



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

**Date: April 29, 2016**

**W. Homer Drake  
U.S. Bankruptcy Court Judge**

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

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
STEPHANIE TONYA HILL,	:	15-11410-WHD
_____	:	
	:	
TREVOR SAWYER MCCARTHNEY,	:	ADVERSARY PROCEEDING
	:	NO. 15-1040
Plaintiff,	:	
	:	
v.	:	
	:	
STEPHANIE TONYA HILL,	:	IN PROCEEDINGS UNDER,
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Second Motion for Default Judgment filed by Trevor McCarthney (hereinafter the “Plaintiff”) in the above-captioned adversary proceeding. The Plaintiff seeks judgment by default against Stephanie Hill (hereinafter the “Debtor”). This matter arises in connection with a complaint

contesting the dischargeability of a debt owed by the Debtor. This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(a) & (b)(2)(I), 1334.

The Plaintiff filed his complaint on August 10, 2015. That same day, the Clerk notified the Plaintiff that his filing was deficient for several reasons, including failure to pay the filing fee. On November 20, 2015, the Plaintiff paid the filing fee, and the Clerk issued a summons for the Debtor. On December 2, 2015, the Plaintiff filed a certificate of service indicating that the Debtor had been served with a copy of the complaint and a summons on November 30, 2015. On February 18, 2016, the Clerk entered default against the Debtor due to her failure to file an answer. The Plaintiff filed the instant Second Motion for Default Judgment on March 30, 2016.

The Plaintiff's motion requests that the Court declare that a debt owed by the Debtor is nondischargeable pursuant to § 523(a)(5) and § 523(a)(15) of the

Bankruptcy Code.<sup>1</sup> The motion also states that the Plaintiff is seeking costs, damages, and attorney's fees. Based on the Plaintiff's complaint, which will be discussed in greater detail below, the debt at issue in this case is a result of a 2014 judgment of the Superior Court of Lamar County, Georgia (hereinafter the "Superior Court"), that resolved a custody dispute between the Plaintiff and the Debtor.<sup>2</sup>

On April 1, 2016, the Debtor filed a response to the Plaintiff's motion. The Debtor does not contest that the debt arising from the order of the Superior Court is nondischargeable. The Debtor does, however, strongly oppose the award of costs and attorney's fees to the Plaintiff for prosecuting this proceeding.

### **Discussion**

In order to grant default judgment, the Court must first determine that the Plaintiff's allegations of fact serve as a sufficient basis for entry of default

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<sup>1</sup> 11 U.S.C. § 101 *et seq.*

<sup>2</sup> The Plaintiff's motion makes reference to the attorney's fees as arising from a divorce decree, but the Superior Court's order makes no mention of a divorce or whether the parties were ever married.

judgment. *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975). In evaluating those allegations, “a defaulted defendant is deemed to have admitted the movant’s well-pleaded allegations of fact, [but] she is not charged with having admitted ‘facts that are not well-pleaded...or conclusions of law.’” *Perez v. Wells Fargo, N.A.*, 774 F.3d 1329, 1339 (11th Cir. 2014) (second alteration in original) (quoting *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)).

Additionally, the Court notes that Federal Rule of Civil Procedure 54(c), applicable to adversary proceedings in Bankruptcy through operation of Federal Rule of Bankruptcy Procedure 7054(a), mandates that “[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.” FED. R. CIV. P. 54(c); *see also* FED. R. BANKR. P.7054(a). If any of the relief requested in the Plaintiff’s motion is not requested in his complaint, the Court will not have the authority to award it.

#### A. The Plaintiff’s Complaint

In the case at bar, the Court acknowledges that the Plaintiff was acting *pro*

*se*, that is, without an attorney, when he filed his complaint.<sup>3</sup> As a result, the complaint is not as thorough as what would be expected from a member of the bar. Nevertheless, the Court notes that *pro se* complaints are entitled to some “latitude” in their construction. *U.S. ex rel. Simmons v. Zibilich*, 542 F.2d 259, 260 (5th Cir. 1976). As the Eleventh Circuit has put it, “*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and are liberally construed.” *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011) (internal quotation marks omitted) (quoting *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998)). However, a plaintiff’s pleadings must not “become irrelevant”—the court should use “common sense” in determining the relief a *pro se* plaintiff seeks. *Zibilich*, 542 F.2d at 260. With these guiding principles in mind, the Court turns to the Plaintiff’s complaint.

At the top of the complaint, the style of the case identifies the Debtor as “Debtor” and the Plaintiff as “Creditor,” and lists their respective contact information. The body of the complaint then reads, in its entirety: “The debt in

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<sup>3</sup> The Plaintiff is currently represented by counsel.

which Stephanie Tonya Hill owes is part of a Support Order. Please find attached.” Complaint, Doc. No. 1. Attached to the complaint is a copy of an order from the Superior Court.

Viewed through the forgiving lens the Court adopts for *pro se* plaintiffs, the Court reads the complaint as making the following allegations: (1) The Debtor owes a debt to the Plaintiff; (2) That debt arose from a judgment of the Superior Court; (3) The facts and reasoning contained in the Superior Court’s order show that the judgment was for domestic support; and (4) The debt is nondischargeable.

The Superior Court signed the order attached to the Plaintiff’s complaint on May 8, 2014.<sup>4</sup> In its order, the Superior Court granted custody of the parties’ minor daughter to the Plaintiff. In addition, the Superior Court outlined the financial responsibilities of the Plaintiff and the Debtor moving forward. After noting that the Plaintiff was paying \$300 per month for the child’s insurance and that both the Plaintiff and the Debtor had another qualifying child residing with

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<sup>4</sup> The document is stamped as filed with the Clerk of the Superior Court on May 15, 2014.

them, the Court ordered the Debtor to pay \$360 per month “as child support for the support and maintenance of the minor child.” The Superior Court also ordered the Debtor to “pay one-half (1/2) of all medical, hospital, doctor, dental, orthodontic and prescription drug expenses incurred on behalf of the minor child that are not covered and paid by any insurance coverage.” Finally, the Superior Court ordered the Debtor to pay the Plaintiff \$2,000, “representing attorney’s fees incurred by the [Plaintiff] in the prosecution of this action.”

B. Dischargeability Under § 523(a)(5)

The Plaintiff’s complaint requests a finding that the debt arising from the Superior Court’s order is nondischargeable. Though the complaint does not make specific reference to it, it is clear that the Plaintiff is seeking such a determination under § 523(a)(5).<sup>5</sup> Section 523(a)(5) excepts from discharge debts that are “for a domestic support obligation.” 11 U.S.C. § 523(a)(5). In order for a debt to

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<sup>5</sup> The Plaintiff’s motion also references § 523(a)(15), which excepts from discharge certain debts owed to a spouse, former spouse, or child of the debtor that are not covered by § 523(a)(5). The debt at issue here, however, is owed to the Plaintiff, and there is no allegation in the complaint that he is a spouse, former spouse, or child of the Debtor.

constitute a “domestic support obligation,” it must meet four general criteria: (1) it must be owed to “(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”; (2) it must be “in the nature of alimony, maintenance, or support 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”; (3) established or subject to establishment before the filing of the bankruptcy petition; and (4) “not assigned to a nongovernmental entity,” unless it was assigned voluntarily “for the purpose of collecting the debt.” 11 U.S.C. § 101(14A).

Here, based on the allegations in the complaint, including the contents of the Superior Court’s order, and mindful that the Plaintiff does not contest the nondischargeability of this debt, the Court finds that the debt arising from the child support, medical expenses, and attorney’s fees awarded by the Superior Court constitutes a domestic support obligation that is nondischargeable pursuant to § 523(a)(5). However, the Court makes no determination as to the **amount** of the debt that is excepted from discharge. Though the Plaintiff asserted specific values



in his motion, the Court will not consider those values because they were not stated in the complaint upon which the entry of default judgment is based. In any event, such a calculation is unnecessary, as the size of the debt is irrelevant to the dischargeability determination. It is enough to conclude that the debt owed as a result of the Superior Court's order is nondischargeable as a domestic support obligation.

#### C. Damages, Costs, and Fees

The Plaintiff's motion also makes requests for damages, costs, and attorney's fees, but the Court will not grant this relief. The Plaintiff's complaint does not request this relief, and therefore compliance with Rule 54 bars any such award. Additionally, the Plaintiff has neither cited any authority nor made any allegation that would justify an award of attorney's fees and costs in this case.

#### **Conclusion**

In accordance with the foregoing, the Plaintiff's Motion for Default Judgment is **GRANTED IN PART**. It is hereby **ORDERED** that the debt for child support, healthcare costs, and attorney's fees arising from the order of the

Superior Court of Lamar County, Georgia, signed on May 8, 2014, in civil action 13B-155-W (Juvenile Case No. 085-13J-095) is excepted from discharge in the Debtor's Chapter 7 case. To the extent that the Plaintiff's motion requests relief beyond a determination of nondischargeability, such a request is **DENIED**.

Judgment will be entered for the Plaintiff in accordance with this Order.

The Clerk shall serve this Order on the Plaintiff, the Debtor, and respective counsel, if any.

**END OF DOCUMENT**