

ENTERED ON DOCKET
9/27/06

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
LAURA MILLLICENT AMPEL)	CASE NO. 05-94878-MHM
)	
Debtor)	
)	
<hr/>		
ELIZABETH L. GUERRA)	
)	
Plaintiff)	ADVERSARY PROCEEDING
)	NO. 05-6462
v.)	
)	
LAURA MILLICENT AMPEL)	
)	
Defendant)	

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANT'S MOTION FOR SANCTIONS**

Before the court are Plaintiff's motions for summary judgment and Defendant's motion for sanctions. Following the filing of Plaintiff's motion for summary judgment, this court issued a Notice to *Pro Se* Party to Respond to Motion (the "Notice"). The Notice described for Defendant, who is proceeding *pro se*, the time limits for filing a response to the motion for summary judgment, the consequences of failing to file a response, and that no hearing would be scheduled unless specifically requested. Defendant filed no response to the motion for summary judgment. Accordingly, the motion is deemed unopposed. BLR 7007-1(b); BLR 7056-1(b)(2).

Prior to the filing of Plaintiff's motion for summary judgment, Defendant filed in this adversary proceeding a pleading entitled Motion for Sanctions. The style of the caption showed that the pleading relates to a contested matter in the main bankruptcy case in which Phillip Ampel is Movant and Debtor is Respondent. Although Plaintiff is mentioned in the text of Debtor's motion, Debtor does not specifically seek any relief against Ms. Guerra, who responded as "Plaintiff." In fact, the pleading does not appear to set forth any claim for relief against Ms. Guerra. Therefore, the pleading will be deemed to have been filed in this adversary proceeding for information purposes only or in error. To the extent that any ruling is required with respect to Plaintiff, the motion for sanctions will be denied.

Plaintiff, a licensed attorney, holds a claim against Debtor arising from Plaintiff's services as *guardian ad litem* on behalf of Debtor's minor children in Debtor's divorce proceeding in Cobb County. Following trial in the divorce proceeding, an order was entered in Cobb County Superior Court awarding judgment to Plaintiff for her *guardian ad litem* fees in the total amount of \$8,136.00. Deducting from that total an amount in the Registry, and deducting \$500 Plaintiff had failed to pay as required by a previous order, the remainder of the fees were divided in half and allocated for payment one-half to Debtor and the other half to Debtor's former spouse, Phillip Ampel. Debtor was directed to pay Plaintiff \$2,999.85 plus the previously unpaid \$500, for a total of \$3,499.85. Thereafter, when Debtor failed to pay Plaintiff, a judgment was entered in the amount of \$4,492.16, which included interest and additional legal fees. Debtor was also required to

pay an additional \$100 to Plaintiff to purge herself of the contempt for failure to pay as previously directed by the court. Plaintiff asserts that the total amount owed as of January 17, 2006, including post-judgment interest, is \$4,713.15, plus \$1.15 per diem, which would yield a total amount due as of the date of entry of this order of \$5004.10.

Plaintiff seeks a determination that her claim is nondischargeable under 11 U.S.C. §523(a)(5), which provides that a debt is nondischargeable if it is owed:

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 (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); 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.

Determining whether a particular claim is "actually in the nature of alimony, maintenance, or support" is a matter of federal bankruptcy law, not state law. *In re Strickland*, 90 F. 3d 444 (11th Cir. 1996); *Harrell v. Sharp*, 754 F. 2d 902. The focus of the determination of the nature of the obligation is on the intent underlying the award. *Cummings v. Cummings*, 244 F. 3d 1263 (11th Cir. 2001); *See also, Harrell*, 754 F. 2d 902.

Professional fees incurred in domestic relations matters will be nondischargeable if they constitute an indirect award of support to a spouse, former spouse or dependent.

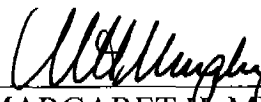
Woodruff, O'Hair & Posner, Inc. v. Smith, 205 B.R. 612 (Bankr. E.D. Cal. 1997). The identity of the payee is not the critical consideration. *Beaupied v. Chang*, 163 F.3d 1138 (9th Cir. 1998), *cert. denied*, 526 U.S. 1149, 119 S.Ct. 2029 (1999). A *guardian ad litem* is appointed to represent the best interests of the child and therefore the obligation to the *guardian's ad litem's* fees is in the nature of support for that child. *Olszewski v. Joffrion*, 240 B.R. 630 (M.D.Ala. 1999); *Chang*, 163 F.3d 1138. Accordingly, it is hereby

ORDERED that the Motion for Sanctions filed by Defendant is deemed to have been filed in this adversary proceeding for information purposes only or in error. To the extent that any ruling is required with respect to Plaintiff, the motion for sanctions is denied. It is further

ORDERED that Plaintiff's motion for summary judgment is granted.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, and Defendant.

IT IS SO ORDERED, this the 26th day of September, 2006.


MARGARET M. MURPHY
UNITED STATES BANKRUPTCY JUDGE