

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

In re:

DAVID E. GRAVLIN, JR.,

Debtor

)
)
)
)
)
)
)

Chapter 13

Case No. 17-41714-CJP

ORDER ON OBJECTIONS TO CLAIMS 9 AND 10

Before the Court are the objections filed by the debtor David E. Gravlin, Jr. (“Gravlin” or the “Debtor”) to proofs of claim 9 [Doc. No. 25] (the “Claim 9 Objection”) and 10 [Doc. No. 26] (the “Claim 10 Objection,” together with the Claim 9 Objection, the “Objections”)¹ filed by his former spouse Lora Fickett (“Fickett”) as domestic support obligations (“DSOs”) entitled to priority under 11 U.S.C. § 507(a).² The Debtor only objects to the priority status of proofs of claim 9 and 10, (collectively, the “Claims”), not the amounts Fickett is seeking. This Order constitutes the Court’s findings of fact and conclusions of law as contemplated by Fed. R. Bankr. P. 7052, as made applicable to these matters pursuant to Fed. R. Bankr. P. 9014(c).³ In reaching its determination, the Court considered the Objections; the Claims; the demeanor and credibility

¹ The Debtor also objected to proofs of claim 6 and 7, as to which the parties reached agreement prior to trial and the Court entered separate orders establishing nondischargeable debts for child support in the amount of \$61,642.78 with respect to Claim 6 [Doc. No. 213] and for attorney’s fees in connection with enforcement of child support obligations in the amount of \$8,367.28 with respect to Claim 7 [Doc. No. 212].

² Unless otherwise noted, all section references herein are to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the “Bankruptcy Code”).

³ To the extent any item in this Order is labeled as a finding of fact, but is actually a conclusion of law (or the opposite), it is adopted as such.

of the witnesses who testified at the trial held regarding the Objections;⁴ all exhibits which were admitted into evidence; and the oral arguments of Fickett, who capably acted pro se, and counsel to the Debtor. As will be discussed, the Court was presented with certain conflicting evidence of intent regarding equalization of the relative income of the Debtor and Fickett at the time of the divorce. After carefully considering the documentary evidence and testimony, the Court concludes that Fickett has not met her burden to establish that the debts were in the nature of alimony, maintenance, or support, constituting priority DSOs, except with respect to a portion of Claim 10.

A. The Claims

Claim 9 filed is in the amount of \$89,000, which Fickett asserts is a portion of the unpaid balance owed by the Debtor on account of a buyout of Fickett's 50% interest in Gravlin Masonry, Inc. (the "Business") negotiated by the parties through a mediator and incorporated into a separation agreement dated October 17, 2011 (the "Separation Agreement").⁵ See Separation Agreement ("Sep. Agr."), Ex. I. The Debtor does not dispute the amount of the claim, but disputes that such obligation constitutes a DSO as asserted by Fickett.

In Claim 10, Fickett asserts claims aggregating \$25,918.86, consisting of \$15,000 of unpaid payments relating to the buyout of her interest in the Business that were the subject of a contempt order of the Middlesex Probate and Family Court (the "Probate Court") dated April 16, 2014 (Ex. 6) (and are not included in Claim 9), monthly mortgage payments and expenses

⁴ Together with the Objections, the Court also heard Fickett's objection to confirmation of the Debtor's plan [Doc. No. 16] and motion to dismiss case [Doc. No. 68], which will be the subject of a separate order.

⁵ The Separation Agreement was admitted into evidence as Exhibit 2. Reference to language in the Separation Agreement will be made to the specific lettered exhibit to that agreement where the language appears, rather than to Exhibit 2, *e.g.*, Sep. Agr., Ex. H, ¶7.

associated with real property located in Maine that came due or accrued after the date of the Separation Agreement in the amounts of \$6,745.73 and \$1,924.45, respectively, which were also the subject of a contempt order of the Probate Court dated April 16, 2014 (Ex. 6), and accrued interest provided in a Probate Court order dated July 29, 2017. Exhibit H of the Separation Agreement provides that the Debtor was solely responsible to make mortgage payments with respect to the Maine Property as part of an equitable division of the couple's marital real estate assets and that the parties would divide other expenses relating to that property. Sep. Agr., Ex. H, ¶ B(3). Again, the Debtor does not dispute the amounts asserted in the Claims, but disputes that such obligations constitute a DSO as asserted by Fickett.

B. Legal Standard

Pursuant to Federal Rule of Bankruptcy Procedure 3001(f), a proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f); *see also Askenaizer v. eCast Settlement Corp. (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009). “In order to rebut the *prima facie* evidence, the objecting party must produce ‘substantial evidence,’ and, if the objecting party produces substantial evidence in opposition to the proof of claim, rebutting the *prima facie* evidence, the burden shifts to the claimant to establish the validity of its claim.” *In re Hayes*, 393 B.R. 259, 269 (Bankr. D. Mass. 2008). “The party seeking to have a debt determined a DSO and thus nondischargeable bears the burden of proving that the obligation is in the nature of support.” *Smith v. Pritchett (In re Smith)*, 586 F.3d 69, 73 (1st Cir. 2009).

Section 507(a) provides that certain claims shall have priority status, including domestic support obligations to a former spouse. 11 U.S.C. § 507(a)(1). A DSO is defined in the Bankruptcy Code, in relevant part, as “a debt . . . owed to or recoverable by a . . . former spouse .

. . . in the nature of alimony, maintenance, or support of such . . . former spouse, . . . without regard to whether such debt is expressly so designated . . . 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 a separation agreement, divorce decree, or property settlement agreement . . .” 11 U.S.C. § 101(14A). DSO claims are afforded special treatment in bankruptcy. *Smith*, 586 F.3d at 73. In Chapter 13 cases, § 1322(a)(2) requires a plan to provide for full payment of all priority claims under § 507; thus, as DSOs are entitled to priority treatment, they must be paid in full during and under a Chapter 13 plan and are not dischargeable. 11 U.S.C. §§ 523(a)(5), 1322(a)(2), and 1328(a)(2).

The United States Court of Appeals for the First Circuit has held that “for an obligation to a former spouse to be considered a DSO, it must actually be in the nature of support.” *Smith*, 586 F.3d at 73. This determination is controlled by federal law. *Id.* In analyzing whether an obligation is in the nature of support, the First Circuit declined to adopt a specific multi-factor test and instead held that a court should analyze the totality of the circumstances of a particular case. *Id.* at 74.

“Factors that other courts consider in making a determination as to whether a particular obligation is in the nature of support include: (1) language and substance of the state court’s order and thus the characterization of the payment in the decree and the context in which the disputed provisions appear; (2) the parties’ financial circumstances at the time of the order and thus whether the recipient spouse actually needed spousal support at the time of the divorce; (3) whether an assumption of a debt or creation of an obligation has the effect of providing the support necessary to ensure that the daily needs of the former spouse and any children of the marriage are met and to ensure a home for the former spouse and any minor children; (4)

whether the parties intended to create an obligation of support; (5) the function served by the obligation at the time of such order; (6) whether the labels given to the payments of the parties may be looked at as evidence of the parties' intent; (7) whether there was an imbalance in the relative income of the parties at the time of the divorce decree and thus whether the payment appears to balance disparate income; (8) whether the obligation terminates on the death or remarriage of either spouse; (9) whether the payments are made directly to the recipient spouse in a lump sum [or] are paid in installments over a substantial period of time; (10) whether the payments are to be made directly to the former spouse or to a third party.” *In re Gambale*, 512 B.R. 117, 123–24 (Bankr. D.N.H. 2014) (citing *In re Efron*, 495 B.R. 166, 176 (Bankr. D.P.R. 2013)).

“A written agreement between the parties is persuasive evidence of intent.” *Id.* at 124 (citations omitted). “Normally, the characterization in the agreement controls if it clearly shows that the parties intended the debt to reflect either support or a property settlement.” *Id.* (citations omitted). However, because the focus is on intent, “[t]he label applied to the obligation by the court or the parties is not necessarily controlling for Bankruptcy Code purposes.” *Smith*, 586 F.3d at 73–74. To discern intent, courts may consider several factors, “including the language used by the divorce court and whether the award seems designed to assuage need, as discerned from the structure of the award and the financial circumstances of the recipients.” *Id.* at 74. Additionally, “[a] trial court may look beyond the separation agreement to discern the parties’ relative financial circumstances at the time of the divorce as evidence of the intent of the parties.” *Id.*

C. Analysis

Here, Fickett filed the Claims using the Official Form for proofs of claim and provided sufficient supporting documentation to constitute *prima facie* evidence of claims in the amounts of \$89,000 and \$25,918.86, respectively. The Debtor does not dispute the amount of either of the Claims, but has sufficiently rebutted the *prima facie* validity of the claimed priority of the asserted DSOs by introducing into evidence the Separation Agreement characterizing those obligations as part of a property division and through testimony stating that the Debtor's intent was consistent with the provisions of the Separation Agreement. As such, the burden shifts back to Fickett to prove by a preponderance of the evidence that the obligations are "in the nature of support" to be considered a DSO.

1. The Separation Agreement

The starting point in determining the parties' intent is examining the language of the Separation Agreement. The Separation Agreement provides a broad waiver of alimony:

Taking into consideration all presently existing relevant facts and circumstances, including but not limited to the financial circumstances of the parties, the Husband and Wife each permanently waive their right to alimony and/or spousal support from the other, past, present, and future. Therefore no provision for alimony or other spousal support of either Party is made herein.

Sep. Agr., Ex. C. Similar language is contained in paragraph 7 of the Separation Agreement's Statement of Facts. Sep. Agr., Statement of Facts, ¶ 7. The language of this provision could not be more clear, but the weight to be given to this factor is less obvious. The parties were not represented in negotiating and drafting the Separation Agreement; instead, the parties utilized the services of a mediator. There is no evidence that the Probate Court scrutinized the Separation Agreement or made any findings when it entered the divorce decree incorporating the terms of the Separation Agreement.

Exhibit I of the Separation Agreement provides for the division of the “equity in Gravlin Masonry, Inc. [, which] was acquired during the marriage and is subject to equitable distribution.” Sep. Agr., Ex. I, ¶ 1. At the time of their divorce, the parties each owned 50% of the outstanding and issued shares of the Business. In Exhibit I, the Debtor agreed to “buy out” Fickett’s 50% interest by making payments over 10 years equaling \$120,000. Sep. Agr., Ex. I, ¶ 5. On its face, Exhibit I is labeled and structured as a property division. Sep. Agr., Ex. I. Paragraph A(5) of Exhibit I recites that “[t]o determine the value of the Wife’s 50% interest, the parties rely upon the Wife’s income averaging calculation” Sep. Agr., Ex. I, ¶ A(5). There is no reference in the Separation Agreement to what that is or how that calculation established the value of Fickett’s interest. As will be discussed below, the extrinsic evidence on this point is disputed.

Exhibit H of the Separation Agreement addresses division of the couple’s interests in real estate. Sep. Agr., Ex. H. At the time of divorce, Fickett and the Debtor owned three properties: property located in Littleton, Massachusetts (the “Marital Home”), a vacation home in Maine (the “Maine Property”), and property in Lunenburg, Massachusetts (the “Lunenburg Property”). *See* Sep. Agr., Ex. H. The Separation Agreement states that the intention of the parties was that the Debtor would receive 27% of the value of the equity in all marital real estate and Fickett would receive the remaining 73% of the value. Sep. Agr., Ex. H, ¶¶ B, C(1). The Separation Agreement provides that Fickett was to retain the Marital Home, and the parties were to sell the Maine Property, 100% of the net proceeds from which would be paid to Fickett. The Debtor was to retain the Lunenburg Property, but, within one month of the sale of the Maine Property, was to refinance the Lunenburg Property and pay Fickett such amount as would be necessary for Fickett to receive 73% of the net equity in the three properties. Sep. Agr., Ex. H. If he could not

refinance to make that payment, the Debtor was to execute a promissory note, grant Fickett a mortgage, and sell the Lunenberg Property within a year to pay off that obligation. Sep. Agr., Ex. H, ¶ C(3). The parties stipulated in Exhibit H of the Separation Agreement that the value of the equity in the Marital Home was \$59,000 and the value of the equity in the Lunenberg Property was \$235,000; they then illustrated the calculation of the payment that would be due to Fickett assuming a hypothetical sale value for the Maine Property. Sep. Agr., Ex. H, ¶ C(1). In that illustration, to give effect to the agreed formula, the Debtor would have received \$86,020 less than if the marital real property was divided evenly. Sep. Agr., Ex. H, ¶ C(1). Ultimately, the Maine Property sold “at a loss” and, based on the Debtor’s testimony, Fickett appears to have received only approximately \$110,000 in net proceeds from the sale by the Debtor of the Lunenberg Property.⁶

Because neither party was represented by counsel in drafting the Separation Agreement, it is less likely that Fickett and Gravlin completely understood the import of the language used in the Agreement. Consequently, while the headings and terms of the Separation Agreement are relevant to determining the parties’ intent, they are not controlling and the Court gives them less weight given the circumstances of the negotiations between the parties. *See Quinn v. Quinn*, Case No. 13-04059, (Boroff, J.) Transcript of Hearing [Doc. No. 34] at 78–84, *aff’d*, 528 B.R. 203, 209 (D. Mass. 2015). The Debtor testified that he did not read or understand certain provisions of the Separation Agreement, and Fickett indicated that she incorrectly believed that Paragraph 18 of the Separation Agreement would have the effect of making all obligations in

⁶ Fickett testified that the Debtor took an improper \$50,000 mortgage loan on the Lunenberg Property that reduced the sale proceeds paid to Fickett. Fickett did not file a Proof of Claim asserting such a claim.

that agreement non-dischargeable in bankruptcy. Sep. Agr., Statement of Facts, ¶ 18.⁷ As contemplated by *Smith*, 586 F.3d at 73–74, this Court must analyze the totality of the circumstances present at the time of divorce in order to discern the parties’ intent; the factors described above inform that determination.

2. Debt Relating to Buyout of Fickett’s Interest in Gravlin Masonry, Inc.

As to the debt arising from the buyout obligations asserted in Claim 9 and a portion of Claim 10, Fickett testified that the Business “buy out” was intended to be a support obligation to compensate her for a disparity in income that existed at the time of the divorce and that she waived alimony in reliance of the buyout payments provided for by Exhibit I. In support of her testimony regarding the parties’ intent, Fickett points to the income equalization language of paragraph A(5) of Exhibit I in the Separation Agreement and Fickett’s “income averaging calculation” admitted as Exhibit 4 at trial, which she testified was a calculation used by the parties and the mediator at the time that they were negotiating the Separation Agreement and shows a “spousal support” line item equal to \$1,000/month in calculating an adjusted net income for each of the parties. Ex. 4. The strength of this evidence is diminished by the Debtor’s testimony that he never saw Exhibit 4 before the bankruptcy case and the heading on Exhibit 4, which was highlighted through testimony of the Debtor and appears to indicate that the document was prepared *after* the parties entered into the Separation Agreement or after the divorce.⁸ Fickett did not address that discrepancy at trial or attempt to clarify her testimony.

⁷ This provision provides: “Notwithstanding any other provisions of this Agreement, it is hereby expressly stated by the parties that this Agreement and the relative obligations of the parties hereunder shall survive the bankruptcy of either or both of the parties to the fullest extent allowed by the law.”

⁸ See Ex. 4. At the top left of the exhibit within the border of a table there is a notation: “At time of Divorce, October 17, 2011.”

Fickett is a Certified Public Accountant and demonstrated a greater level of financial sophistication than the Debtor. It may be that an earlier form of this document was used at the time of the negotiations or that the calculations reflect Fickett's intent in negotiating the agreement, but this is not supported by any evidence in the record other than inferences that could be made from Fickett's testimony and the reference in Exhibit I of the Separation Agreement to "Wife's income averaging calculation."

Consistent with Fickett's testimony, the amount of the payments do appear to roughly balance the difference in income at the time of divorce as reported on the financial statements dated October 17, 2011 submitted by the parties in connection with their divorce. Ex. 3. Fickett's income was \$1,250 a week while the Debtor's income was \$2,500 a week.⁹ Ex. 3. Notably, the payments are structured over a set period over time, not in a lump sum or offset by other property division. Further, the statement in paragraph A(5) of Exhibit I that "[t]o determine the value of the Wife's 50% interest, the parties rely upon the Wife's income averaging calculation" invites an inference that the structure of the property division really had nothing to do with valuing the business, but was an effort to provide support to Fickett for the period of the buyout. Sep. Agr., Ex. I, ¶ A(5). However, Exhibit 4 was discredited, and no evidence, other than Fickett's disputed testimony, was introduced to explain the reference to the "Wife's income averaging calculation." Valuation models for business typically include a determination of net income or cash flow of a business against which to apply a multiple. In drafting the Separation

⁹ The Debtor testified that the income amounts used at the time of divorce may not have been accurate. The Debtor claims to have later discovered that his income was less than reported because he had relied on Fickett's bookkeeping, but what is relevant is the Debtor's belief and intent at the time of the Separation Agreement, so that testimony has not been given weight by the Court.

Agreement, it is unclear what the mediator meant by the reference. While Fickett testified what she intended the reference to mean, the Debtor's testimony directly conflicted.

The Debtor testified that he had not seen the income calculation chart (Ex. 4) until the trial in this Court and that he only agreed to the business's valuation and payout in the context of negotiations over the value of Fickett's interest. He testified that Fickett originally proposed a valuation of \$320,000 (the testimony was unclear as to whether that was a valuation of the business or her interest) and that there was no way he could ever pay that. He stated that he and Fickett negotiated and agreed to value Fickett's interest at \$120,000. The Debtor testified that even though that number was an "absurd number," he nonetheless hoped he could pay it back in time. He added that he did not ever understand the payments to be alimony and that there was "not ever" a discussion with Fickett about the business buyout being alimony or support payments. Other factors also cut against the business buyout payments being viewed as a DSO. For example, the payments do not terminate upon Fickett's death or remarriage or upon her earning an amount equal to the Debtor. *See* Sep. Agr., Ex. I., ¶ 6. Moreover, in addition to the alimony waiver language of the Settlement Agreement and the characterization of the payments as part of a property division in the agreement, paragraph A(6) of Exhibit I provides that, for tax purposes, the payments are not to be considered as alimony or separate maintenance payments that would constitute taxable income to Fickett and would be deductible by the Debtor. Sep. Agr., Ex. I., ¶ A(6). Neither party testified or provided other evidence with respect to the tax treatment provided in the Separation Agreement, which is consistent with a property division.

Faced with conflicting evidence regarding the intent of the parties, the Court inquired of the Debtor how he could have believed that, after a marriage of more than 10 years, where Fickett had taken time away from her career to remain at home with the couple's young children,

it was reasonable that the Separation Agreement did not provide for some support to equalize what the parties believed was a material difference between the Debtor's income and Fickett's income at the time of divorce. The Debtor testified that there had been no contemplation of the Business buyout making up for waived alimony or to provide support. Instead, the Debtor testified that he intended that the real estate division, where he would receive only 27% of the value of the perceived equity in the marital properties, would provide support for his children to move forward following the divorce. The Debtor added that he also agreed to pay more in child support than the applicable guidelines would have required. The Debtor further testified that Fickett was earning up to two-thirds of what he was earning and that he "gave" Fickett all of the equity in the marital properties to ensure that his children would have "what they wanted" and had money to "survive."

After considering all of the evidence and the totality of the circumstances, the Court cannot find that Fickett has met her burden of demonstrating by a preponderance of the evidence that the Business buyout debts asserted in Claim 9 and a portion of Claim 10 were intended by the parties to be DSOs as contemplated by § 101(14A). In the end, the Court was presented with evidence of two plausible interpretations, one of which is more consistent with the terms of the Separation Agreement. As such, the Claim 9 Objection is sustained in its entirety and the Claim 10 Objection is sustained in part regarding the Business buyout debts asserted in those Claims, which will be allowed as general unsecured claims, not entitled to priority under § 507(a)(1), and which may be discharged pursuant to § 1328(a)(2).

3. Debt Relating to the Maine Property

The remaining portion of Claim 10 consists of certain mortgage payments and expenses associated with the Maine Property that accrued after the date of the Separation Agreement in the

amounts of \$6,745.73 and \$1,924.45, respectively, which were the subject of a contempt order of the Probate Court dated April 16, 2014 (Ex. 6), and accrued interest provided in a Probate Court order dated July 29, 2017. Claim 10, Part 4. Fickett testified that she paid the Debtor's portion of expenses and made mortgage payments that the Debtor was required to make under the Separation Agreement. *See* Sep. Agr., Ex. H, ¶ A(3). Exhibit H of the Separation Agreement provides that the Debtor would be solely responsible to make the mortgage payments that are referenced in Claim 10. Sep. Agr., Ex. H, ¶ A(3). Again, the Debtor does not dispute the amounts asserted in the claim, but disputes that such obligations constitute DSOs as asserted by Fickett.

While the language of the Separation Agreement appears to contemplate that the Debtor's obligation to make these payments constitutes a division of liabilities associated with a property settlement, given the testimony of the Debtor from which the Court infers his intent to provide a benefit to Fickett from the perceived equity in their real estate assets that would make up for any income disparity, the other evidence presented, and the totality of the circumstances, the Court determines that these obligations were intended for the maintenance and support of Fickett and constitute DSOs as contemplated by § 101(14A). As such, \$9,502.20, constituting that portion of Claim 10 relating to the Maine Property expenses and mortgage payments paid by Fickett with allocated pre-petition accrued interest, will be allowed as a priority claim under § 507(a)(1), which may not be discharged pursuant to § 1328(a)(2). The direct relationship between these expenses and the reduction in the economic benefit received by Fickett from the marital real estate assets because the Debtor failed to pay these amounts is sufficient to conclude that the debts constitute DSOs.

While there was testimony regarding the Debtor improperly encumbering the Lunenberg Property, which may have resulted in a decrease in the amount of net proceeds paid to Fickett, no associated debt was asserted as part of any proof of claim and no evidence was presented as to how the calculation of amounts due under the formula provided in Exhibit H(C)(1) of the Separation Agreement may have been affected. Further, no evidence was presented that any mortgage obligation of the Debtor with respect to the Lunenberg Property violated the Separation Agreement or resulted in a debt owed to Fickett. The Claim 10 Objection is overruled in part with respect to the Maine Property obligations the Debtor should have paid.

D. Conclusion

For the reasons above, the Court (i) sustains the Debtor's Claim 9 Objection and disallows Claim 9 as a priority claim, allowing it as a general unsecured claim in the amount of \$89,000, and (ii) partially sustains the Debtor's Claim 10 Objection and Claim 10 will be allowed in the total amount of \$25,918.86, consisting of a priority unsecured claim of \$9,502.20, and a general unsecured claim of \$16,416.66. The Court has proportionally allocated the prepetition interest component of Claim 10.¹⁰

Dated: March 6, 2020

By the Court,



Christopher J. Panos
United States Bankruptcy Judge

¹⁰ The basis for the prepetition interest component of Claim 10 was the Probate Court's orders that are attached as exhibits to that proof of claim. The Probate Court calculated \$2,248.68 interest on both the \$15,000 portion and the \$8,670.18 portion of the claim, and the Court has proportionally allocated that interest amount to the allowed non-priority claim of \$15,000 and the allowed priority claim of \$8,670.18 in the amounts of \$1,416.66 and \$832.02, respectively.