

4/29/10

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. G09-23362-REB
	:	
EDWARD STALNAKER, II,	:	
	:	
Debtor.	:	
	:	
	:	ADVERSARY PROCEEDING
	:	NO. 09-2132
	:	
	:	
	:	
	:	CHAPTER 7
	:	
	:	
	:	JUDGE BRIZENDINE
	:	

DANIELA K. STALNAKER,
Plaintiff,

v.

EDWARD STALNAKER, II,
Defendant.

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff named above filed a motion for judgment on the pleadings on March 16, 2010 pursuant to Fed.R.Civ.P. 12(c) applicable herein through Fed.R.Bankr.P. 7012(b). In the motion, Plaintiff contends that based on record and admissions in Defendant-Debtor's answer, there are no material facts at issue. Debtor filed a response on April 14, 2010.¹

In the complaint, Plaintiff seeks a ruling that certain expenses Debtor was ordered to pay to Plaintiff by a federal district court in the amount of \$4,853.18 constitutes a domestic support obligation and should be excepted from his discharge herein based on 11 U.S.C. §§ 523(a)(5) and/or (a)(15). The expenses were incurred in connection with Plaintiff's travel to the United States following the retention

¹ Debtor's response appears to be untimely, but the Court will consider his argument and citation of authority as set forth therein. See Local Rule of Practice BLR 7007-1(c).

of Plaintiff and Debtor's children by Debtor and their return to Germany. Plaintiff contends this obligation is a domestic support obligation as that term is broadly defined in 11 U.S.C. § 101(14A). In response, Debtor argues the obligation is not in the nature of support and an issue exists as to the intention of the District Court regarding same in its Order entered on January 26, 2009.

As an initial matter, this Court observes that federal law controls in determining whether an obligation is to be excepted from discharge as a domestic support obligation as being in the nature of support. *See Strickland v. Shannon*, 90 F.3d 444, 446 (11th Cir. 1996). Given the standards in deciding a motion for judgment on the pleadings and viewing the pleadings in the light most favorable to Debtor as the non-moving party herein, based upon a review of the record, including the admissions in Debtor's answer, the Court concludes that Plaintiff has shown that no material facts remain for resolution and that she is otherwise entitled to entry of judgment as a matter of law. *See generally Mergens v. Dreyfoos*, 166 F.3d 1114, 1116-17 (11th Cir.), *cert. denied*, 528 U.S. 820, 120 S.Ct. 63, 145 L.Ed.2d 55 (1999); *Chester v. Parker (In re Parker)*, 289 B.R. 779, 781 (Bankr. M.D.Ga. 2002). Specifically, the Court concludes that construction of the Order of the District Court does not create an issue of intent, but instead, that the obligation set forth therein is related in its nature and function to the carrying out of the provisions in the Final Judgment and Decree of the Superior Court of Dawson County, Georgia that the parties' children shall reside with Plaintiff in Germany. What appears as an incidental cost to Debtor is associated with Plaintiff's overall effort to enforce the terms of the custody award.

Further, this Court observes that Debtor's response insisting that the dispute was a "fair fight" and not akin to a contempt proceeding appears to be a collateral challenge to either the Order of the District Court or the Judgment of the state court. In any event, the Order of the District Court was not appealed, and this bankruptcy forum is not appropriate to initiate such a dispute regarding the grounds

for entry of an award of expenses. The issue before this Court is whether such obligation is a domestic support obligation under Section 101(14A) and excepted from discharge herein, which definition Congress has indicated is to be broadly construed through its recent amendments to the Bankruptcy Code.

Accordingly, upon consideration of the motion, it is therefore

ORDERED that Plaintiff's motion be, and the same hereby is, **granted**; and, it is

FURTHER ORDERED that the obligation of Defendant-Debtor owed to Plaintiff in the amount of \$4,853.18, as set forth in the Order of the U.S. District Court for the Northern District of Georgia entered on January 26, 2009 in Case Action File No. 1:08-CV-2928, be, and the same hereby is, **excepted** from discharge herein under 11 U.S.C. §§ 523(a)(5) and/or (a)(15).

A judgment is entered contemporaneously herewith.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, Defendant-Debtor, counsel for Defendant-Debtor, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 29th day of April, 2010.



ROBERT E. BRIENDINE
UNITED STATES BANKRUPTCY JUDGE