

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:

LONNIE D. BAILEY,

Debtor.

CASE NO. 15-03052-HAC

Chapter 7

VALERIYA BAILEY,

Plaintiff,

v.

ADV. PROC. NO. 15-00174-HAC

LONNIE BAILEY,

Defendant.

ORDER

This adversary proceeding came before the Court for a status conference hearing. Debtor was present in court, along with counsel for plaintiff and defendant. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the order of reference in the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and the Court has authority to enter a final order.

The parties informed the court that all issues which are the subject of plaintiff's complaint have been resolved either by subsequent rulings of the domestic relations court or payment except an award of \$1,000 against defendant for the plaintiff's attorney's fees ordered by the Circuit Court of Mobile County in the divorce decree. A copy of the divorce decree was admitted into evidence as Plaintiff's Exhibit A. The parties stipulated in open court that the only remaining issue in the adversary proceeding is the dischargeability of that \$1,000 attorney's fee in this Chapter 7 case.

Defendant contends that the award is not a domestic support obligation (DSO) and is thus dischargeable. Plaintiff contends that either the award is not dischargeable as spousal DSO under § 523(a)(5) or it is not dischargeable as a non-DSO spousal debt under § 523(a)(15). After researching the issue, the Court agrees with plaintiff that, regardless of whether it is a domestic support obligation, the \$1,000 attorney's fee award is not dischargeable.

Paragraph 10 of the April 22, 2015 divorce decree provides:

10. That a judgment is awarded against the Plaintiff [debtor Lonnie Bailey] in favor of the Defendant's attorney, Alison Herlihy, for \$1,000.00 to be applied toward a reasonable attorney's fee to be paid within thirty (30) days of the date from the entry of the Judgment of Divorce.

11 U.S.C. § 523(a)(15) provides that a discharge under § 727 does not discharge an individual debtor from any debt "to a spouse, former spouse or a child of the debtor and not of the kind described in paragraph (5) [domestic support obligations] 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" So even if the \$1,000 award is not DSO under § 523(a)(5), it still is not dischargeable in a Chapter 7 under § 523(a)(15).

Although the attorney's fee award here was made to the former spouse's divorce attorney rather than directly to the former spouse, other courts have held that that distinction does not affect the applicability of §§ 523(a)(5) and (15). See In re Marshall, 489 B.R. 630 (Bankr. S.D. Ga. 2013); In re Rogowski, 462 B.R. 435 (Bankr. E.D. N.Y. 2011). This Court agrees and will enter a separate judgment finding the \$1,000 attorney's fee award non-dischargeable.

Dated: May 2, 2016


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE