

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Honorable Howard R. Tallman**

In re:)	
)	
CHARLES EDWARD ARNOLD and CORTNEY ARNOLD, Debtors.)	
)	
<hr/>)	
BRENDA LEE REEVES,)	Case No. 15-20011 HRT
)	Chapter 7
Plaintiff,)	
v.)	
)	Adversary No. 15-01496
CHARLES EDWARD ARNOLD)	
)	
)	
<hr/> Defendant.)	

ORDER ON MOTION FOR SUMMARY JUDGMENT

This case comes before the Court on the Motion for Summary Judgment (“Motion”) filed by Plaintiff Brenda Reeves (“Reeves”) on April 1, 2016 (docket #22), the Response thereto filed by Debtor Charles Arnold (“Debtor”) (docket #25), and the Reply in Support filed by Reeves (docket #26). The Court has reviewed the pleadings and the record and is now ready to rule.

I. Background

Debtor and Reeves obtained a divorce decree in Douglas County District Court (the “state court”) on August 14, 2009. The separation agreement (“Separation Agreement”), incorporated into the divorce decree, provided for spousal maintenance, child support, and division of an investment account with Bed Bath and Beyond.¹ On or about September 9, 2010, the parties entered into an agreement arising out of a mediation. Pursuant to a mediation order (“Mediation Order”), which was entered by the state court on December 6, 2010, Debtor was to “divide his 401k 50/50” at the time of the decree. (Response, Ex. B).

In July 2014, Reeves filed a contempt action in the state court alleging Debtor “liquidated the 401k” and did not provide her with the appropriate division of funds. The action was

¹ Both parties have referred to this account as a 401k, but Debtor now disputes whether it is actually a 401k. The language of the Separation Agreement refers to the account as “BBBY stock” and provides: “Parties agree to divide proceeds from sale of BBBY stock in April of each year upon vesting, beginning in April 2010 and continuing until April of 2017.” (Motion, Ex. B).

resolved in May 2015 with a hearing and a minute order from the state court (the “Contempt Order”) that provided as follows:

The separation agreement adopted by the court indicated that a bed bath and beyond 401k would be divided between the parties 50/50. Petitioner admits to liquidating the bed bath and beyond 401k plan and not dividing it with the respondent. Petitioner is advised of his rights by the court and petitioner admits to the allegations of the contempt citation. Sanctions imposed by the court: Court finds that petitioner should pay \$30,000 to respondent on or before 07/31/15. Matter set for a hearing at 8:15 a.m. in courtroom 8 on 07/31/15 . Petitioner to be prepared to be remanded if he has not complied with the Court ordered sanction.

(Motion, Ex. C).

The parties appeared at the compliance hearing on July 31, 2015, and indicated the parties had reached a resolution. The court’s minute order for that hearing provided:

Petitioner has paid \$15,000 of the \$30,000 that is owed. Atr [sic] requests to set this matter out for 60 days to determine the payment of the rest of the fees. James Lapin may file an affidavit of attorney fees within 7 days from today's date. Petitioner has 14 days, from receipt of the affidavit of attorney fees, to respond. Hearing on compliance set in courtroom 8 on 10/9/ 15 at 1:30 p.m.

(Motion, Ex. D).

Mr. Lapin (Reeves’ attorney) submitted attorney fees of \$8,307.50 to the court. The Debtor did not file a response, and the fees were approved by order of August 24, 2015 (the “Fee Order”). (Motion, Ex. E).²

Additionally, under the Separation Agreement and the Mediation Order, Debtor was obligated to pay spousal maintenance to Reeves, which maintenance terminated upon her remarriage in May 2014, with arrears owing. The spousal maintenance arrearage, including interest, as of the date the Motion was filed, is \$40,646.80. Debtor also was obligated to pay

² This is the only attorney fee amount evidenced in the record before this Court. The parties also refer to a fee award of \$9,117.50, apparently rendered in March 2016 (post-petition). Reeves cites to Exhibits G and H to support this award, but these are child support modification orders that do not reference attorney fees. Thus, the Court will only address the \$8,307.50 in fees approved by the state court in the Fee Order attached to the Motion as Exhibit E. The state court has concurrent jurisdiction to determine the dischargeability of its other fee awards which were not included in the record before the Court.

child support, which obligation is continuing with interest compounding monthly. The child support arrears, including interest, as of the date the Motion was filed, is \$10,641.91.

Debtor and his current wife filed their petition under Chapter 7 of the Bankruptcy Code on September 4, 2015. On their bankruptcy schedules, they listed the \$15,000 owed to Reeves on Schedule F as a “property settlement.” The \$8,307.50 in attorney fees are listed on Schedule F as attorney fees Debtor owes to Mr. Lapin. Reeves moved for, and was granted, relief from stay in order to pursue collection of Debtor’s obligations in the state court. Reeves then filed this adversary proceeding on December 1, 2015, alleging claims under 11 U.S.C. §§ 523(a)(5) and (a)(15).³

II. Discussion

Summary judgment is appropriate when the materials submitted to the court demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Kaiser-Francis Oil Co. v. Producer’s Gas Co.*, 870 F.2d 563, 565 (10th Cir. 1989); *National Dev. Servs., Inc. v. Denbleyker (In re Denbleyker)*, 251 B.R. 891, 894 (Bankr. D. Colo. 2000). *See also Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). What facts are material depends upon the substantive law applied. *Kaiser-Francis Oil Co. v. Producer’s Gas Co.*, 870 F.2d at 565. Disputes about immaterial facts will not preclude summary judgment. *Id.*

Reeves asserts two claims against Debtor seeking a determination that certain of Debtor’s obligations to Reeves are domestic support obligations pursuant to § 523(a)(5), and therefore nondischargeable, and certain of them are debts arising out of a domestic court order pursuant to § 523(a)(15), and therefore also nondischargeable.

A. § 523(a)(5).

Section 523(a)(5) provides that an individual debtor will not receive a discharge from any debt for a domestic support obligation. Section 101(14A) defines “domestic support obligation” as a debt that accrues before, on, or after the date of the order for relief, 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;
 - (ii) a governmental unit;

³ Unless otherwise indicated, all statutory references are to Title 11 of the United States Code.

(B) in the nature of alimony, maintenance or support of such spouse, former spouse or child of the debtor, 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.

Initially, Debtor disputed the amounts of the arrearages owing for both spousal maintenance and child support.⁴ At this juncture, however, Debtor does not contest that he owes the \$40,646.80 arrearage of spousal maintenance and, after a subsequent modification, \$10,641.91 in child support, and that these debts are nondischargeable under § 523(a)(5). Debtor does dispute, however, that he owes the \$15,000 which remains due under the Contempt Order, and the \$8,307.50 in attorney fees awarded in the Fee Order. He further asserts these amounts are not in the nature of support under § 523(a)(5).

In his Response, Debtor first argues he does not in fact owe Reeves \$30,000, but rather only \$14,011.87, pursuant to an accounting of a “Bed Bath & Beyond Inc. 401(k) Savings Plan” he has attached to his Response (Ex. C). This is simply an attempt re-litigate matters decided in the state court. The state court, in its Contempt Order, clearly ordered Debtor to pay \$30,000 to Reeves or risk being remanded to jail. If Debtor disagrees with the amount entered in the Contempt Order, he must address this in the state court, not in this Court. This Court is required to give full faith and credit to state court judgments under the *Rooker–Feldman* doctrine. *See In re Golio*, 393 B.R. 56, 61-62 (Bankr. E.D. N.Y. 2008) (“The validity and enforceability of [state court] judgments are not for this Court to decide. The only issue before this Court is not whether the state court judgments were correctly decided but whether they are dischargeable in whole or in part under 11 U.S.C. §§ 523(a)(5) and/or (a)(15)”).

⁴ On his schedules, Debtor listed the amount of child support owing as \$9,500 (when at the time it was approximately \$14,000 (Motion, Ex. F), and did not list any amount owing as an arrearage in maintenance to Reeves.

Debtor also asserts, for the first time in these proceedings, that the BBY stock referred to in the state court as a 401k is not actually a 401k, and in fact there is no 401k referred to in the Separation Agreement. Again, if Debtor feels there was a misunderstanding in the state court about this account, he needs to address that in state court. Debtor also contends the attorney fees incurred by Lapin during the contempt action are excessive. Debtor, however, chose not to respond to Lapin's affidavit of attorney fees submitted in the state court, and instead filed for bankruptcy. This Court cannot re-examine the award of attorney fees ordered by the state court after a non-response in that court by Debtor. The state court has concurrent jurisdiction to resolve any dispute about its orders.

This Court also need not determine whether the \$15,000 owing under the Contempt Order or the \$8,307.50 awarded in the Fee Order are in the nature of support under § 523(a)(5). After BAPCPA, in Chapter 7 cases, “the distinction between a domestic support obligation and other types of obligations arising out of a marital relationship is of no practical consequence in determining the dischargeability of the debt.” *Golio*, 393 B.R. at 61-62. A court need not make a determination on whether debts are domestic support obligations under § 523(a)(5) if a party can demonstrate the debts would be nondischargeable in any event under § 523(a)(15). *Id.*; see also *In re Melchiorre*, 2016 WL 1618456 (Bankr. E.D. Tex. 2016) (“These statutory changes, at least as applied in a Chapter 7 case, render a DSO analysis unnecessary if a party can demonstrate that a particular debt would be nondischargeable under the less stringent evidentiary requirements of § 523(a)(15).”).

The enactment of § 523(a)(15) and the broadening of the scope of the discharge exception under BAPCPA “expresses Congress's recognition that the economic protection of dependent spouses and children under state law is no longer accomplished solely through the traditional mechanism of support and alimony payments.” 4 Collier on Bankruptcy ¶ 523.23 at p. 523–126–27 (16th ed. 2015). Therefore, the Court need only address the parties' arguments as to whether the \$15,000 remaining due under the Contempt Order, and the \$8,307.50 awarded in the Fee Order, are nondischargeable debts under § 523(a)(15).

B. § 523(a)(15)

Section 523(a)(15) provides:

- (a) A discharge under section 727, ... of this title does not discharge an individual debtor from any debt—
- (15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit[.]

As this Court previously noted in *In re Loomas*, 2013 WL 74477, *6 (Bankr. D. Colo. 2013), under § 523(a)(15), “all that is required for nondischargeability is to find that the debt arises out of a domestic court order.” Debtor contends the \$15,000 still owing under the Contempt Order is not a debt arising out of a domestic court order, because “the division of the 401k is separated from the domestic support obligations in the stipulation.” The Tenth Circuit recently examined the language of § 523(a)(15) in *In re Taylor*, 737 F.3d 670, 680 (10th Cir. 2013). In that case, the Circuit determined that a state court judgment, entered in favor of an ex-spouse for overpayment of support, plus attorney fees, fell within the definition of § 523(a)(15). The Circuit held the domestic judgment was nondischargeable under that section because it “arose as a result of a judgment against a spouse in favor of . . . a former spouse . . . by the court in connection with a separation agreement or divorce decree.” See also *In re Tritt*, 2014 WL 1347763 at *7 (Bankr. E.D. Tex. 2014)(collecting cases finding various orders in domestic cases, including contempt orders, to be within the parameters of § 523(a)(15)).

In this case, the \$15,000 debt results from a state court order entered in favor of an ex-spouse, pursuant to another state court order adopting the parties’ stipulation during divorce proceedings, that the 401k “shall be split 50/50 at the time of the decree.” Debtor admittedly liquidated the 401k without forwarding any proceeds at all to Reeves. Reeves then had no choice but to pursue collection, initiated in July 2014 and not resolved until May 2015 with the Contempt Order, which order clearly states Debtor shall pay \$30,000 to Reeves or face being remanded. Then, at the July 2015 compliance hearing, Debtor had paid only \$15,000 of the \$30,000 he had been ordered to pay, but Reeves agreed to allow Debtor extra time to pay the remainder. Instead of doing so, he and his current wife filed for bankruptcy.

While bankruptcy entitles a debtor to a “fresh start” by allowing the discharge of certain debts (including over \$200,000 in unsecured debt in this particular case), it does not enable Debtor to disregard a contempt order issued by a state court in a marital dissolution action. See *Golio*, 393 B.R. at 62 (“the judgments are clearly awarded by the state court in connection with a divorce decree and to enforce prior orders of the state court concerning the Plaintiff’s rights and remedies under the Divorce Judgment. The Judgments were awarded to the Plaintiff due to her status as the Defendant’s former spouse”). This Court concludes that the remaining \$15,000 Debtor owes to Reeves pursuant to the Contempt Order is nondischargeable under § 523(a)(15).

Debtor further argues the \$8,307.50 awarded in the Fee Order was not incurred “in efforts to enforce obligations under the orders in the dissolution action, but rather to collect a debt for Reeves’ former attorney.” Attorney fees incurred in connection with the enforcement of a separation agreement are nondischargeable under § 523(a)(15). *In re Loomas*, 2013 WL 74477 (Bankr. D. Colo. 2013); *In re Vann*, 2014 WL 505257 (Bankr. D. Conn. 2014) (holding attorney fees incurred in connection with enforcing custody provision of separation agreement were fees incurred “in the course of” a divorce proceeding). See also *In re Melchiorre*, 2016 WL 1618456 (Bankr. E.D. Tex. 2016) (“[T]he defendant’s argument that the plaintiff is not entitled to a favorable § 523(a)(15) judgment because the legal fees were not incurred during a

divorce proceeding is unpersuasive. The defendant's reading of § 523(a)(15) is too myopic. Section 523(a)(15) is broader than the defendant alleges because it addresses debt that is incurred "in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record.").

Debtor further argues the attorney fees were not incurred in connection with the Separation Agreement, but rather in an attempt to incorrectly collect "disputed amounts." The majority of cases, however, "have rejected the literal interpretation of section 523(a)(5) and (15) and have expanded the statutory language to cover the attorneys of the former spouse on the basis that the former spouse's expenses of collection are part of the underlying obligation and the debt is actually owed to the former spouse." See, e.g., *Howerton v. Howerton (In re Howerton)*, 2013 WL 4505368, at *3 (Bankr.N.D.Ga., July 19, 2013) (citing *Koscielski v. Koscielski (In re Koscielski)*, 2011 WL 338634 (Bankr.N.D.Ill., Jan. 31, 2011)). Therefore, the Court holds the \$8,307.50 awarded in the Fee Order is a nondischargeable debt under § 523(a)(15).

As a final matter, the parties disagree as to whether the attorney fees Reeves has incurred to pursue this adversary proceeding should be deemed nondischargeable. In *Taylor*, the Tenth Circuit concluded the bankruptcy court did not have authority, under the parties' separation agreement, to award attorney fees incurred in the adversary proceeding to determine dischargeability of a domestic obligation under § 523(a)(15). *Taylor*, 737 F.3d at 682. Similarly, in this case, the Separation Agreement does not contain any provision regarding attorney fees. The Court notes the Mediation Order does contain a section providing that each party is to pay its own attorney fees. (Response, Ex. B, section 2(f)). Given the lack of clarity in the record, the Court will not determine whether fees should be awarded for this adversary proceeding and whether those fees are nondischargeable. The state court has concurrent jurisdiction to determine those issues. See *in re Busch*, 369 B.R. 614, 626-27 (BAP 10th Cir. 2007); *In re Kelly*, 549 B.R. 275, 282 (Bankr. D. N.M. 2016).

For all the foregoing reasons, it is HEREBY ORDERED that the Motion is GRANTED. The \$15,000 remaining due under the Contempt Order, as well as the \$8,307.50 awarded in the Fee Order, are nondischargeable debts in this bankruptcy proceeding under § 523(a)(15). A separate judgment will enter.

Dated this 9th day of June, 2016.

BY THE COURT:



Howard R. Tallman, Judge
United States Bankruptcy Court