

IT IS ORDERED as set forth below:



Date: June 1, 2012

A handwritten signature in black ink, appearing to read "W. Homer Drake".

W. Homer Drake
U.S. Bankruptcy Court Judge

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
MICHAEL BRYAN ADAMS,	:	11-13886-WHD
	:	
Debtor.	:	
_____	:	
	:	
MICHAEL BRYAN ADAMS,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 11-1077
v.	:	
	:	
PATRICIA DEGROSS, RODNEY	:	
LONG, and ELIZABETH HARWELL,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Partial Summary Judgment, filed by Michael Bryan Adams (hereinafter the "Plaintiff") against Rodney Long and

Patricia DeGross (hereinafter the “Defendants”). The Defendants oppose the Motion. This matter arises from a complaint objecting to the dischargeability of a particular debt and, accordingly, constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(I), § 1334.

FINDINGS OF FACT

1. The Plaintiff married Dana Long, the Defendants’ daughter, on April 2, 2005. Affidavit of Michael B. Adams, ¶ 2. The Plaintiff and Long had no children and were divorced approximately six years later. *Id.* ¶¶ 2-3.
2. Following a contested divorce, the Superior Court of Coweta County entered a final order of divorce, which divided the parties’ property and liabilities, but awarded no child support. *Id.* ¶ 3-4, Exhibit 1 to the Complaint. The divorce decree ordered the Plaintiff to pay \$4,097.82 to Defendant Rodney Long within a reasonable time and \$4,993.50 to Defendant Patricia DeGross within a reasonable time. The divorce decree stated that Dana Long would be responsible for the balance of the debts owed to her parents. Exhibit 1 to the Complaint.
3. At the time of the divorce, Dana Long owned the martial residence as her separate property, and the Plaintiff owned no real property. Plaintiff’s Affidavit, ¶ 7, Exhibit D to Plaintiff’s Affidavit. The Plaintiff’s monthly take-home pay was

\$1,220, while Dana Long's monthly take-home pay was \$2,135, including \$640 per month in disability income received for the benefit of her son from a previous marriage. *Id.* Dana Long's monthly expenses totaled \$3,279, while the Plaintiff's monthly expenses totaled \$302. *Id.*

4. At the time of the divorce, Dana Long was employed in a clerical capacity in a medical office, while the Plaintiff worked as a line operator at a manufacturing facility. *Id.* ¶ 8.

5. The debts owed to the Defendants were incurred by the Plaintiff and Dana Long to help pay family living expenses during the marriage. *Id.* ¶ 6.

6. The Plaintiff filed a voluntary petition under Chapter 13 of the Bankruptcy Code on November 29, 2011. On December 8, 2011, the Plaintiff filed the instant complaint to determine the dischargeability of the debts owed by the Plaintiff to the Defendants.

CONCLUSIONS OF LAW

The Plaintiff seeks a declaration that the debt owed to the Defendants is not nondischargeable pursuant to section 523(a)(5) of the Bankruptcy Code. Defendant Rodney Long has not responded to the Motion and, accordingly, pursuant to Bankruptcy Local Rule 7007-1(c), the Motion as to Defendant Long

is deemed unopposed.

A. Summary Judgment Standard

In accordance with Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure, a party moving for summary judgment is entitled to prevail only 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 judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322. The moving party bears the initial burden of establishing that no genuine factual issue exists. *See Celotex*, 477 U.S. at 323; *Clark v. Coats & Clark, Inc.*, 929 F.2d 604 (11th Cir.1991). The movant must point to the pleadings, discovery responses or supporting affidavits which tend to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323.

The Court must construe this evidence in the light most favorable to the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Rollins v. TechSouth, Inc.*, 833 F.2d 1525 (11th Cir.1987). If the moving party satisfies its burden to show an absence of a genuine issue of material fact, no burden of going forward arises for the opposing party, and the non-moving

party must designate “specific facts showing that there is a genuine issue for trial.”

Clark, 929 F.2d at 608; *Celotex*, 477 U.S. at 324.

B. *Section 523(a)(5)*

To be nondischargeable under section 523(a)(5), a debt must be “for a domestic support obligation.” 11 U.S.C. § 523(a)(5). The Code defines the term “domestic support obligation” as “a debt that accrues before, on, or after the date of the order for relief . . . including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of [the Code], that is”: 1) “owed to or recoverable by” a spouse or former spouse; 2) “in the nature of alimony, maintenance, or support” of such spouse or former spouse, “without regard to whether such debt is expressly so designated”; 3) “established or subject to establishment before, on, or after the date of the order for relief . . . by reason of applicable provisions of” a divorce decree; and 4) “not assigned to a governmental entity. . . .” *Id.* § 101(14A).¹

¹ “In determining whether an obligation constitutes a [domestic support obligation], the Court looks to the interpretation of [domestic support obligations] in case law involving the dischargeability of debts under § 523(a)(5), as enacted prior to the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).” *In re Krueger*, 457 B.R. 465, 474 (Bankr. D.S.C. 2011).

The Plaintiff asserts that the debt at issue is not “in the nature of alimony, maintenance, or support.” The question of whether a debt is “in the nature of alimony, maintenance, or support” is a question of federal law. *In re Strickland*, 90 F.3d 444 (11th Cir.1996); *In re Smith*, 586 F.3d 69, 73 (1st Cir. 2009). “Thus, a label placed upon the obligation by the consent agreement or court order which created it will not determine its subsequent [treatment] in bankruptcy.” *In re Robinson*, 193 B.R. 367, 372 (Bankr. N.D. Ga. 1996) (Drake, J.). Instead, the Court should consider the intent of the state court in including certain provisions within the divorce decree. If the evidence suggests that the obligation was imposed upon the debtor as a means of providing support for the debtor's former spouse, the Court should find that the obligation is in the nature of support. On the other hand, if the evidence suggests that the obligation was an attempt to divide the marital property or liabilities, the Court should find that the obligation is not in the nature of support.

In determining the intent of the state court, it is helpful for the Court to consider such factors as: 1) whether the obligation is tied to a contingency, such as a child reaching the age of majority or the remarriage of the former spouse; 2) whether the obligation appears to have been imposed as a means of balancing the disparate incomes of the parties; 3) whether the obligation is payable in a lump

sum or in installments; 4) the respective physical health of the spouses and their levels of education; and 5) whether there was an actual need for support at the time of the divorce. *Id.* The creditor seeking to except the debt from discharge has the burden of proving by a preponderance of the evidence that the debt is “in the nature of support, alimony, or maintenance.” *Cummings v. Cummings*, 244 F.3d 1263, 1265 (11th Cir. ,2001); *Smith*, 586 F.3d at 73 ; *In re Krueger*, 457 B.R. 465 (Bankr. D. S.C. 2011); *In re Clark*, 441 B.R. 752 (Bankr. M.D. N.C. 2011).

Having considered the evidence submitted by the Plaintiff, the Court finds that no genuine issues of material fact remain in dispute and that the Plaintiff is entitled to judgment as a matter of law. Under the circumstances in existence at the time the parties were divorced and considering the factors outlined above, the Plaintiff’s obligation to pay a portion of the debt owed to the Defendants was simply a means of dividing the marital liabilities. The court ordered the Plaintiff to pay a particular amount of these debts in a lump sum within a reasonable time. The obligation is not tied to any contingency related to Dana Long’s support, such as her death or remarriage, and there is no evidence of disparate incomes between the parties at the time of the divorce. In fact, at that time, Dana Long earned more money than the Plaintiff.

The Court notes that only one factor weighs in favor of a finding that the

Plaintiff's obligation to pay these debts was in the nature of support. Dana Long appears to have had a need for support at the time of the divorce, as her expenses exceeded her income, while the Plaintiff's expenses were less than his income. However, the remaining evidence does not support a finding that the state court intended to provide for the continued support of Dana Long and her children from a previous marriage by ordering the Plaintiff to pay approximately \$8,000 of a joint debt owed by Dana Long and the Plaintiff to the Defendants.

The parties were married only five years before separating and had no children together. It appears that they had similar financial resources at the time of their marriage and both worked during the course of the marriage. Aside from her need for support, nothing in the record supports the conclusion that the state court intended to provide for that need by ordering the Plaintiff to pay these debts. Accordingly, the Court finds that the Plaintiff has demonstrated that no genuine issues of material fact remain for trial and that the undisputed facts support the conclusion that the debts owed to the Defendants by the Plaintiff are not in the nature of support.²

² Referenced in and attached to the answer filed by Co-Defendant Elizabeth Harwell is a copy of a final order on a contempt proceeding brought against the Plaintiff by Harwell and the Defendants. To the extent, if any, that the Order could be seen as a prior determination by the state court that the debts owed to the Defendants are in the nature of support, the Court declines to give the order such preclusive effect because the Defendants

CONCLUSION

For the reasons stated above, the Plaintiff is entitled to partial summary judgment as to his claims against Rodney Long and Patricia DeGross. The debts owed by the Plaintiff to the Defendants are not nondischargeable under section 523(a)(5). A separate judgment will be executed concurrently herewith and, there being no just reason for delay, this Order shall be a final order within the meaning of Rule 7054 of the Federal Rules of Bankruptcy Procedure.

END OF DOCUMENT

have not argued that the order is entitled to such effect and, as the Plaintiff points out, the order appears to be void, having been entered in violation of the automatic stay. The order was signed by the state court judge after the Plaintiff filed his bankruptcy petition, and there is no evidence in the record to support a finding that the action taken by the state court in signing the order was a purely “ministerial” act that would not have violated section 362(a)(1). *See, e.g., In re Soares*, 107 F.3d 969 (1st Cir. 1997).