligation". A domestic support obligation is defined in 11 U.S.C. § 101(14A) as a debt 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 … of such spouse, former spouse, or child of the debtor …;
> (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 non-bankruptcy law by a governmental unit
> ….

Here, the Superior Court of DeKalb County has ordered the Debtor to pay Aldridge $8,749 pursuant to the divorce decree. This Court has already determined in its Order Denying Debtor's Motion to Dismiss [Docket No. 4] that the fact the payee was Aldridge, as opposed to a spouse or a child, did not disqualify the payment as one for support. The remaining question, therefore, is whether the order to pay Aldridge $8,749 in fees is in the nature of support. Whether a given debt is in the nature of support is an issue of federal law. Strickland v. Shannon (In re Strickland), 90 F.3d 444, 446 (11th Cir. 1996). The Eleventh Circuit has instructed further that a determination under Section 523(a)(5) "requires nothing more than a simple inquiry as to whether the obligation can legitimately be characterized as support." Id. at 447. Whether the obligation is in the "nature of support" must be based on the "intent underlying the award." Engram v. MacDonald (In re MacDonald), 194 B.R. 283, 287 (Bankr. N.D. Ga. 1996); see also Rackley v. Rackley (In re Rackley), 502 B.R. 615, 625 (Bankr. N.D. Ga. 2013); Baskin & Baskin, P.C. v. Carlucci (In re Carlucci), 2007 WL 7132275, at *2 (Bankr. N.D. Ga. Mar. 13, 2007).

Most courts that have considered the question have determined the concept of "support" is not limited to financial support but includes any efforts made on the part of a party for the child's benefit, welfare and support. See Dvorak v. Carlson (In re Dvorak), 986 F.2d 940, 941 (5th Cir. 1993) (guardian ad litem supplied services during a child custody hearing that was for the minor child's benefit and support as the purpose of the hearing was to determine who could provide the best home for the child); Peters v. Hennenhoeffer (In re Peters), 133 B.R. 291, 295-96 (S.D. N.Y. 1991) (fees incurred on behalf of a child during proceedings that affect the welfare of the child are deemed to be in the nature of support); Tatum v. Espinosa (In re Espinosa), 2012 WL 1951107, at *2 (Bankr. N.D. Ga. Feb. 1, 2012); In re Carlucci, 2007 WL 7132275, at *2; Madden v. Staggs (In re Staggs), 203 B.R. 712 (Bankr. W.D. Mo. 1996) (services provided by

guardian ad litem in custody proceeding were in the nature of support and non-dischargeable). Here, Aldridge was appointed by the Superior Court of DeKalb County to evaluate the parties and their children and make a recommendation to the court regarding both custody and visitation rights. The Court therefore concludes the services provided by Aldridge were for the welfare and benefit of the Debtor's children. Thus, the fees incurred were for the support of the children and are non-dischargeable under 11 U.S.C. § 523(a)(5).

Aldridge argues next that she is entitled to additional fees in the amount of $2,250 for testifying at a hearing where the Debtor was held in contempt for having failed to previously pay the fees to Aldridge. The result of this hearing was an order that held the Debtor in contempt, but the Debtor was only required to pay the original $8,749 to Aldridge within 180 days of the court's order entered on March 28, 2014. Aldridge has submitted no evidence the state court has awarded her $2,250 in additional fees. Moreover, Aldridge has not argued any basis for this Court to conclude she is entitled to additional fees of $2,250. Finally, it is doubtful that any such award would be non-dischargeable under Section 523(a)(5) as the nature of an award of such fees would be to punish the Debtor and to benefit Aldridge rather than to benefit the children. See In re Rackley, 502 B.R. at 625 (fees awarded as a sanction were not in the nature of support). Finally, Aldridge asks this Court to award her attorney's fees for bringing this non-dischargeability action. Again, Aldridge alleges no basis on which the Court would make such an award, and the Court sees none. See TranSouth Fin. Corp. of Florida v. Johnson, 931 F.2d 1505, 1507 (11th Cir. 1991) (creditor prevailing on Section 523 claim is not entitled to attorneys' fees unless there is a contractual right to such fees). Further, any such award of attorney's fees would likely be dischargeable, as this dischargeability proceeding is not for the support of children, but for the benefit of Aldridge. For the foregoing reasons, it is hereby

ORDERED that the Motion is granted in part and Plaintiff shall have judgment that her claim of $8,749 is non-dischargeable;

ORDERED FURTHER that the remainder of the Motion is denied.

END OF ORDER

DISTRIBUTION LIST

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