



**IT IS ORDERED as set forth below:**

**Date: February 26, 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
	)	
REID WATSON MILLNER,	)	CHAPTER 7
	)	
Debtor.	)	JUDGE WENDY L. HAGENAU
_____	)	
	)	
DR. NANCY C. ALDRIDGE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADV. PROC. NO. 14-5315-WLH
	)	
REID MILNER,	)	
	)	
Defendant.	)	
_____	)	

**ORDER DENYING MOTION TO DISMISS**

This matter came before the Court on the Defendant's Motion to Dismiss [Docket No. 4] and Plaintiff's response thereto. The Court has jurisdiction over this matter under 28 U.S.C. § 1334

because the action is one to determine the dischargeability of a debt. The proceeding is core under 28 U.S.C. § 157(b)(2)(I) and the Court has authority to enter a final judgment thereon.

The Complaint alleges the Plaintiff, Dr. Aldridge (“Aldridge”), was appointed to evaluate and recommend child custody and visitation guidelines in a divorce proceeding between the Defendant Debtor and his ex-wife. The state court ordered the Debtor to pay Aldridge her professional fees amounting to \$8,749. The Debtor failed to make the payment so Aldridge pursued a contempt proceeding in state court to have the Debtor pay her fees. On March 28, 2014, the Superior Court of DeKalb County issued an order finding the Debtor in contempt for failing to pay his portion of the custodial evaluation fees. The Debtor then filed his Chapter 7 bankruptcy case on June 28, 2014. The Complaint in the above-styled matter seeks to determine that the sums owed to Aldridge are non-dischargeable under 11 U.S.C. 523(a)(5) as domestic support obligations. The Motion to Dismiss alleges that the Complaint fails to state a claim because the order requiring the payment of the psychological evaluation fees required payment to be made to Aldridge and not to Debtor’s spouse, former spouse or child or such child’s parent, legal guardian or responsible relative or to a governmental unit.<sup>1</sup>

Section 523(a)(5) provides that a debt for a “domestic support obligation” (“DSO”) is non-dischargeable. A “domestic support obligation” is defined in 11 U.S.C. § 101(14)(A) as follows:

a debt that accrues before, on, or after the date of the order for relief in a case under this title including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, 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 (including assistance provided by a governmental unit) 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

---

<sup>1</sup> The Complaint seeks a determination that the debt is non-dischargeable under 11 U.S.C. § 523(a)(5); however, the cover sheet to the Complaint also indicated a request that the debt be determined non-dischargeable under 11 U.S.C. § 523(a)(15). Neither party, though, has addressed Section 523(a)(15) in the Motion to Dismiss or response.

law by a governmental unit; and (D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

The Debtor focuses on the portion of the DSO definition stating that the debt is owed to or recoverable by "a spouse, former spouse, or child of the debtor or such child's parent, legal guardian or responsible relative ... or a governmental unit". However, courts to consider this question have unanimously held that it is "not the identity of the payee that determines dischargeability but the nature of the debt owed". In re Laing, 187 B.R. 531, 533 (Bankr. W.D. Va. 1995). As the 10th Circuit stated, "[t]o hold a debt dischargeable simply because the money was payable to someone other than the spouse, would be to put form over substance, in contravention of established bankruptcy law." In re Miller, 55 F.3d 1487, 1490 (10th Cir. 1995) (cites omitted). See also In re Chang, 163 F.3d 1138 (9th Cir. 1998). Several of these cases involve a psychologist who was appointed by the state court as a part of the divorce proceedings.

Consequently, the Motion to Dismiss the Complaint because the payments were to be made directly to Aldridge is DENIED. The substantive issue in applying Section 523(a)(5) to a claim such as Aldridge's is whether the award was made "in the nature of alimony, maintenance or support". Of course, Section 523(a)(15) makes non-dischargeable a debt "that is incurred by the debtor in the course of a divorce or separation" which is not a domestic support obligation. Therefore, even if the order to pay Aldridge's fees is not a domestic support obligation because it is not in the nature of support, it would likely be non-dischargeable under 11 U.S.C. § 523(a)(15) should the Plaintiff seek relief under that section.

It is therefore ORDERED that the Motion to Dismiss is DENIED.

**### END OF ORDER ###**