



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

**Date: March 9, 2016**

*Paul Baisier*

---

**Paul Baisier**  
U.S. Bankruptcy Court Judge

---

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

IN RE:	:	CASE NO. <b>14-72302-PMB</b>
	:	
<b>BRADLEY THOMAS MALLET,</b>	:	
	:	
Debtor.	:	CHAPTER 13
	:	
<hr/>		
<b>JENNIFER PATRICE SOTO,</b>	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	
v.	:	NO. <b>14-5446</b>
	:	
<b>BRADLEY THOMAS MALLET,</b>	:	
	:	
Defendant.	:	
	:	
<hr/>		

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANT-DEBTOR'S MOTION FOR SUMMARY JUDGMENT  
ON REMAINING ISSUE CONCERNING NONDISCHARGEABILITY  
OF AWARD OF ATTORNEY'S FEES IN TEMPORARY ORDER ON MODIFICATION**

This matter is again before the Court on cross motions for summary judgment and related pleadings filed by Plaintiff Jennifer Patrice Soto (the “Plaintiff”) and Defendant-Debtor Bradley Thomas Mallet (the “Debtor”).<sup>1</sup> On January 20, 2016, the Court entered an Order Granting in Part and Holding in Abeyance in Part Plaintiff’s Motion for Summary Judgment and Denying in Part and Holding in Abeyance in Part Defendant-Debtor’s Motion for Summary Judgment (Docket No. 40) (the “Initial Order”). This Order addresses the issue held in abeyance in the Initial Order.

Plaintiff commenced this adversary proceeding on December 18, 2014, and amended her complaint on February 17, 2015. In the complaint as amended, Plaintiff seeks a determination that certain obligations of her former husband are excepted from discharge in this case as “domestic support obligations” under 11 U.S.C. § 523(a)(5) & (a)(15). The obligations at issue arise out of the *Final Judgment and Decree of Divorce* (the “Divorce Decree”) entered in the parties’ divorce action in the Superior Court of Cobb County, Georgia (the “Superior Court”),<sup>2</sup> and two (2) Orders issued by the Superior Court - a *Final Order of Contempt* (the “Contempt”

---

<sup>1</sup> These pleadings are identified as follows:

- (1) Plaintiff’s Motion for Summary Judgment, filed on August 28, 2015 (Docket No. 31), with exhibits (the “Plaintiff’s Motion”);
- (2) Debtor’s Response to Plaintiff’s Motion, filed on September 30, 2015 (Docket No. 38);
- (3) Plaintiff’s Reply to Debtor’s Response, filed on October 13, 2015 (Docket No. 39);
- (4) Debtor’s Motion for Summary Judgment, filed on August 28, 2015 (Docket No. 32), with Brief in Support (Docket No. 33), with exhibits (the “Debtor’s Motion”); and
- (5) Plaintiff’s Brief in Response to Debtor’s Motion, filed on September 21, 2015 (Docket No. 35).

<sup>2</sup> See Final Judgment and Decree of Divorce, filed August 13, 2013, *Bradley Thomas Mallet v. Jennifer Patrice Soto*, Civil Action File No. 11-1-03909-51, Cobb County, Georgia, Superior Court, a copy of which is attached as Exhibit “A” to the Plaintiff’s Motion.

Order”),<sup>3</sup> and a *Temporary Order on Modification* (the “Modification Order”).<sup>4</sup> Those obligations include \$11,426.57 in payments under the Divorce Decree that were not made by the Debtor, an award of \$7,732.37 in attorney’s fees under the Contempt Order. An additional \$20,000.00 of attorney’s fees is provided for in the Modification Order (the “Fees Award”).

In the Initial Order, the Court entered dispositive rulings on most of the issues presented, but concluded that both Plaintiff’s and Debtor’s Motions should be held in abeyance with respect to the Fees Award. Upon review of the record, the Court determined that Plaintiff had not established the existence and enforceability of a debt under applicable state law for purposes of determining its dischargeability under 11 U.S.C. § 523(a)(5) on summary judgment. Similarly, the Court concluded that Debtor had not established entitlement to summary judgment on this question. Therefore, the parties were allowed additional time to address this remaining issue, and the following responses were filed:

- (1) Defendant’s Response to Order on Motion for Summary Judgment, filed on January 30, 2016 (Docket No. 42);
- (2) Plaintiff’s Supplemental Motion for Summary Judgment with Supplemental Memorandum of Law in Support, filed on February 1, 2016 (Docket No. 44); and
- (3) Plaintiff’s Response to Defendant’s Response to Order on Motion for Summary Judgment, filed on February 9, 2016 (Docket No. 45).

---

<sup>3</sup> See Final Order of Contempt, filed November 13, 2014, *Jennifer Patrice Soto v. Bradley Thomas Mallet*, Civil Action File No. 13-1-10435-51, Cobb County, Georgia, Superior Court, a copy of which is attached as Exhibit “E” to Plaintiff’s Motion (Docket No. 31).

<sup>4</sup> See Temporary Order on Modification, filed December 4, 2014, *Bradley Thomas Mallet v. Jennifer Patrice Soto*, Civil Action File No. 13-1-10245-51, Cobb County, Georgia, Superior Court, a copy of which is attached as Exhibit “F” to Plaintiff’s Motion.

Based upon a review of the case file (including the aforementioned pleadings), the record in this bankruptcy case, and an analysis of applicable law, for the reasons stated herein, the Plaintiff's Motion will be granted and Debtor's Motion will be denied on the issue held in abeyance in the Initial Order regarding the award of attorney's fees in the Modification Order.

As described in this Court's Initial Order, following a hearing on the issues of contempt and modification, the Superior Court of Cobb County, Georgia awarded Plaintiff "temporary fees for going forward on the modification in the amount of twenty thousand dollars." Hearing Transcript of October 28, 2014 at 86-91, attached as Exhibit "I" to Debtor's Brief (Docket No. 33).<sup>5</sup> These fees were awarded under state law in view of Debtor's demand for a jury trial regarding his petition for a reduction in child support based on his income, as well as statements concerning Plaintiff's financial circumstances and counsel's estimate of potential fees in connection with such continuing litigation. The ruling was subsequently reduced to writing, and in the Modification Order filed on December 4, 2014, the Superior Court concluded that "[p]ursuant to O.C.G.A. § 19-9-3(g) as child custody is at issue in this action, attorney's [f]ees are herein awarded to Defendant Jennifer Patrice Soto [Plaintiff herein] in the amount of TWENTY THOUSAND DOLLARS ZERO CENTS (\$20,000.00) on account." Modification Order, at 2. The Superior Court directed the fees to be paid by Debtor to Plaintiff's attorneys. Prior to entry of this Order, however, Debtor commenced this Chapter 13 case through the filing of a petition on November 10, 2014.

---

<sup>5</sup> Debtor filed his Petition for Modification and Contempt, Civil Action No. 3-1-10245-51, on November 27, 2013 (the "Petition for Modification") (copy attached as Exhibit "B" to the Plaintiff's Motion (Docket No. 31). In the Petition, Debtor sought, among other things, a modification of the terms set forth in the Final Judgment and Decree of Divorce as entered by the Superior Court on August 13, 2013 (copy attached as Exhibit "A" to the Plaintiff's Motion (Docket No. 31) with regard to custody, visitation, and child support.

Debtor argues that the fees as set forth in the Fees Award are not actual earned fees, and may not be claimed as a debt currently due and owing to Plaintiff. Emphasizing the conditional nature of the award of these temporary fees, Debtor insists that the Fees Award only becomes final if and when he decides to proceed with a jury trial. Because Debtor has filed nothing in pursuit of this litigation, and no trial has, in fact, ever been held, Debtor states that the Fees Award does not currently constitute a legally enforceable obligation for the payment of \$20,000.00 by Debtor. Further, Debtor states that he amended his Petition for Modification to withdraw his request for a change in custody on March 27, 2015. Since the attorney's fees were awarded in connection with a specific reference to that particular issue under O.C.G.A. § 19-9-3(g), and because the only issues actually addressed by the Superior Court related to contempt and modification, not custody, Debtor states that the Fees Award also cannot be claimed as a viable debt on that basis. In addition, Debtor observes that, to date, Plaintiff has submitted no evidence supporting actual fees or costs or showing that they are reasonable. Simply stated, Debtor's position is that the Fees Award is an estimate for legal services never actually performed. Finally, Debtor urges that since the Modification Order was entered after the filing of the bankruptcy case, it is null and void in any event and, therefore, of no legal or binding effect.

In response, Plaintiff argues that, once awarded, an order to pay attorney's fees entered in the discretion of the Superior Court to enable a party, such as Plaintiff herein, to contest pending issues as asserted in litigation associated with parties' divorce, whether or not the party prevails, is enforceable under Georgia law. Moreover, Plaintiff rebuts Debtor's argument that she never incurred any fees on a jury trial stating that, to date, the Petition for Modification has never been dismissed or withdrawn. In addition, Debtor has obtained approval to employ special counsel,

signaling his intent to pursue such a trial. Thus, Debtor may still assert his claims, putting Plaintiff to potential cost and expense. Next, Plaintiff disputes Debtor's description of the award as conditional. The fees were not intended to be awarded *if* Debtor proceeded and actual fees incurred, but were awarded on the basis of Plaintiff's financial condition as then evaluated. Moreover, Plaintiff insists that because the fees were not paid as directed by the Superior Court, Debtor is subject to sanctions. Lastly, Plaintiff argues that the Modification Order does not violate the automatic stay based on the exception provided in 11 U.S.C. § 362(b)(2)(A) as it arises in connection with a civil action for modification of a domestic support obligation.

Reviewing the authority cited by Plaintiff, this Court believes that once an action is prosecuted to judgment, such fee awards may be enforced through contempt or attachment. But here, even if the matter remains a live controversy, it is not clear the extent to which the Fees Award may finally be collected in whole or in part without consideration of whether fees have actually been incurred. Nevertheless, some type of obligation seems to exist. This conclusion is supported by the fact that the state court made the award "on account," suggesting that it may have contemplated making an additional award if and as necessary. *Compare Richardson v. Richardson*, 237 Ga. 830, 229 S.E.2d 641 (1976). For these reasons, the Court concludes that Plaintiff has established the existence of an obligation for attorney's fees, albeit contingent in nature and unliquidated in final amount, in relation to her Motion for Summary Judgment.

Consistent with its reasoning in the Initial Order, the Court concludes that, however the Fees Award is eventually and properly characterized under state law, for purposes of the analysis this Court must undertake concerning its dischargeability, the Fees Award is in function an award in the nature of support, as it is intended to benefit a former spouse in connection with litigation arising in the context of a marital dissolution. Accordingly, the Court determines that

the Fees Award constitutes a “domestic support obligation” as defined in 11 U.S.C. § 101(14A), and is, therefore, excepted from discharge herein under Section 523(a)(5), as referenced in Section 1328(a)(2).<sup>6</sup>

As a final matter, the Court observes that the Fees Award can be addressed by the Superior Court with regard to fixing and finalizing its amount. If at some future date a party believes that such determination has an effect on this bankruptcy estate or on the foregoing analysis, such issue can be presented to this Court for review and decision at that time.

Accordingly, for the reasons set forth above, it is

**ORDERED** that Plaintiff’s Motion for Summary Judgment be, and the same hereby is, **granted**, and Debtor’s Motion for Summary Judgment be, and the same hereby is, **denied**, with regard to the remaining issue previously held in abeyance, to the extent as follows:

The Fees Award as set forth in the Modification Order, as ultimately determined and finally fixed in amount by the appropriate state court tribunal, is **excepted** from discharge as support under 11 U.S.C. § 523(a)(5) and said obligation is **nondischargeable** herein.

Judgment will be entered contemporaneously herewith.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, counsel for Defendant-Debtor, and the Chapter 13 Trustee.

**[END OF DOCUMENT]**

---

<sup>6</sup> The Court also concludes that no stay violation occurred through entry of the Modification Order. First, the entry of the Order, which memorialized the prepetition ruling of the state court on this point, could be considered to be a ministerial act not subject to the stay. Second, as noted by the Plaintiff, the entry of the Order may be subject to the stay exception provided for in 11 U.S.C. § 362(b)(2) as a matter addressing an obligation in a domestic support situation. In any event, the Court believes that, had a request been made, it would have been appropriate to grant stay relief to permit the state court to memorialize its ruling so that this Court would have the benefit of same.