

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

IN RE:)
)
JEFFREY TURNER,) Case No. 15-02941
)
Debtor.)

CORRECTED ORDER OVERRULING IN PART OBJECTION TO CONFIRMATION

This matter is before the Court on the objection by creditor Belinda Turner to confirmation of the debtor's amended plan (doc. 18). 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)(L), and the Court has authority to enter a final order.

The parties agree that Belinda Turner has a prepetition domestic support obligation (DSO) claim which must be paid in full under the debtor's plan pursuant to Bankruptcy Code § 1322(a)(2). However, the parties disagree as to whether the debtor can provide for his attorney's fees to be paid before the prepetition DSO claim or on a sharing basis to which the DSO creditor objects.

Domestic support obligations are a priority claim under Bankruptcy Code § 507(a)(1), and Chapter 13 debtor's attorney's fees are a priority claim under § 507(a)(2).¹ Since the DSO has a higher priority than the attorney's fees under § 507, does that mean DSO gets paid first? The answer depends upon the chapter under which the bankruptcy case is proceeding. In a

¹ Section 507(a)(2) includes administrative expenses allowed under § 503(b). Code § 503(b)(2) grants administrative expense status to compensation awarded under § 330(a). Code § 330(a)(4)(B) allows the court to award compensation for attorneys representing Chapter 13 debtors.

Chapter 7 case, Code § 726(a)(1) requires that the priority claims be paid in order of listing. In a Chapter 11 case, administrative expenses under § 507(a)(2), which include debtor's counsel's fees, must be paid in full as of the effective date pursuant to § 1129(a)(9)(A); most other priority claims in a Chapter 11 can be paid over time pursuant to § 1129(a)(9)(B).

But a special provision applies to debtor's attorney's fees in Chapter 13 cases.

Bankruptcy Code § 1326(b) provides: "Before or at the time of each payment to creditors under the plan, there shall be paid (1) any unpaid claim of the kind specified in section 507(a)(2) of this title" [Emphasis added.] This provision thus allows, but does not require, a Chapter 13 plan to provide for debtor's attorney's fees to be paid before other claims, including DSO claims.

The Court adopts the reasoning of other cases in Alabama which have held that, under § 1326(b), DSO priority claims are not required to be paid before debtor's attorney's fees in Chapter 13 cases. In re Bouler, No. 2:06-cv-473, 2008 U.S. Dist. Lexis 5131 (M.D. Ala. January 24, 2008); In re Brown, No. 2:06-cv-472, 2008 U.S. Dist. Lexis 5137 (M.D. Ala. January 24, 2008); In re Vinnie, 345 B.R. 386 (Bankr. N.D. Ala. 2006); and In re Sanders, 341 B.R. 47 (Bankr. N.D. Ala. 2006).

The objection to confirmation filed by creditor Belinda Turner on the basis that she is entitled to a higher alternative minimum payment is thus overruled. The Court is not reaching the issue of her objection based on the debtor's alleged failure to pay postpetition alimony, which will be heard the next time the case is set for confirmation.

Dated: May 3, 2016


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE