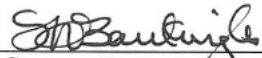




SO ORDERED.
SIGNED this 20th day of August, 2018

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


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

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

In re

ANDREW S. HENSLEY
aka ANDREW SCOTT HENSLEY
aka ANDY HENSLEY
aka SCOTT HENSLEY
aka ANDY S. HENSLEY
aka ANDREW HENSLEY

Case No. 3:17-bk-32350-SHB
Chapter 13

Debtor

**MEMORANDUM AND ORDER ON
DEBTOR'S OBJECTION TO PROOF OF CLAIM
FILED BY SAMANTHA JAYNE FRY (#7)**

This contested matter is before the Court on Debtor's Objection to Proof of Claim Filed by Samantha Jayne Fry (#7) ("Objection to Claim") filed by Debtor on January 29, 2018 [Doc. 28], objecting to Ms. Fry's assertion that her claim is entitled to priority under 11 U.S.C. § 507(a) as a domestic support obligation, and Ms. Fry's *pro se* response filed on February 21, 2018 [Doc. 30]. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

Debtor filed the Voluntary Petition commencing this Chapter 13 bankruptcy case on July 28, 2017. Ms. Fry, who is Debtor's former spouse, filed a Proof of Claim in the amount of \$6,672.73 on November 29, 2017, claiming that the claim is entitled to priority as a domestic support obligation under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). As the basis for the claim, Ms. Fry relies on the Decree of Divorce entered by the Washington County Circuit Court on April 19, 2013 ("Divorce Decree"), granting the parties' divorce and directing Debtor to repay Ms. Fry \$7,500.00 for money that she loaned to Debtor. [Claim #7-1-1.] The balance of this debt is \$6,672.73.

Under § 507(a)(1)(A), "[a]llowed unsecured claims for domestic support obligations" have first priority. The Bankruptcy Code defines domestic support obligations as follows:

The term "domestic support obligation" means 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 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.

11 U.S.C. § 101(14A).

The record establishes that Ms. Fry is Debtor's former spouse and that the underlying debt owed by Debtor to Ms. Fry was established by a divorce decree. Additionally, because neither party presented evidence to prove that Ms. Fry assigned the debt to a nongovernmental entity, subsection (D) is satisfied. *See, e.g., Lawrence v. Combs (In re Combs)*, 543 B.R. 780, 793 (Bankr. E.D. Va. 2016) ("Nothing in the record indicates that the debt has been assigned, and, therefore, the Court finds that § 101(14A)(D) is satisfied here."); *Yelverton v. Senyi (In re Yelverton)*, No. 09-00414, 2012 WL 4434087, at *8 (Bankr. D.D.C. Sept. 24, 2012) ("Nor is there any contention that the obligations have been assigned, so § 101(14A)(D) is satisfied."). Nevertheless, because the Court finds that the underlying debt for Ms. Fry's claim is not in the nature of alimony, maintenance, or support of a spouse, it does not fall within the definition of "domestic support obligation" and, thus, is not entitled to priority treatment under § 507(a).

"Whether an obligation is in the nature of alimony, maintenance, or support is a determination of federal law for which state law may provide guidance." *In re Boller*, 393 B.R. 569, 574 (Bankr. E.D. Tenn. 2008). When deciding whether a debt is a domestic support obligation, courts "must also consider the big picture: 'if something looks like a duck, walks like a duck, and quacks like a duck, then it is probably a duck.'" *In re Swonger*, No. 14-50807, 2014 WL 5149181, at *3 (Bankr. E.D. Mich. Oct. 10, 2014) (quoting *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397, 401 (6th Cir. 1998)).

“The structure of the agreement or decree determines whether the obligation was intended as support.” *In re Boller*, 393 B.R. at 577. Payments for alimony, child support, attorneys’ fees, and a guardian ad litem fees are examples of debts that can be nondischargeable domestic support obligations. *See, e.g., Read v. Read (In re Read)*, No. 14-52035, 2015 WL 3918137, at *2 (Bankr. E.D. Tenn. June 25, 2015) (“The alimony payments undoubtedly [are] . . . ‘for a domestic support obligation’”); *Garner v. Garner (In re Garner)*, 520 B.R. 683, 689 (Bankr. E.D. Tenn. 2014) (“The obligations imposed on [the debtor] for child support by the Final Decree are domestic support obligations.”); *In re Rose*, No. 08-30051, 2008 WL 4205364, at *9 (Bankr. E.D. Tenn. Sept. 10, 2008) (“[T]he Judgment for guardian ad litem fees in the amount of \$1,850.00 constitutes a domestic support obligation”); *Rogers v. Rogers (In re Rogers)*, No. 05-36084, 2008 WL 1740248, at *9 (Bankr. E.D. Tenn. Apr. 11, 2008) (“[T]he court intended to award attorneys’ fees in [the debtor’s wife’s] favor as a method of support”). On the other hand, if the parties fail to provide evidence that those debts are in the nature of alimony, maintenance, or support, courts will determine that debts are not domestic support obligations. *See, e.g., In re Boller*, 393 B.R. at 577 (“[T]he record is bereft of evidence sufficient to overcome the evidence of the parties’ intent not to provide for spousal support in the Compromise Agreement.”); *In re Knox*, No. 07-11082, 2007 WL 1541957, at *3 (Bankr. E.D. Tenn. May 23, 2007) (“The marital dissolution agreement does not evidence an intent that the allocation of debts to [the debtor] operate as support for [his former wife] or the parties’ children. . . . [T]he marital dissolution agreement indicates that the allocation of debts was intended as ‘part of a fair and equitable division of the parties’ assets and liabilities,’ rather than as part of an award of support.”).

Nothing within the Divorce Decree here reflects any intention by the state court that repayment of the \$7,500.00 owed by Debtor to Ms. Fry was intended to be anything other than repayment of money that she had loaned to him. Instead, Ms. Fry seeks repayment on a loan as an individual creditor — not as a spouse seeking repayment of an obligation in the nature of alimony, maintenance, or support – and the debt does not arise from payments for alimony, child support, attorneys’ fees, or guardian ad litem fees. The Divorce Decree ordered “[t]hat monies which were loaned to [Debtor] by [Ms. Fry] . . . shall be fully re-paid by [Debtor] to [Ms. Fry].” [Claim 7-1.] Additionally, Ms. Fry acknowledged that she is “an individual creditor trying to get repaid what was borrowed and collect on a judgment entered by a court. That in my eyes, is no different than a company creditor trying to get repaid for what was borrowed from them.” [Doc. 30 at p. 4.]

Because the Court finds that Ms. Fry’s claim is for a debt that is not a domestic support obligation, the Court directs the following:

1. Debtor’s Objection to Proof of Claim Filed by Samantha Jayne Fry (#7) [Doc. 28] is SUSTAINED.

2. Ms. Fry’s Proof of Claim [Claim #7] is allowed as an unsecured non-priority claim and shall be paid in accordance with Paragraph 13 of the Debtor’s Confirmed Chapter 13 Plan.

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