

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: TANYA D. CARTER, Debtor

**No. 4:14-bk-10252
Ch. 13**

TANYA D. CARTER

PLAINTIFF

vs.

4:15-ap-1016

CHARLES MARTIN II

DEFENDANT

ORDER

Before the Court is the debtor's complaint filed on February 11, 2015, to determine the dischargeability of a debt arising from a state court order. The state court ordered the debtor to pay the defendant's attorney fees, which were awarded in relation to the debtor's motion for a change of custody. In her complaint, the debtor also requests that the Court disallow the defendant's claim that alleges the debt to be a priority claim under 11 U.S.C. § 507(a)(1). The defendant answered the complaint on March 11, 2015, and the Court set the complaint and answer for trial on July 9, 2015. When the case was called, Christian Frank appeared for the debtor but neither the debtor nor the defendant appeared. For the reasons stated below, the Court denies the debtor's complaint and finds that the defendant is entitled to a priority claim in the debtor's bankruptcy case.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (I). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

The essence of the debtor's argument is that the attorney fees that were incurred by the defendant to defend against the debtor's motion for a change of custody in state court are not a domestic support obligation under § 523(a)(5) and, hence, are dischargeable in the

debtor's bankruptcy case under § 1328. Because the fees are not a domestic support obligation, the debtor further argues that the defendant is not entitled to a priority claim in the debtor's case. The debtor also argues that because the defendant did not attach any documentation to his Proof of Claim, his claim should be disallowed.

The following facts, which appear in the debtor's complaint, are undisputed:

- [1.] The Debtor, Tanya Carter and Creditor, Charles Martin have a minor child born June 28, 2001.
- [2.] At no time were Debtor and Creditor Charles Martin married.
- [3.] Debtor filed a Petition to Determine Paternity on August 14, 2001 against Creditor Charles Martin in Pulaski County, Arkansas, Case No. 60 DR-01-4173.
- [4.] A Judgment of Paternity was entered on April 29, 2002.
- [5.] Debtor was awarded primary physical custody of the child and Creditor was ordered to pay child support.
- [6.] On March 12, 2012 Creditor was awarded custody of the child, his child support was terminated, and Debtor was ordered to pay child support.
- [7.] On May 3, 2013 Debtor filed a Motion for change of custody and contempt.
- [8.] On January 7, 2014 the Pulaski County Circuit Court, Hon. Patricia James, entered an Order denying the requested relief and awarding creditor \$5,560 for attorney's fees.

At trial, the Court accepted into evidence a copy of (1) the state court order, which set forth in detail the reasons why the court granted the defendant's motion for directed verdict and awarded attorney fees to the defendant, (2) the debtor's Schedules I and J, (3) the debtor's Statement of Financial Affairs, and (4) the defendant's Proof of Claim.

A cause of action under § 523(a)(5) encompasses a shifting burden of proof. The initial burden is on the non-debtor to show that the obligation was in the nature of a domestic support obligation. *In re Portwood*, 308 B.R. 351, 355 (B.A.P. 8th Cir. 2004). Once the

initial burden has been met, because there is a presumption of nondischargeability under § 523(a)(5), the burden of going forward then shifts to the debtor to prove that the obligation was not in the nature of a domestic support obligation. *Id.* In the Eighth Circuit, in order to characterize an award of attorney fees as a domestic support obligation, “the crucial issue is the function the award was intended to serve.” *Adams v. Zentz*, 963 F.2d 197, 200 (8th Cir. 1992) (quoting *Williams v. Williams*, 703 F.2d 1055, 1057 (8th Cir. 1983)). In *Adams*, the court held that the fee award was not a domestic support obligation and was dischargeable because the underlying custody action was not focused on the child’s welfare. In fact, the court found that neither parent posed a threat to the child’s health or welfare. *Id.*; *but see In re Jones*, 9 F.3d 878, 881 (10th Cir. 1993) (“In our view, in all custody actions, the court’s ultimate goal is the welfare of the child.”).

In the case before this Court, the Court finds that the defendant’s burden of proof was met based on the state court order that was introduced by the debtor’s counsel. In the order, the state court makes a number of findings that indicate to this Court that the child’s health and welfare was a significant focus of the state court. For instance,

- A. There was testimony from an allergy specialist concerning the child’s non-completion of a steroid treatment and how the incomplete treatment was a common practice to prevent addiction or overuse.
- B. The court found that the defendant complied with a court order regarding the child’s school information and found no fault in the defendant’s failure to attend the child’s small school events. The court also stated that the child appeared to be receiving “appropriate school support and encouragement in the home.”
- C. The court recognized the defendant’s current insurance coverage for the child and ordered its maintenance as long as it is available to the defendant.
- D. The court ordered the defendant to schedule the child’s doctor’s appointments and expressed concern that the debtor’s “harassment of the

doctors and their staff” may cause the child to lose her current medical providers.

- E. The court recognized the child’s current asthma plan.
- F. The court ordered counseling “to promote a healthier relationship between [the child] and her parents.” The court also gave the counselor the authority to report if either parent was “not participating in a way that is healthy for [the child].”

Because a substantial portion of the state court order focuses on the health and welfare of the child, the Court finds that the defendant’s burden of proving that the attorney fee awarded by the state court was awarded in a custody action that was focused on the child’s welfare has been met.

The burden now shifts to the debtor to prove that the fees are not in the nature of a domestic support obligation. The debtor did not testify or introduce any additional evidence to meet her burden. Accordingly, the Court finds that the debtor has failed to meet her burden and holds that the fee awarded to the defendant in the state court is a domestic support obligation and is non-dischargeable in the debtor’s bankruptcy case.

The debtor also objected to the defendant’s Proof of Claim, arguing that the defendant is not entitled to a priority claim in the debtor’s case. Additionally, the debtor argues that because the defendant did not attach any documentation to his Proof of Claim, the claim should be disallowed under Federal Rule of Bankruptcy Procedure 3001. The debtor’s arguments fail in both instances. First, because the Court held that the attorney fee award is a domestic support obligation, the fee award is entitled to a priority claim status in the debtor’s bankruptcy case. 11 U.S.C. § 501(a)(1)(A). Second, although the defendant may not have complied with Rule 3001 by attaching a copy of the state court order to his Proof of Claim, this simply means that the defendant had the burden to establish his entitlement to a claim. *See In re Muller*, 479 B.R. 508 (Bankr. W.D. Ark. 2012). When the debtor introduced the state court order into evidence, the defendant’s burden was met and the burden of proof shifted to the debtor to prove one of the exceptions under

§ 502(b). *Id.* Because the debtor failed to introduce any evidence to support an exception under § 502(b), the Court finds that the debtor failed to meet her burden, overrules the debtor's objection, and sustains the defendant's claim as a priority claim in the amount of \$5560.

For the reasons stated above, the Court denies the debtor's complaint and holds that the defendant is entitled to a priority claim in the amount of \$5560 in the debtor's bankruptcy case.

IT IS SO ORDERED.

cc: Christian Frank
Tanya Carter
Charles Martin
Mark T. McCarty, chapter 13 trustee

courtesy copy to:
Hon. Patricia James
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