IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 03-34419

LESLIE EVERETTE BROOKS

Debtor

ANGELA YVETTE BROOKS

Plaintiff

v. Adv. Proc. No. 03-3194

LESLIE EVERETTE BROOKS

Defendant

M E M O R A N D U M

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court upon the Complaint of Creditor in Objection to Defendant's Discharge (Complaint) filed by the Plaintiff on November 17, 2003, seeking a determination that monies owed to the Plaintiff pursuant to a divorce decree are nondischargeable under 11 U.S.C.A. § 523(a)(5) (West 2004).[1]

The trial of this adversary proceeding was held on February 6, 2007. The record before the court consists of nine exhibits stipulated into evidence, along with the testimony of the parties.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(I) (West 2006).

I

The parties were divorced on December 4, 2002, under the terms of a Final Decree of Divorce (Final Decree) entered in the Fourth Circuit Court for Knox County, Tennessee (Fourth Circuit Court). TRIAL EX. 2. The Final Decree incorporated into its terms a Marital Dissolution Agreement signed by the parties, stating that it "settles and determines all claims for alimony." *See* TRIAL EX. 1. As material to this adversary proceeding, the Marital Dissolution Agreement contains the following provisions with respect to alimony and payment of debts:

> 5. That no spousal support shall flow to or from other party unless specifically provided herein.
>
> . . . .

[1] The Adversary Proceeding Cover Sheet filed accompanying the Complaint identifies the Plaintiff's cause of action as "Object to discharge of debtor under Title 11, Chapter 7, United States Code, 11 U.S.C. § 727." On June 4, 2004, the court entered an Order and accompanying Memorandum on Motion to Dismiss filed on April 30, 2004, in which it denied the Defendant's Motion to Dismiss for failure to state a claim upon which relief could be granted, stating that the Complaint sufficiently set forth information for the Defendant to assess that the Plaintiff was actually seeking a determination of nondischargeability under 11 U.S.C. § 523(a)(5) (West 2004) rather than asserting an objection to discharge under § 727.

> 7. That the parties shall be equally responsible for all payments to the Chapter 13 Bankruptcy Trustee for their Chapter 13 Bankruptcy.
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> . . . .
>
> 9. That this Agreement is intended to settle fully and finally the property rights between the parties, and the parties hereby release each other from any and all other rights or claims arising out of the marital relationship upon the approval of this Agreement by the Court, and this document may be filed in the aforesaid divorce action and fully incorporated by reference in any Final Decree entered therein upon the Court's approval.

TRIAL EX.1. The Marital Dissolution Agreement also provided that the Defendant would quit claim to the Plaintiff his interest in the parties' house located at 3236 Sunset Avenue, Knoxville, Tennessee, pay property taxes not to exceed $350.00 per year, relinquish to the Plaintiff his interest in a Jeep Grand Cherokee, and surrender 50% of his retirement accounts to the Plaintiff. TRIAL EX.1.

The Chapter 13 bankruptcy case referenced in the Marital Dissolution Agreement was case number 01-33783, filed jointly by the parties on August 2, 2001 (Chapter 13 Case). At the time the Chapter 13 Case was filed, the parties were separated, living in separate locations, and maintaining separate households. Schedule I to their petition evidences that they had a combined monthly income of $3,353.41, and Schedule J evidences total monthly expenses of $1,199.00. COLL. TRIAL EX. 4. The parties checked the box located at the top of Schedule J evidencing that they maintained separate households, but they did not file a separate Schedule J. At trial, this issue was not addressed directly, but their testimony led the court to the conclusion that they combined their monthly expenditures from their separate households to arrive at the expenses itemized at Schedule J.

An Order Confirming Chapter 13 Plan was entered on October 2, 2001, requiring the parties to make weekly payments to the Chapter 13 Trustee of $260.00 for sixty months, with a 100% dividend to unsecured creditors. On May 22, 2003, the Defendant filed a motion requesting his dismissal from the Chapter 13 Case, which was granted by an order entered June 17, 2003. The Plaintiff maintained the Chapter 13 Case, making all payments due thereunder, and received a discharge on June 23, 2006.

On May 28, 2003, the Plaintiff filed a Petition for Contempt against the Defendant in the Fourth Circuit Court, seeking a determination that the Defendant was in "willful contempt" of the Final Decree because he had failed to perform his obligations under the Marital Dissolution Agreement by failing to: (1) pay one-half of the weekly payments due under the confirmed plan in the Chapter 13 Case (Chapter 13 Payments); (2) execute a quit claim deed to her for their marital residence; (3) pay the property taxes on the marital residence up to $350.00; and (4) transfer the title to the Jeep Grand Cherokee into the Plaintiff's name. TRIAL EX. 9. A hearing on the Petition for Contempt was originally scheduled for June 20, 2003.

On August 7, 2003, the Defendant filed the Voluntary Petition commencing his present Chapter 7 bankruptcy case and received a discharge on February 2, 2007.[2] The Plaintiff filed the Complaint initiating this adversary proceeding on November 17, 2003; however, the trial has been held in abeyance pending the Defendant's return from active military duty.

[2] Because the Adversary Proceeding Cover Sheet accompanying the Complaint erroneously identifies the Plaintiff's cause of action as an objection to discharge, the clerk flagged the case file to withhold the Defendant's discharge. Neither the Plaintiff nor the Defendant advised the clerk that the Plaintiff's action, in fact, involved the dischargeability of a debt, thus allowing the Defendant to receive his discharge sooner. *See supra* n. 1.

On January 23, 2007, the Fourth Circuit Court entered an Order (Judgment) finding that, pursuant to a hearing held on August 11, 2006, on the Petition for Contempt, the Defendant did not pay property taxes for three years, totaling $1,050.00; that the Defendant did not pay his one-half of the plan payments in the Chapter 13 Case for thirty-eight months, totaling $21,405.02; that the Plaintiff was granted a judgment for those amounts; and that these obligations "can only be construed to be for the support of the [Plaintiff] and, as support, the amounts due and payable therein are not dischargeable in bankruptcy." TRIAL EX. 3. The Judgment was entered *nunc pro tunc* to August 11, 2006.

By the present action, the Plaintiff seeks a determination that the Defendant's obligation to make the Chapter 13 Payments constitutes spousal support and is nondischargeable.[3] She also argues that the Fourth Circuit Court had the authority to enter the Judgment despite the pendency of this adversary proceeding and the Defendant's bankruptcy case. On the other side, the Defendant argues that the Chapter 13 Payments are not in the nature of support and are, therefore, dischargeable. Additionally, he argues that the Judgment entered by the Fourth Circuit Court is void since it was obtained in violation of the automatic stay.

[3] Pursuant to the Pretrial Order entered on January 8, 2007, the Complaint "seeks an Order excepting the debt to the Plaintiff represented by the Marital Dissolution Agreement for payment of one-half of the amount due in the Plaintiff's Chapter 13 case as alimony." PRETRIAL ORDER at ¶ 2. Accordingly, the property taxes addressed in the Judgment are not at issue in this adversary proceeding.

II

The threshold issue the court must decide is whether the January 23, 2007 Judgment of the Fourth Circuit Court is void.

The commencement of the Defendant's bankruptcy case triggered the protection of the automatic stay as follows:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301 . . . operates as a stay, applicable to all entities, of—
>
> > (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C.A. § 362(a) (West 2004).

"The protections of the stay are automatic and mandatory with the filing of the bankruptcy petition." *Enron Corp. v. Calif. ex rel. Lockyer (In re Enron Corp.)*, 314 B.R. 524, 533 (Bankr. S.D.N.Y. 2004). "The scope of the automatic stay is broad and is a fundamental debtor protection that not only protects debtors but protects creditors as well[,]" *Enron Corp*. 314 B.R. at 533 (internal citations omitted), and remains in effect throughout the pendency of the bankruptcy case. *In re Printup*, 264 B.R. 169, 173 (Bankr. E.D. Tenn. 2001). It applies to all debts, even those "that will ultimately be excepted from discharge, since one of the fundamental purposes of the automatic stay is to give the debtor 'a breathing spell from his creditors' and 'to be relieved of the financial pressures that drove him into bankruptcy.'" *In re Haas*, 2004 Bankr. LEXIS 2216, at *6 (Bankr. E.D. Va. Dec. 22, 2004) (quoting H.R. REP. NO. 95-595 at 340 (1977)). The automatic stay also

precludes the entry of declaratory judgments. *See Enron Corp.*, 314 B.R. at 533. Actions taken in violation of the automatic stay are "invalid and voidable and shall be voided absent limited equitable circumstances." *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir. 1993).[4]

Notwithstanding § 362(a), the Bankruptcy Code contains limited statutory exceptions from the automatic stay, including actions for "the establishment or modification of an order for alimony, maintenance, or support," § 362(b)(2)(A)(ii), and/or actions for "the collection of alimony, maintenance, or support from property that is not property of the estate[,]" § 362(b)(2)(B). 11 U.S.C.A. § 362(b)(2). With respect to these sections,

> It is important to note that, unlike some of the other exceptions to the stay listed in section 362(b), this exception does not extend to the "commencement or continuation of an action or proceeding" to enforce an obligation. Thus, section 362(b)(2)(B) protects an obligee who receives property on a prepetition obligation, for example, through a prior wage attachment, from claims that such receipt is improper, but does not authorize enforcement litigation against the debtor without relief from the automatic stay. A separate provision, section 362(b)(2)(A), grants an exception for the commencement or continuation of an action or proceeding, but only for the establishment or modification of an order for alimony, maintenance or support. Proceedings to enforce such orders are conspicuously omitted from that exception and continue to be stayed, except in cases in which they are criminal in nature and permitted by section 362(b)(1).

Lori v. Lori (In re Lori), 241 B.R. 353, 355 (Bankr. M.D. Pa. 1999) (quoting 3 COLLIER ON BANKRUPTCY ¶ 362.05[2], at 362-51 (15th ed. rev. 1999)); *see also Hutchison v. Birmingham (In re Hutchison)*, 270 B.R. 429, 433-34 (Bankr. E.D. Mich. 2001). Pursuing a finding of contempt with respect to an alimony award is a violation of the automatic stay. *See, e.g., Tipton v. Adkins (In re*

[4] "[I]n the absence of 1) an attempt to exploit the stay to gain an unfair advantage or 2) the fraudulent, willful delay in asserting the stay as a defense, actions taken during the pendency of the stay are void." *Easley*, 990 F.2d at 911. Neither of those situations have arisen in this case.

Tipton), 257 B.R. 865, 874-75 (Bankr. E.D. Tenn. 2000); *Lori*, 241 B.R. at 355-56; *In re Tweed*, 76 B.R. 636, 639 (Bankr. E.D. Tenn. 1987).

Once the Defendant filed his bankruptcy petition on August 7, 2003, the automatic stay was in effect, and the Plaintiff was prohibited from commencing or continuing proceedings against him in the Fourth Circuit Court to enforce or collect under the Final Decree without first obtaining relief from the automatic stay.[5] And, although it would generally be within the authority of the Fourth Circuit Court to make the determination of whether the Chapter 13 Payments fall within the scope of § 523(a)(5) since the federal and state courts have concurrent jurisdiction over § 523(a)(5) matters, *see Dodge v. Lacasse (In re Lacasse)*, 238 B.R. 351, 355 (Bankr. W.D. Mich. 1999), it could not exercise that authority and make such a determination in violation of the automatic stay.

It is undisputed that the Plaintiff was aware of the Defendant's bankruptcy case because, not only had she commenced this adversary proceeding in November 2003, the Judgment expressly states that the Defendant "at some point filed his own Chapter 7 personal bankruptcy and failed to pay any more towards the Chapter 13 bankruptcy reorganization plan as agreed." TRIAL EX. 3. At the time of the August 11, 2006 hearing and on the date of the entry of the Judgment on January 23, 2007, the Defendant had not been granted a discharge, and the automatic stay had not terminated. Nevertheless, the Plaintiff did not seek relief from the automatic stay to proceed with her contempt action in the Fourth Circuit Court. Because the purpose of the August 11, 2006 hearing was not to

[5] Unless modified or terminated by an order of the court, the automatic stay remains in effect as to property of the estate "until such property is no longer property of the estate," 11 U.S.C.A. § 362(c)(1) (West 2004), and "the stay of any other act . . . continues until the earliest of— (A) the time the case is closed; (B) the time the case is dismissed; or (C) if the case is a case under chapter 7 . . . concerning an individual . . . the time a discharge is granted or denied." 11 U.S.C.A. § 362(c)(2) (West 2004). Here, no order was entered granting the Plaintiff the right to proceed with the August 11, 2006 hearing, nor did the Defendant receive his discharge until February 2, 2007.

modify an existing order with respect to alimony, but was instead to rule on the Plaintiff's Petition for Contempt and to obtain a judgment, the hearing violated the automatic stay, as did the Judgment that was entered on January 23, 2007, *nunc pro tunc* to August 11, 2006. The Fourth Circuit Court Judgment is accordingly void.

III

The Plaintiff has requested a determination that the Chapter 13 Payments the Defendant was directed to make pursuant to the Marital Dissolution Agreement are nondischargeable in the Defendant's Chapter 7 bankruptcy case. Nondischargeability of debts is governed by 11 U.S.C.A. § 523 (West 2004),[6] which provides, in material part:

> (a) A discharge under section 727[7] . . . of this title does not discharge an individual debtor from any debt—
>
> . . . .
>
> > (5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—
> >
> > > (A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise . . .; or

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[6] Because the Defendant commenced his bankruptcy case prior to the October 17, 2005 effective date of the consumer provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the provisions of § 523(a)(5) under the new Act have no application to this adversary proceeding.

[7] Chapter 7 debtors receive a discharge of pre-petition debts, "[e]xcept as provided in section 523 of this title[.]" 11 U.S.C.A. § 727(b) (West 2004). This accomplishes the goals of Chapter 7 to relieve "honest but unfortunate" debtors of their debts and allow them a "fresh start" through this discharge. *Buckeye Retirement, LLC v. Heil (In re Heil),* 289 B.R. 897, 901 (Bankr. E.D. Tenn. 2003) (quoting *In re Krohn*, 886 F.2d 123, 125 (6th Cir. 1989) (citing *Local Loan Co. v. Hunt*, 54 S.Ct. 695, 699 (1934))).

> (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support[.]

11 U.S.C.A. § 523(a)(5). Although § 523(a) dischargeability actions are generally construed strictly in favor of debtors, in order to promote Congressional policies favoring the enforcement of spousal and child support obligations, proof in § 523(a)(5) actions is strictly construed in favor of former spouses and children. *See Hanjora v. Hanjora (In re Hanjora)*, 276 B.R. 822, 825 (Bankr. N.D. Ohio 2001) (stating that § 523(a) "implements the general bankruptcy policy of favoring domestic support obligations over the Plaintiff's need for a fresh start"); *Rouse v. Rouse (In re Rouse)*, 212 B.R. 885, 887 (Bankr. E.D. Tenn. 1997) (noting that although exceptions to discharge are usually narrowly construed against creditors, § 523(a)(5) is an exception). Nevertheless, the former spouse bears the burden of proof, by a preponderance of the evidence. *Grogan v. Garner*, 111 S. Ct. 654, 661 (1991).

The Plaintiff argues that the Chapter 13 Payments are in the nature of spousal support and are nondischargeable pursuant to § 523(a)(5). *See Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103, 1107 (6th Cir. 1983). Whether a debt constitutes alimony, maintenance, or support under § 523(a)(5) is a matter of federal law, but because these issues fall "within the exclusive domain of the state courts[,]" the bankruptcy court should also rely on state law in making its determination. *Calhoun*, 715 F.2d at 1107-08. The following three-part test is used within the Sixth Circuit to decide whether alimony, maintenance, or support is actually in the nature thereof: (1) whether the award was intended to be support; (2) whether the award was effectively support in light of the recipient

spouse's present needs; and (3) whether the award was "manifestly unreasonable under traditional concepts of support." *Calhoun*, 715 F.2d at 1109-1110.

"In determining whether an award is actually support, the bankruptcy court should first consider whether it 'quacks' like support," and look for the presence of "traditional state law indicia that are consistent with a support obligation" giving rise to the conclusive presumption that the award is support. *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397, 401 (6th Cir. 1998). These indicia include, but are not limited to, the following: "(1) a label such as alimony, support, or maintenance in the decree or agreement, (2) a direct payment to the former spouse, as opposed to the assumption of a third-party debt, and (3) payments that are contingent upon such events as death, remarriage, or eligibility for Social Security benefits." *Sorah*, 163 F.3d at 401. Other circumstances to be considered include

> (1) the nature of the obligations assumed; (2) the structure and language of the parties' agreement or the court's decree; (3) whether other lump sum or periodic payments were also provided; (4) the length of the marriage; (5) the age, health and work skills of the parties; (6) whether the obligation terminates upon the death or remarriage of the parties; (7) the adequacy of support absent the debt assumption; and (8) evidence of negotiations or other understandings as to the intended purposes of the assumption.

Luman v. Luman (In re Luman), 238 B.R. 697, 706 (Bankr. N.D. Ohio 1999); *see also Crawford v. Osborne (In re Osborne)*, 262 B.R. 435, 442-43 n.5 (Bankr. E.D. Tenn. 2001).

If a former spouse establishes the presence of "traditional state law indicia" and satisfies the burden of proof, it shifts to the debtor to prove the third prong of the *Calhoun* test; i.e., that "although the obligation is of the *type* that may not be discharged in bankruptcy, its *amount* is unreasonable in light of the debtor spouse's financial circumstances." *Sorah*, 163 F.3d at 401. In

making a reasonableness determination, the bankruptcy court must give deference to the state court's findings of fact, and if it finds an award is unreasonable, it may discharge the debt only "to the extent that it exceeds what the debtor spouse can reasonably be expected to pay." *Sorah*, 163 F.3d at 402. "Section 523 obviously places no limitation upon a state court's ability to award alimony, maintenance, or support, and the bankruptcy court should not second-guess the state court support award absent evidence that the burden on the debtor spouse is excessive." *Sorah*, 163 F.3d at 402 (citations omitted).

The Chapter 13 Payments are not labeled as alimony, maintenance, or support in the Marital Dissolution Agreement, nor does the Marital Dissolution Agreement state that the Defendant was to make payments directly to the Plaintiff for the Chapter 13 Case. In fact, Plan payments were made by the parties directly to the Chapter 13 Trustee through wage order. The Marital Dissolution Agreement expressly states that "no spousal support shall flow to or from either party unless specifically provided herein." TRIAL EX. 1 at ¶ 5. It also provides that "the parties desire by this Agreement to make an equitable division of all their property which settles and determines all claims for alimony, which divides all property, both real and personal, . . . and which divides responsibility for all current indebtedness incurred during the marriage." TRIAL EX. 1 at 1. The wording of these sentences imply the parties' intention that the Marital Dissolution Agreement fully control all issues of alimony, property settlement, and division of debt, and that no alimony was intended.

At trial, the Plaintiff testified that she thought the Chapter 13 Payments were to be support. She testified that after the Defendant stopped making payments, she was able to continue paying the entire required Plan payment of $260.00 per week, and that, in fact, she paid the Chapter 13 Case

off in May 2006. During that time, the Plaintiff testified that she helped support a daughter in college and at least one foster child, but that she had to pawn things in order to keep her payments current. The Plaintiff also testified that she was not represented by an attorney during the negotiation of the Marital Dissolution Agreement, although she did make additions to the agreement originally proposed by the Defendant's attorney, including the provisions awarding her 50% of the Defendant's retirement accounts and requiring the Defendant to continue payments in the Chapter 13 Case.

The Defendant testified that the Chapter 13 Payments were not intended to be support, but were, instead, a split down the middle of the amounts necessary to pay off the debts that the parties incurred during the marriage. He acknowledged that the Marital Dissolution Agreement was prepared by his attorney; however, he testified that the Plaintiff made additions, including the paragraph concerning payments on their joint Chapter 13 Case. He also testified that he made the Chapter 13 Payments as agreed through wage order from his employer, Tom's Foods, until he was terminated from his job in June 2003. The Defendant testified that it was several weeks after he lost his job before he found employment with Morrison's, located in Baptist Hospital West, making $7.50 per hour, a sum substantially less than the $12.00 per hour he earned at Tom's Foods, and that he filed his Chapter 7 case because he was unable to pay his bills due to the loss of his higher income job.

The parties were married five years and had no children. Per the Marital Dissolution Agreement, the Plaintiff kept the parties' house located at 3236 Sunset Avenue, Knoxville, Tennessee, and a Jeep Grand Cherokee. There is no dispute that the Defendant gave up his interest in these properties as required by the Marital Dissolution Agreement. The parties had been separated

for two to three months at the time they filed the Chapter 13 Case, each maintaining a separate household, with separate incomes and expenses. Both parties testified that the purpose of the Chapter 13 Case was to pay off the debts that they had incurred during the marriage and to get their finances in order. The Marital Dissolution Agreement supports that arrangement. The Plaintiff was given the house, the Jeep Grand Cherokee, one-half of the Defendant's retirement accounts, and payment of the property taxes up to $350.00 per year. Each party retained ownership of whatever property was in his or her possession at the time of the divorce; each party assumed full responsibility for his or her individual debts; and each party assumed one-half responsibility for the payments in the Chapter 13 Case, which they both testified was filed to pay off their marital debts. Based upon the Marital Dissolution Agreement as a whole, together with the testimony of the parties, the court finds that the Chapter 13 Payments were not in the nature of support, but instead, were a division of the marital debts, to be paid by both parties. Their testimony establishes that there was no specific thought or reason to support the $130.00 per week that each was to pay. Rather, the parties just agreed to split the required weekly amount down the middle without taking into account income or expenses of their separate households.

Furthermore, a comparison of the Defendant's Schedules I and J filed in his Chapter 7 bankruptcy case on August 7, 2003, with the Plaintiff's Amended Schedules I and J filed in the Chapter 13 Case on February 17, 2004, evidence that the Plaintiff had income of $1,713.56 and expenses of $586.00, while the Defendant had income of $1,082.57 and expenses of $1,730.00.[8]

[8] When he filed his Chapter 7 case, the Defendant had remarried, and he testified that his new wife's income was included in his Schedule I, but her expenses were not included in his Schedule J. The total income evidenced on the Defendant's Schedule I, including that of his new spouse, was $2,252.59.

Compare COLL. TRIAL EX. 5 *with* COLL. TRIAL EX. 7. A comparison of these schedules with Schedule I filed in the parties' joint Chapter 13 Case evidence that the Plaintiff's monthly net income rose from $1,590.41 in August 2001 to $1,713.56 in February 2004, while the Defendant's monthly net income decreased from $1,763.00 in August 2001 to $1,082.57 in August 2003. *Compare* COLL. TRIAL EX. 4 *with* COLL. TRIAL EX. 5, 7. These various schedules evidence that there was not a large disparity in the earnings of the Plaintiff and the Defendant such that she possessed the need for support from the Defendant. Although the Defendant acknowledged at trial that he knew the Plaintiff would have a hard time making the Chapter 13 Payments alone, this statement does not convert the division of debts into nondischargeable spousal support.[9]

In summary, the court finds that the Order entered on January 23, 2007, in the Fourth Circuit Court for Knox County, Tennessee, in the parties' divorce case is void and of no effect. Additionally, the court holds that the Defendant's obligation to pay one-half of the payments to the Chapter 13 Trustee in Case No. 01-33783 as required by the parties' Marital Dissolution Agreement filed on October 29, 2002, was not denominated as support, was not in the nature of support, and is determined to be dischargeable under 11 U.S.C.A. § 523(a)(5). The Defendant's obligation to pay this liability was discharged on February 2, 2007.

[9] Even presuming that the court found the Chapter 13 Payments to be in the nature of support, the Plaintiff has not meet her burden of proof because she did not address the second inquiry necessitated by *Calhoun*, the "present needs" test, which requires the court to determine whether the award is effectively support in light of the recipient spouse's present needs, by examining "the practical effect of the discharge . . . upon the [non-debtor] spouse's ability to sustain daily needs." *Calhoun*, 715 F.2d at 1109. There is nothing in the record concerning the Plaintiff's present financial situation other than the fact that she received a discharge in June 2006, after completing payments under the Chapter 13 Case.

A judgment consistent with this Memorandum will be entered.

FILED: February 15, 2007

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

SO ORDERED.

SIGNED this 15 day of February, 2007.

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Richard Stair Jr.
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 03-34419

LESLIE EVERETTE BROOKS

Debtor

ANGELA YVETTE BROOKS

Plaintiff

v.

Adv. Proc. No. 03-3194

LESLIE EVERETTE BROOKS

Defendant

J U D G M E N T

For the reasons set forth in the Memorandum filed this date, containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, made

applicable to this adversary proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure, the court directs the following:

1. The Order entered by the Fourth Circuit Court for Knox County, Tennessee, on January 23, 2007, *nunc pro tunc* to August 11, 2006, in the case of *Leslie Everette Brooks v. Angela Yvette Brooks*, No. 92451, is VOID.

2. The Complaint filed by the Plaintiff on November 17, 2003, entitled "Complaint of Creditor in Objection to Defendant's Discharge," is DISMISSED.

3. The obligation of the Defendant under paragraph 7 of the parties' Marital Dissolution Agreement incorporated into the Final Decree of Divorce entered by the Fourth Circuit Court for Knox County, Tennessee, on December 4, 2002, in the case of *Leslie Everette Brooks v. Angela Yvette Brooks*, No. 92451, requiring the Defendant to make fifty percent (50%) of the payments into the parties' prior Chapter 13 case, was discharged on February 2, 2007.

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