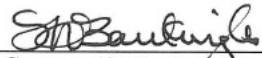




SO ORDERED.

SIGNED this 24th day of September, 2020

**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

CHAD WILLIAM SOINE

Case No. 3:19-bk-33217-SHB
Chapter 13

Debtor

**MEMORANDUM AND ORDER ON OBJECTION
BY DEBTOR TO THE CLAIM OF
CRYSTAL MELISSA DELENE SOINE (CLAIM NO. 11)**

This contested matter is before the Court on the Objection by Debtor to the Claim of Crystal Melissa Delene Soine (Claim No. 11) (“Objection to Claim”) filed on July 3, 2020 [Doc. 57], objecting to the claim in the amount of \$7,500.00 filed by Ms. Soine on June 18, 2020, and the Response of Crystal M. Soine to Debtor’s Objection to Claim 11 by Claimant Crystal Melissa Soine and Motion to Reinstate Claim 8 of Crystal Melissa Soine Filed by the Debtor (“Response”) filed August 3, 2020 [Doc. 63], asking the Court to overrule Debtor’s objection and to reinstate the proof of claim that was filed by Debtor on Ms. Soine’s behalf on December 17, 2020. 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 October 3, 2019, and the claims deadline was set as December 12, 2019 [Doc. 15]. Debtor scheduled Ms. Soine, his former spouse, as a general unsecured creditor, and she received notice of Debtor's bankruptcy case [Docs. 1 at 34; 18]. Because Ms. Soine did not file a proof of claim before the December 12, 2019 claims deadline, on December 17, 2019, Debtor, as authorized by Federal Rule of Bankruptcy Procedure 3004, filed a claim in the amount of \$7,500.00 on Ms. Soine's behalf ("Claim No. 8").¹ The Clerk issued a Notice of Filing dated December 18, 2019 [Doc. 34], advising that Debtor had filed Claim No. 8.

On June 1, 2020, the Chapter 13 Trustee filed the Trustee's Motion to Dismiss, stating that the Trustee had not received any payments since February 14, 2020, resulting in plan arrearages of \$1,330.00, and that the case was no longer feasible due to plan arrearages and "due to [the] claim filed [by Debtor] for Crystal Soine in the amount of \$7,500.00." [Doc. 54]. Debtor subsequently withdrew Proof of Claim No. 8 on June 15, 2020. [Doc. 55.] Three days later, Ms. Soine filed a Proof of Claim No. 11 in the amount of \$7,500.00, followed by two amendments that same date (collectively "Claim No. 11").

Debtor filed his Objection to Claim on July 3, 2020, arguing that Claim No. 11 should be disallowed as a late-filed claim. In her Response, Ms. Soine acquiesces that Claim No. 11 was late-filed; however, she argues that Debtor was not authorized to withdraw Claim No. 8 and that it should be reinstated. Ms. Soine did not properly raise the issue procedurally, nor is her requested relief that Claim No. 8 be reinstated procedurally correct by its inclusion in her Response. Nonetheless, because Debtor was not authorized by the Federal Rules of Bankruptcy

¹ Although the claims register for this case reflects that the claim was for \$0.00, Claim No. 8 clearly reflects on its face that the claim amount is \$7,500.00. The parties appear to agree that the \$7,500.00 is not an unsecured priority claim, notwithstanding that it results from the parties' property settlement in connection with their divorce. [See Claim Nos. 8, 11.]

Procedure to withdraw Claim No. 8, the Court will strike the Withdrawal of Claim filed by Debtor on June 15, 2020, so that Claim No. 8 will be paid in accordance with Debtor's plan as confirmed on February 25, 2020 [Doc. 47].

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence as to the amount and validity of the claim, which is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f).

The Bankruptcy Code defines a "claim" as:

(A) [the] right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmetered, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) [the] right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

Validity of a claim stems from a party's status as a creditor of the debtor, defined by the Bankruptcy Code as "[an] entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10)(A). Any objecting party must present evidence rebutting the proof of claim by refuting at least one allegation that is essential to the legal sufficiency of the claim, after which the burden of proof shifts to the creditor to prove the claim's validity by a preponderance of the evidence. *In re Cleveland*, 349 B.R. 522, 527 (Bankr. E.D. Tenn. 2006) (citation omitted).

Under Rule 3004, if a creditor does not file a proof of claim, the debtor may, within thirty days after the claims deadline, file a claim on behalf of the creditor. The creditor then receives

notice from the clerk that the claim was filed. Fed. R. Bankr. P. 3004.²

The parties do not dispute that Claim No. 11 was untimely filed so that it should be disallowed. The dispute arises from Debtor's assertion that he could withdraw Claim No. 8 because he filed it under Rule 3004. In his brief, Debtor references Rule 60(a) of the Federal Rules of Civil Procedure, which allows courts to take steps to correct clerical mistakes or other parts of the record. He also argues that his withdrawing the claim "is administrative and corrective in nature, which does not alter the creditor's position in this case significantly more than the failure to file a timely proof of claim . . . pursuant to Rule 3002." [Doc. 70 at 4.]

Finally, Debtor states the following in support of his withdrawal of Claim No. 8:

It is important to note that Claim #8 was filed by Debtor's counsel upon information and belief that the Chapter 13 Plan would support payment of this claim and that it may be a domestic support obligation. The basis of such belief was a review of the original divorce decree and accompanying documentation. However, after filing Claim #8, additional documents provided to Debtor's counsel – specifically, the state court documents filed in the divorce proceeding (see Exhibit 1) – revealed a clear provision that modified the original decree to recategorize the debt under Claim #8 from child support. According to the State of Tennessee's Petition to Modify the Parenting Plan, the state court granted the petition for the following reasons (as quoted in pertinent part):

The \$7500 for the house that was previously included as a child support arrear has been removed and shall not be considered as child support or child support arrears.

[Doc. 70 at 4-5.]

The Court can easily dispose of Debtor's reliance on Rule 60(a) as a basis for allowing him to withdraw Claim No. 8. As the Sixth Circuit has explained,

Rule 60(a) allows a district court to correct a "clerical mistake . . . in a judgment, order, or other part of the record." This rule is intended "to correct errors that are

² Although not directly at issue here, the Advisory Committee Notes to Rule 3004 explain that "[t]he rule leaves to the courts the issue of whether to permit subsequent amendment of such proof of claim," and several courts have exercised discretion to allow a creditor to amend a claim filed by the debtor under Rule 3004. *In re Lee*, No.16-30416, 2018 WL 2138774, at *3 (Bankr. N.D. Ohio. May 8, 2018).

mechanical in nature.” *Braun v. Ultimate Jetcharters, LLC*, 828 F.3d 501, 515 (6th Cir. 2016) (quoting *In re Walter*, 282 F.3d 434, 440 (6th Cir. 2002)). This rule “may not be used in ‘instances where the court *changes its mind*, either because it made a legal or factual mistake in making its original determination.’” *Id.* (quoting *Walter*, 282 F.3d at 440).

Parris v. Wainwright, No. 18-3003, 2018 WL 3244401, at *2 (6th Cir. May 10, 2018). Debtor’s filing a proof of claim on behalf of Ms. Soine does not implicate a clerical mistake or an error or oversight that needs to be corrected.

Similarly, Debtor’s assertions concerning the change in treatment of Ms. Soine’s claim per the modified parenting plan do not contradict Claim No. 8. Debtor filed Claim No. 8 as an unsecured nonpriority claim in the amount of \$7,500.00 for “[b]uying out [Ms. Soine’s] portion of [the] marital home.” [Claim No. 8.] Facially, Claim No. 8 contains no reference to the claim being based on child support or any other type of domestic support obligation.

Finally, Debtor asserts that “[n]othing in any of the Rules specifically address[es] a situation where a creditor fails to file a claim and the claim that is filed by the Debtor cannot be withdrawn.” [Doc. 70 at p.2.] Withdrawal of previously filed proofs of claims is governed by Federal Rule of Bankruptcy Procedure 3006, which states in pertinent part that “[a] creditor may withdraw a claim as of right by filing a notice of withdrawal[.]”

Rule 3006 does not specifically reference debtor- or trustee-filed claims; while the first part of this rule (“A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule.”) appears to govern any claim of a creditor, whether filed by the creditor or on its behalf, the rule is specific that the creditor must have court approval to withdraw the claim once an objection or complaint has been filed. Thus, while Rules 3004 and 3006 would appear to permit [a creditor] to withdraw the claim filed by [the d]ebtors on its behalf without court approval before an objection or adversary proceeding is filed, the plain language of Bankruptcy Rules 3004 and 3006 does not explicitly permit [d]ebtors to withdraw the [creditor’s] [c]laim

A number of courts have held that neither the Bankruptcy Code nor the Bankruptcy Rules authorize a debtor to withdraw a claim filed on behalf of a creditor. *See, e.g., Johnson v. Peoples Indep. Bank, N.A. (In re Johnson)*, No. 08-

41177-JJR-13, Adv. Proc. No. 08-40071-JJR, 2008 WL 5120114, at *5 (Bankr. N.D. Ala. Dec. 3, 2008) (“[O]nly a creditor, not a debtor, may withdraw a claim.”); *In re Melton*, 194 B.R. 418, 419 (Bankr. E.D. Tex. 1996) (“Although Rule 3004 allows a Debtor to file a claim on behalf of a creditor, there is no corresponding provision in Rule 3006 which would allow the Debtor to withdraw that claim once it has been filed.”); *In re Hutchins*, 162 B.R. 1014, 1021 (Bankr. N.D. Ill. 1994) (“While a creditor is allowed to withdraw a claim it has filed, no provision of the bankruptcy code allows a debtor to withdraw a claim filed by that debtor on behalf of a creditor.”); *see also* 8 COLLIER ON BANKRUPTCY ¶ 501.04 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (“Once a claim is filed by a debtor, the debtor does not have the authority to subsequently withdraw the claim.”).

In re Renz, 476 B.R. 382, 387 (Bankr. E.D.N.Y. 2012). Even when a debtor mistakenly filed a claim in an erroneous amount, courts have held that Rule 3006 allows “only a creditor, not a debtor” to withdraw a claim. *See, e.g., In re Johnson*, 2008 WL 5120114, at *5.

One case is particularly illustrative. In *In re Melton*, 194 B.R. at 419, the debtors filed a proof of claim on behalf of the Internal Revenue Service only to withdraw it one month after the claims deadline had passed. The IRS then late-filed its claim. *Id.* In support of their objection to the claim, the debtors argued that because they had filed the claim for the IRS, they were authorized to withdraw it and the late-filed claim should be barred. *Id.* The IRS argued “that the attempted withdrawal of the claim filed by the [d]ebtors was ineffective and that the claim filed by them is either an amending or superseding claim under the rules or, alternatively the fact of late filing is not grounds for disallowance under 11 U.S.C. § 502.” *Id.* The court did not accept the IRS’s argument that its late-filed claim could supersede the claim filed by the debtors, regardless of its withdrawal; however, it did agree that “Federal Rule of Bankruptcy Procedure 3006 allows a *creditor* to withdraw a claim by filing a notice of withdrawal[and a]lthough Rule 3004 allows a [d]ebtor to file a claim on behalf of a creditor, there is no corresponding provision

in Rule 3006 which would allow the Debtor to withdraw that claim once it has been filed.” *Id.*³

Although Debtor here was authorized by Rule 3004 to file Claim No. 8 on Ms. Soine’s behalf, he was without the authority under Rule 3006 to withdraw it. Debtor may argue that such a result is unfair; however, the express provisions of the Rules must have meaning. *Walker v. Armco Steel Corp.*, 446 U.S. 740, 750 n.9 (1980) (“The Federal Rules should be given their plain meaning.”); *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1017 (6th Cir. 2005) (“[C]ourts must begin their interpretation of the Federal Rules, as with other laws, ‘with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.’” (quoting *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985))). Had the Judicial Conference or Congress intended for debtors to possess authority to withdraw claims, the Rules would so reflect.

Furthermore, logic supports not allowing debtors to withdraw creditors’ claims, even when the claims were filed by the debtors. Rule 3004 requires that notice be sent to the creditor if a claim is filed on its behalf. At that point, the creditor may act by amending⁴ or withdrawing the claim, or it may decide not to act because the claim filed on its behalf – as in this case – accurately reflected the amount of the creditor’s claim and assigned it the proper priority. As directed by Rule 3004, the Clerk issued a Notice of Filing dated December 18, 2019 [Doc. 34], advising Ms. Soine that Debtor had filed Claim No. 8, and it was reasonable for her to rely on Claim No. 8.

³ Because the pre-1994 version of § 502 did not include lateness as a ground for disallowance of claims, the *Melton* court overruled the objection to the IRS’s late-filed claim on that ground. *See In re Melton*, 194 B.R. at 420 n.1. Section 502 now includes untimeliness as a ground for disallowance of claims.

⁴ *See supra* note 2.

Because Claim No. 8 accurately reflected her \$7,500.00 unsecured nonpriority claim, Ms. Soine was under no obligation to act and, in fact, did not act after Claim No. 8 was filed.⁵ Debtor's plan was confirmed on February 25, 2020, more than two months after Claim No 8 was filed. In fact, it was only after Debtor fell behind on his plan payments and his confirmed plan became unfeasible that Debtor withdrew Claim No. 8, presumably for the purpose of curing the feasibility problem and as a defense to the Chapter 13 Trustee's Motion to Dismiss. The feasibility problems caused by Debtor's failure to make plan payments and inclusion of Ms. Soine's \$7,500.00 claim, however, do not provide a legitimate basis for ignoring the express language of Rule 3006. The Withdrawal of Claim filed by Debtor on June 15, 2020, could not effect a withdrawal of Claim No. 8. Rule 3006 permits Claim No. 8 to be withdrawn solely by the creditor, Ms. Soine, irrespective that it was filed by Debtor.

For the reasons set forth herein, the Court directs the following:

1. The Objection by Debtor to the Claim of Crystal Melissa Delene Soine (Claim No. 11) filed on July 3, 2020 [Doc. 57], is SUSTAINED. Claim No. 11, which was late-filed by Ms. Soine on June 18, 2020, is DISALLOWED.
2. The Withdrawal of Claim filed by Debtor on June 15, 2020 [Doc. 55], is STRICKEN and ineffective as to Claim No. 8, which must be paid in accordance with the Order Confirming Chapter 13 Plan entered on February 25, 2020 [Doc. 47].
3. The motion included in the Response of Crystal M. Soine to Debtor's Objection to Claim 11 by Claimant Crystal Melissa Delene Soine and Motion to Reinstate Claim 8 of Crystal

⁵ The Court notes that Debtor's meeting of creditors was continued from its original date of November 14, 2019, to December 19, 2019, to January 23, 2020, when it was finally concluded. [Docs. 15, 29, 35, 40.] Mrs. Soine arguably could have lodged an objection to confirmation of Debtor's proposed plan with the Chapter 13 Trustee in person at the meeting as late as January 23, 2020. *See* E.D. Tenn. LBR 3015-3(a). Thus, she was not without recourse even after having missed the claims bar date of December 12, 2019. [Doc. 15.]

Melissa Soine Filed by the Debtor filed on August 3, 2020 [Doc. 63], is DENIED as moot.

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