

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

In Re:

JEFFREY WILSON BEESLEY,

Case No. 16-04043

Debtor.

STACY MICHELLE BEESLEY,

Plaintiff,

v.

Adversary Case No. 17-00021

JEFFREY WILSON BEESLEY,

Defendant.

ORDER

This chapter 13 case, no. 16-4043, and a related adversary proceeding, no. 17-21, are before the court on several matters. In the main case is the objection filed by creditor Stacy Beesley (doc. 32) to the debtor Jeffrey Beesley's proposed chapter 13 plan and Jeffrey Beesley's objections (docs. 78 and 79) filed as to claims 2 and 4 filed as priority claims by Stacy Beesley. In the adversary proceeding, no. 17-21, Stacy Beesley ("Stacy" or "Plaintiff") seeks to have her claim declared non-dischargeable as domestic support obligation and also seeks to set aside certain transfers by Jeffrey Beesley ("Jeffrey" or "Defendant") to his mother Elaine Beesley as fraudulent. Jeffrey has filed a motion (doc. 48) to dismiss the fraudulent transfer claim alleged in paragraph 2 of the prayer for relief in Stacy's amended complaint (doc. 29).

The court has jurisdiction to hear these matters pursuant to 28 U.S.C. §§ 157 and 1334 and the order of reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B) and (L), and the court has authority to enter a final order.

Background

Stacy Beesley and Jeffrey Beesley were married in 2000 and had one child together, Colton. Stacy and Jeffrey jointly owned a used car business, JB Automotive, Inc. (sometimes referred to herein as “the used car business” or “the business”), which operated a used car lot that was immediately adjacent to their home and located on the same property. Stacy separated from Jeffrey in August 2013 after he had an affair, and Jeffrey filed for divorce in the Circuit Court of Washington County that same month.

The parties settled the divorce proceeding shortly before trial, and the agreement was incorporated in the divorce decree entered on December 11, 2014. (*See* Def. Ex. 1). The order provided that Jeffrey would pay Stacy \$500 a month in child support for their child Colton, who was about 11 at the time. (*See id.*). The decree awarded Jeffrey the marital home, surrounding buildings, 4.2 acres of real property, and all of Stacy’s interest in the used car business. (*See id.*). Jeffrey was to pay Stacy what the order called a property settlement in the amount of \$202,000 -- \$27,000 to be paid within thirty days, \$25,000 by June 1, 2015, and the remaining \$150,000 to be paid in sixty-six monthly payments of \$2,272 beginning January 1, 2015. (*See id.*).

In connection with the divorce, Jeffrey’s attorney obtained a preliminary appraisal valuation of the used car business in the amount of \$440,000 (Def. Ex. 12).¹ The accountant

¹ All exhibit references are to exhibits admitted as part of a two-day hearing.

valued the company at \$400,000 based on cash flow and \$480,000 based on net assets and averaged the two figures to reach \$440,000. The net value calculations included \$85,238 for the car lot buildings but nothing for the underlying real estate or adjacent residence. His attorney also obtained a real estate appraisal of \$160,000, which included both the house and the car lot buildings. (*See* Def. Ex. 8).

On October 8, 2015, Stacy filed a “petition for contempt and petition to modify” in the Circuit Court of Washington County. (*See* Def. Ex. 1). She contended that Jeffrey had made the first payment of \$27,000 but then paid only \$10,000 of the \$25,000 payment due on June 1, 2015. She also alleged that Jeffrey was in default for the August 2015 monthly installments forward.

Despite the divorce decree language denominating the \$202,000 as a property settlement, on Stacy’s petition for contempt, circuit court entered an order of contempt on August 19, 2016. (*See* Pl. Ex. 1; Def. Ex. 1). The circuit court specifically found that “such money is actually used by and depended upon by [Stacy Beesley] to meet her and the minor child’s financial needs each month.” (*See id.*). The circuit court ordered Jeffrey incarcerated until he purged himself of contempt by catching up the back payments over a period of five months as well as making the current monthly payments of \$2,272 on the “property settlement” and monthly child support payments of \$500. (*See id.*). Jeffrey was in fact incarcerated until he filed his bankruptcy case.

Jeffrey testified that his used car business started going down after Stacy left. He testified that he had severe medical problems with his eyes which impeded his ability to drive and to inspect vehicles for purchase. He testified that his mother Elaine Beesley had lent him a total of \$243,500 on an unsecured basis; \$176,000 of that amount was supposedly lent after

Stacy left in mid-August 2013. (*See also* Def. Exs. 4, 13). Stacy, who handled the business's finances before she left Jeffrey and then for a short period afterwards, disputed the validity of any loans supposedly made while she was there. Stacy also testified that Jeffrey told her that he would "fix it to where he wouldn't have to pay her a dime."

In November 2015, Jeffrey entered into a written contract to transfer his used car business, home, and associated real estate to his mother Elaine in return for forgiveness of the \$243,500 he supposedly owed her and assumption of certain debts. (*See* Def. Ex. 5). Elaine paid off mortgage debt to Ocwen in the amount of \$32,001.02 and debt owed to Capstone Bank in the amount of \$145,838.24 as part of the transaction. (*See* Def. Ex. 9). Since that time, according to his mother's and his testimony, Jeffrey has continued to live in the house on the premises and works as a "watchman" at the business for a salary of \$2,000 a month. Stacy disputes that testimony, stating that Jeffrey is still operating the business as he did before.

According to Stacy's proof of claim no. 4, Jeffrey still owes her \$141,471 pursuant to the divorce decree. That is almost his only debt; the only other proofs of claim filed in his case total \$2,176.25 in unsecured debt. Jeffrey's Schedules I and J, as amended, show employment income of \$2,050/month as "property manager/security" for employer Elaine Beesley and a monthly net income of \$255 after payment of monthly expenses. His proposed plan (doc. 27 in the main case) provides for payments to the trustee of \$250/month for 36 months.

Discussion

The court will first address the adversary proceeding and then will address Jeffrey's objections to Stacy's proof of claim and Stacy's objection to confirmation of Jeffrey's plan.

I. Adversary Case No. 17-21

As previously discussed with the parties, the court will grant Jeffrey's motion to dismiss the fraudulent transfer claim because Stacy failed to name the transferee Elaine Beesley as a party to the action. As a matter of due process, a court cannot set aside a transfer without having the transferee named in the suit and being given an opportunity to defend the claim. The court's dismissal of that claim will be without prejudice since the court is not reaching the claim's merits.

The remaining adversary proceeding claims deal whether the "property settlement" of the divorce decree is a domestic support obligation and, if so, in what amount. Bankruptcy courts and state courts have concurrent jurisdiction to determine this issue. *See, e.g., Cummings v. Cummings*, 244 F.3d 1263, 1267 (11th Cir. 2001). In this respect, the court has decided to abstain from hearing this issue in favor of the circuit court.² In summary, and as set out in further detail below, the circuit court has already determined that at least some of the so-called "property settlement" is DSO but did not determine the amount, and this court does not have sufficient evidence before it to decide this issue.

Under Bankruptcy Code § 1328(a)(2), a domestic support obligation ("DSO") is not dischargeable in chapter 13 but a divorce property settlement is. Code § 101(14A) defines DSO to include, among other things, a debt "in the nature of alimony, maintenance, or support" of the ex-spouse or child "without regard to whether such debt is expressly so designated" The

² Stacy had earlier requested that the circuit court decide this issue in her objection to confirmation (doc. 32 in the main case), but a bankruptcy court can abstain even without a motion to do so being filed. *See, e.g., In re Orlando Gateway Partners, LLC*, 555 B.R. 848, 853 (Bankr. M.D. Fla. 2016).

terms contained in a divorce decree do not necessarily govern the characterization of property settlement versus DSO. *See, e.g., Cummings*, 244 F.3d at 1265. In addition, Alabama law allows a party to be held in criminal contempt for failure to pay alimony or child support but not a property settlement. *See generally, e.g., Dolberry v. Dolberry*, 920 So. 2d 573 (Ala. Civ. App. 2005).

Here, the evidence was uncontradicted that each side's counsel always referred to "property settlement" in their negotiations and that was the term incorporated into the divorce decree. However, this fact is not dispositive. *See Cummings*, 244 F.3d at 1265; *see also* 11 U.S.C. § 101(14A) (DSO is to be determined "without regard as to whether the debt is expressly so designated"). As noted in the section above, the circuit court specifically found that Stacy uses and depends on the purported "property settlement" payments to support the minor child and her, which would appear to qualify as DSO under the Code definition. And the circuit court could not order Jeffrey incarcerated, as it did, for failure to pay a property settlement; the circuit court thus necessarily found that at least some, and perhaps all, of the so-called "property settlement" serves as DSO. (*See* Pl. Ex. 1; Def. Ex. 1).

"It is appropriate for bankruptcy courts to avoid incursions into family law matters 'out of consideration of court economy, judicial restraint, deference to our state court brethren and their established expertise in such matters.'" *Carver v. Carver*, 954 F.2d 1573, 1578-79 (11th Cir. 1992); *see also Cummings*, 244 F.3d at 1267 (reaffirming the court's strong policy favoring abstention in family law matters). This court finds this case to be very similar to *In re Zhuk*, 576 B.R. 273 (Bankr. S.D. Fla. 2017), where a state court judge had already held a contempt hearing prior to the bankruptcy and the bankruptcy court abstained.

The undersigned had originally thought that, since the original divorce decree was the result of a settlement rather than a court hearing, it would be in the interest of judicial economy for this court to decide the DSO versus property settlement issue as part of the confirmation process. However, this court's effort to determine what amount, if any, is DSO is complicated by the fact that the parties did not file the required child support and income forms which would have at least established the presumptive amount of child support that Jeffrey was to pay under Alabama law. Alabama Rule of Judicial Administration 32 requires the parties in a divorce proceeding involving child support to file Forms CS-41, CS-42, and CS-43 showing their relevant income and expenses, the presumptive child support pursuant to Alabama's child support guidelines, and the reasons for any deviation from the presumptive child support. Pursuant to that rule, the presumptive child support amount can be rebutted only by (1) a fair, written agreement between the parties establishing a different amount and stating the reasons therefor or (2) a determination by the court, based on evidence presented in court and stating the reasons therefor, that application of the guidelines would be manifestly unjust or inequitable. None of those forms were filed in the Beesleys' divorce proceeding. The parties also have not provided the court with enough income or other financial information to allow it to attempt to recreate the presumptive child support amount or any alimony. The court is thus going to abstain from deciding the property settlement versus DSO issue in favor of state court.

The court will dismiss without prejudice the fraudulent transfer claim, as discussed above, but will stay the remaining claims. The court will enter an order in the main case granting limited relief from stay for Stacy Beesley to return to the Circuit Court of Washington County and seek determination as to whether any of the "property settlement" still owed should

be considered DSO. The undersigned apologizes to the parties for the extra trouble and expense they incurred litigating the DSO versus property settlement issue in the adversary proceeding. But particularly given the lack of evidence in the record, the circuit court which deals with these issues all the time, which has already heard testimony, and which has already determined that at least some portion of the so-called property settlement is DSO is in a much better position to make a final determination on that issue.

II. Bankruptcy Case No. 16-4043

Regarding Jeffrey's objections, which are directed to proofs of claim 2 and 4 filed by Stacy, the court will sustain the objection (doc. 79) to claim 2 because it appears claim 4 supersedes claim 2. The court will continue the objection (doc. 78) to claim 4 for status on March 7, 2018 because the issue there is whether the claim should be treated as priority or unsecured, which will be affected by what the circuit court does.

Turning to Stacy's objection to confirmation of Jeffrey's plan, Bankruptcy Code § 1325(a)(3) provides that the debtor's plan must be proposed in "good faith" to be confirmed. Although Stacy's objection to confirmation (doc. 32) did not use the term "good faith," Stacy complained that Jeffrey had fraudulently transferred his assets to his "mother in a plan to later file bankruptcy and to try [to] discharge all debt owed to [Stacy]." Moreover, the court can confirm a chapter 13 plan only on a finding of good faith and is obligated to consider that requirement on its own even if not raised by the trustee or a creditor. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 277 n.14 (2010); *see also, e.g., Davis v. Gore*, No. 1:12-CV-2013-WMA, 2014 WL 536980, at *3 (N.D. Ala. Feb. 10, 2014) ("Bankruptcy courts have an

independent obligation to verify that a debtor meets all confirmation requirements before confirming the plan and allowing the case to proceed.”).

In deciding whether Jeffrey proposed his plan in good faith, the court has considered the factors set forth in *In re Kitchens*, 702 F.2d 885 (11th Cir. 1983). Contrary to Jeffrey’s contentions, the *Kitchens* factors are not exhaustive and are not the only factors the court can consider. *See, e.g., In re Kirk*, 465 B.R. 300, 302-03 (Bankr. N.D. Ala. 2012). No one factor is determinative, and the court must consider the circumstances as a whole, including prepetition circumstances as well as circumstances surrounding the bankruptcy filing. *See, e.g., In re Sellers*, 285 B.R. 769, 773 (Bankr. S.D. Ga. 2001); *In re Chung*, No. 13-15338-JKO, 2014 WL 11279465, at *9 (Bankr. S.D. Fla. Jan. 7, 2014). Having done so, the court concludes that Jeffrey’s plan is not proposed in good faith.

The prepetition circumstances surrounding Jeffrey’s bankruptcy filing are highly suspicious. According to his own testimony, at the time he transferred (or agreed to transfer) nearly all of his assets to his mother Elaine in November 2015, Jeffrey allegedly owed his mother \$243,000 on a completely unsecured basis and owed his ex-wife at least \$141,000 pursuant to a divorce decree which had already been reduced to judgment. Jeffrey’s best case scenario is that a year before his bankruptcy, while the subject of Stacy’s motion for contempt and under pressure to pay a court-ordered judgment to her, he transferred his primary assets to a friendly unsecured creditor, his mother, rather than pay his ex-wife, a judgment creditor. He chose to pay the unliquidated, unsecured debt owed to his mother over payment of any of the remaining debt to his ex-wife and in the process essentially destroyed his own ability to make the

payments to his ex-wife by drastically reducing his ability to generate the income he previously had through the used car business.

Since that time, Jeffrey conveniently continues to live on the property that Elaine now owns, and she pays him a salary which allows him to live but is low enough that he will not have to pay Stacy much, if anything, in the bankruptcy. *See, e.g., In re Kirk*, 465 B.R. at 302-03; *In re Kurtz*, 238 B.R. 826, 830-31 (Bankr. D.N.D. 1999). The claims bar date in the main case has passed, and the only outstanding claims other than Stacy's \$141,471 claim are two credit card debts totaling \$2,176.56. Stacy is in essence Jeffrey's only creditor, and he has chosen to file chapter 13, which allows for a discharge of non-DSO marital obligations under § 1328(a)(2), rather than chapter 7, which would not allow such a discharge under § 523(a)(15). *See, e.g., In re Kirk*, 465 B.R. at 302-03; *see also In re Chung*, 2014 WL 11279465, at *9. The plan is only for the minimum applicable commitment period of 36 months.

“A Chapter 13 debtor should not be permitted to nullify major provisions of 11 U.S.C. § 523 merely by paying an insignificant portion of the nondischargeable debt.” *In re Sellers*, 285 B.R. at 773 (citation and quotation marks omitted). That is exactly what Jeffrey proposes to do here. *See, e.g., In re Dickinson*, No. 02-40260, 2002 WL 34705755, at *5 (Bankr. S.D. Ga. June 26, 2002). After hearing testimony and observing the witnesses, including Jeffrey, his mother Elaine, and Stacy, the court finds that Jeffrey's primary motivation for his proposed chapter 13 plan is to avoid the terms of the divorce decree and the Washington County Circuit Court's contempt order. *See, e.g., id.* The court also finds believable Stacy's testimony that Jeffrey told her that he would make sure that she never got anything, which testimony sheds further light

both on Jeffrey's motivation for filing this bankruptcy and proposed plan and on his pre-petition conduct in transferring assets to his mother Elaine. *See, e.g., In re Sellers*, 285 B.R. at 774-77.

As noted above, Jeffrey conveyed both the used car business and real estate, which included both his residence and the car lot buildings, to his mother Elaine. Although the valuation evidence was less than rock-solid, it appears likely that Elaine received in repayment of her debt more than she would have in a hypothetical chapter 7, making the transfer potentially preferential under Bankruptcy Code § 547(b) if within one year of the bankruptcy. *See, e.g., In re Sellers*, 285 B.R. at 774 (“a finding of good faith requires that a debtor's conduct, both pre-filing and post-filing, must evidence a desire to pay debts to the best of the debtor's ability”); *In re Chung*, 2014 WL 11279465, at *9 (good faith consideration may include consideration of “the debtor's treatment of creditors both before and after the petition was filed”) (citation and quotation marks omitted). Aside from the alleged debt forgiveness, the only hard evidence of the consideration Elaine paid was the total of \$177,839.26 in mortgage debt to Ocwen and Capstone. The contract for sale (Def. Ex. 5) also called for her to pay off about \$12,000 in credit card debt and about \$50,000 in IRS debt, but there was no evidence documenting that she did so. Jeffrey's IRS debt has been reduced to zero in the main case. (*See* claim no. 3).

It is difficult to value the property Jeffrey transferred to Elaine, especially when a large part of the used car business value is in its fluctuating customer receivables. The two appraisals admitted into evidence (Def. Exs. 8, 12) overlap, but neither include both the value of the business and all the real estate. The real estate appraisal (Def. Ex. 8) valued the real estate, including the residence and car lot buildings, at \$160,000. Backing out the car lot buildings valued at \$20,000 in that appraisal results in a rough value of about \$140,000 for the underlying

dirt and the house. Using the 2015 value of \$440,000 of the business from the other appraisal (Def. Ex. 12) and adding \$140,000 for the house and real estate that were not included in that valuation yields a combined value of \$580,000. That rough estimate may be very high for November 2015 because of the decline in the business, but even cutting it 50% yields a value substantially higher than the consideration it was proven Elaine paid other than the alleged debt forgiveness.

The timing of the transfer(s) to Elaine is also not clear. According to Jeffrey, his mother and he signed the “agreement for sale of business” on or about November 12, 2015, just over a year before the November 18, 2016 petition date. However, this agreement (Def. Ex. 5) was a contract for sale of the business, not the actual conveyance document. After the first hearing, the court requested (doc. 109 in the main case) that the parties furnish a copy of all conveyance documents. Jeffrey’s response at the next hearing was that there were none: Jeffrey had dissolved JB Automotive, Inc. and Elaine was operating the business as a DBA. However, the court presumes that there must have been at least a deed conveying the real estate, since it is not listed on Jeffrey’s schedules. If Jeffrey conveyed the real estate to his mother after November 18, 2015, the conveyance would be within the one year insider preference period of Code § 547(b)(4)(B). Nonetheless, the court is not reaching the issue of whether Jeffrey’s transfer of assets to Elaine was potentially preferential or fraudulent except in the context of good faith under § 1325.³

³ As noted above, the adversary proceeding is not postured correctly to set aside a preferential or fraudulent transfer because Stacy Beesley never named Elaine Beesley as a defendant.

Taking into account the totality of the circumstances, the court finds that the chapter 13 plan, which would provide a very minimal or no distribution to what is in essence his sole creditor, is not proposed in good faith. *See, e.g., In re Sellers*, 285 B.R. at 777. The court declines to establish a dollar figure which Jeffrey would have to pay into the case to establish good faith, since that amount depends on the DSO versus property settlement question which the court is sending back to the circuit court. In the meantime, the undersigned strongly encourages the parties to attempt mediation or other settlement discussions again and to contact the court if it can help facilitate that process in any way.

Conclusion

To the extent the court has not specifically addressed any of the parties' arguments or evidence, it has considered them and determined that they would not alter the results reached herein.

For the reasons set out above, the court orders as follows:

1. Creditor Stacy Beesley's objection to confirmation (doc. 32 in the main case) is sustained.
2. Jeffrey Beesley's objection (doc. 79 in the main case) to Stacy Beesley's claim no. 2 is sustained and the claim is disallowed.
3. Jeffrey Beesley's objection (doc. 78 in the main case) to Stacy Beesley's claim no. 4 is set for status on March 7, 2018, at 8:30 a.m.
4. Jeffrey Beesley's motion (doc. 48 in the adversary proceeding) to dismiss the fraudulent transfer claim alleged in paragraph 2 of the prayer for relief in the amended complaint is granted. That claim is dismissed without prejudice.
5. The adversary proceeding is stayed pending a determination by the Circuit Court of Washington County, Alabama as to whether any of the "property settlement" in the divorce decree entered between the debtor Jeffrey Beesley and his ex-wife Stacy Beesley should be considered a domestic support obligation and, if so, in what amount. The court will enter a separate order in the main case granting limited relief

from stay. Stacy Beesley should promptly notify the court in writing of the circuit court's determination within seven days of that decision so that this action may proceed accordingly.

6. The chapter 13 case and the related adversary proceeding are set for status on March 7, 2018, at 8:30 a.m.

Dated: January 8, 2018


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE