SO ORDERED,

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: September 29, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: GARRETT L. NECAISE & CYNTHIA A. NECAISE	**CASE NO. 11-52718-KMS**
DEBTORS	**CHAPTER 7**
THE ESTATE OF MILDRED R. NECAISE, DECEASED THROUGH ADMINISTRATOR, JOHN G. MCDONNELL, ESQ.; GARLAND JOSEPH NECAISE; AND GARRIE PATRICK NECAISE	**PLAINTIFFS**
V.	**ADV. PRO. NO. 12-05011-KMS**
GARRETT LYNN NECAISE AND CYNTHIA A. NECAISE	**DEFENDANTS**

ORDER ON COMPLAINT OBJECTING TO DISCHARGEABILITY

This matter came before the Court for trial on June 8, 2015, (the "Trial") on the Complaint Objecting to Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2), (4) and (6)

(the "Complaint"), (Adv. Dkt. No. 1),[1] filed by The Estate of Mildred R. Necaise, deceased, through administrator, John G. McDonnell, Esq.; Garland Joseph Necaise; and Garrie Patrick Necaise (collectively the "Plaintiffs"), and the Answer to Complaint Objecting to Discharge, (Adv. Dkt. No. 9), filed by debtors-defendants Cynthia A. Necaise, and Garrett L. Necaise (collectively "Debtors"). At Trial, David L. Lord represented the Debtors and William P. Wessler and Channing Powell represented the Plaintiffs. The Plaintiffs submitted 16 exhibits: 12 were admitted either by stipulation or with no objection from the Defendants; 3 were withdrawn; and the Court reserved ruling on the remaining exhibit.[2] The Defendants submitted 16 exhibits: 13 were submitted either by stipulation or with no objection from the Plaintiffs, and the Court reserved ruling on the other 3.[3] The Court invited the parties to submit post-trial briefs regarding whether the Defendants are entitled to assert setoff as a defense. Plaintiffs submitted their brief on June 22, 2015. (Dkt. No. 88). The Defendants did not submit a brief. Having considered the evidence, the Court finds that certain debts of Garrett L. Necaise are non-dischargeable for the reasons set forth below.[4]

I. JURISDICTION

The Court has jurisdiction of the parties to and the subject matter of this Adversary pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

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[1] Unless stated otherwise, citations to the record are as follows: (1) citations to docket entries in the adversary proceeding, Adv. Proc. No. 12-05011-KMS, are cited as "(Adv. Dkt. No. ___)"; and (2) citations to docket entries in the main bankruptcy case, Case No. 11-52718-KMS, are cited as "(Dkt. No. ___)".

[2] Exhibits P-1, P-2, P-5–P-8, P-10–P-13, P-15, and P-16 were all admitted at Trial. P-3, P-4, and P-9 were withdrawn. The Court reserved ruling on P-14, which is an itemized statement of attorney Channing Powell's work performed during the trial in Chancery court.

[3] D-1, D-2, D-4, D-6–D-11, and D-13–D-16 were all admitted at Trial. D-3–D-5, and D-12 were not admitted into evidence. It was unnecessary for the Court to rule on their admittance into evidence because the Debtors did not seek to use them during Trial.

[4] Pursuant to Federal Rule of Civil Procedure 52, made applicable to this Adversary by Federal Rule of Bankruptcy Procedure 7052, the following constitutes the findings of fact and conclusions of law of the Court.

II. FINDINGS OF FACT

A. Background

This matter concerns the dischargeability of Plaintiffs' state court judgment against the Debtors.[5] The Chancery Court of Harrison County, Mississippi, (the "Chancery Court") determined that the Debtors received money and property as a result of undue influence that they exercised over Mildred Necaise, Garrett Necaise's mother. (Adv. Dkt. No. 85-6, Ex. 11 at 7, ¶ 22). This Court previously entered a memorandum opinion holding that the factual findings underlying the Chancery Court judgment are sufficient to establish the requirements of 11 U.S.C. §523(a)(6) as against Garrett Necaise. (Adv. Dkt. No. 50). But because the Chancery Court did not make specific factual findings regarding the insurance policies in question, the transfers from the bank accounts, or any personal property alleged to have been transferred to the Debtors, this Court could not make a final determination regarding the exact amount of the debt that is nondischargeable.[6]

On November 22, 2011, Garrett and Cynthia Necaise filed a voluntary petition for relief

[5] The state court judgment at issue was not appealed and is a final judgment.

[6] The opinion of the Chancery Court is devoid of relevant facts regarding the alleged debt, including but not limited to the following:

1. The date the confidential relationship between Mildred Necaise and the Debtors arose.
2. The name of any insurance company purporting to provide life insurance on the life of Mildred Necaise and the amount of said policy.
3. The beneficiary designations on any insurance policies.
4. Identification by bank and/or account number of the alleged joint bank accounts with Garrett Necaise. (p.2).
5. The date Garrett Necaise was added as a co-owner to any bank account owned by Mildred Necaise. (p. 3).
6. The identification of any personal property alleged to have been transferred to Debtors by Mildred Necaise.

pursuant to Chapter 7 of the Bankruptcy Code.[7] (Dkt. No. 1). In their schedules, Debtors listed the Estate of Mildred Necaise, Gabriel Necaise, Garrie P. Necaise and Garland Necaise as creditors, each with a claim designated as "pending lawsuit." (Dkt. No. 3, at 14–15).[8] On March 9, 2012, the Plaintiffs filed an adversary complaint seeking to have their claims arising from a will contest in the Chancery Court declared non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (4) and (6). (Adv. Dkt. No. 1). After allowing time for discovery, this Court granted partial summary judgment finding that the Plaintiffs, by virtue of the Chancery Court judgment, had established conduct on the part of Garrett Necaise that would create a nondischargeable debt under 11 U.S.C. § 523(a)(6). (Adv. Dkt. No. 50). The Court denied summary judgment regarding any claims against Cynthia Necaise and also held that it could not liquidate the amount of nondischargeable debt based on the record before it. (*Id.*). The parties were allowed to conduct additional discovery; and trial on the issue of the amount of the nondischargeable debt was held on June 8, 2015.

B. The Debts Plaintiffs Claim are Nondischargeable

At trial, the Plaintiffs narrowed the issues to recovery of the following:

1. Life insurance proceeds in the amount of $10,028.49 from a Liberty National Life Insurance Policy ("Liberty National").
2. Life insurance proceeds in the amount of $36,100.80 from an insurance policy with The Guardian Life Insurance Company of America. ("The Guardian").

[7] "Bankruptcy Code" or "Code" refers to the United States Bankruptcy Code located at Title 11 of the United States Code. All Code sections hereinafter will refer to the Bankruptcy Code unless specifically noted otherwise.

[8] Garrett Necaise is the son of decedent Mildred Necaise and Cynthia Necaise is her daughter-in-law. Gabriel Necaise, Garrie Necaise and Garland Necaise are siblings of Garrett Necaise and children of Mildred Neicase. (Adv. Dkt. No. 28-4, at ¶¶ 2-3). Gabriel Necaise joined the Plaintiffs in the Chancery Court (will contest) action but did not join in this adversary proceeding.

3. Withdrawals from an account at Hancock Bank in the amount of $10,500.00 and $6,200.00.

4. Attorney's fees awarded by the Chancery Court in the amount of $12,258.92.

1. The Life Insurance Policies

The evidence at Trial established that Mildred Necaise owned life insurance policies with Liberty National and The Guardian. (Adv. Dkt. Nos. 85-1, Exh. 2; 85-2, Exh. 5). The Liberty National policy was issued on April 1, 1996, in the amount of $10,028.49. (Adv. Dkt. No. 85-1, Exh. 2 at 2). The beneficiaries for this policy as of September 26, 2000, were Garrett L. Necaise, Gary Necaise, Gabriel A. Necaise, and Garland J. Necaise. (*Id.* at 6).[9] But, as of January 4, 2006, Garrett L. Necaise was the sole beneficiary listed for the policy. (*Id.* at 7). On March 1, 2006, Mildred Necaise died. (Adv. Dkt. No. 85-8, Exh. 15). Liberty National issued a check in the amount of $10,028.49 to Garrett L. Necaise on March 27, 2006. (Adv. Dkt. No. 85-1, Exh. 2 at 8–10).

The Guardian policy was in the amount of $36,100.80. (Adv. Dkt. No. 85-2, Exh. 5 at 1). On March 22, 2005, Garrett Necaise and Garrie P. Necaise were listed as the beneficiaries of the policy. (*Id.* at 4). On March 23, 2005, the beneficiary designation was revised to include Gabriel and Garland Necaise. (*Id.* at 5). On January 5, 2006, the beneficiary designation was revised again and Garrett Necaise was listed as the sole primary beneficiary, with Cynthia Necaise listed as the secondary beneficiary. (*Id.* at 6). On May 22, 2006, The Guardian issued a check to Garrett Necaise in the amount of $36,100.80. (*Id.* at 1).

[9] On April 12, 1996, the original beneficiaries were listed as Garrett L. Necaise, Garrie P. Necaise, Gabriel A. Necaise, and Garland J. Necaise. (Adv. Dkt. No. 85-1, Exh. 2 at 4). The only difference between the April 12, 1996 and September 19, 2000 designations appears to be the spelling of Garrie being changed to Gary. *Compare* Exh. 2 at 4 *with* Exh. 2 at 3.

At trial, Garrett Necaise testified that he received the insurance proceeds from The Guardian and Liberty National. He also stated that he did not put those proceeds back into Mildred Necaise's estate, nor did he share the proceeds with his brothers. Finally, Garrett Necaise testified that he no longer had the funds he received from the insurance policies.

2. The Withdrawals from the Hancock Bank Account

Mildred Necaise had an account at Hancock Bank.[10] Garrett Necaise became an owner and authorized user on the account on January 6, 2006. (Adv. Dkt. No. 85-8, Exh. 16 at 14–15). After his mother died, Garrett Necaise made two withdrawals from the Hancock Bank account: one on March 7, 2006, in the amount of $10,500.00 in the form of a cashier's check, and one on March 20, 2006, in the amount of $6,200.00. (Adv. Dkt. No. 85, Exh. 1 at 3). The Chancery Court specifically found that the addition of Garrett Necaise as an owner and authorized user on Mildred Necaise's bank account was the product of undue influence. (Adv. Dkt. No. 85-6, Exh. 11 at 7 ¶ 22). At Trial, Garrett Necaise testified that he made the withdrawals and did not repay any of the money. He also testified that he no longer had the money, and that he spent it—along with the proceeds from the life insurance policies—over time.

3. The Attorney's Fees

The Chancery Court instructed Garrett Necaise to pay attorney's fees in the amount of $12,258.92 as part of the judgment rendered against the Debtors. (Adv. Dkt. No. 85-6, Exh. 11 at 12). This amount represented the $11,508.92 in fees incurred prior to the trial in that case; $700.00 for the time spent at the hearing and to prepare the order in that case; and $50.00 for the cost of the court reporter to transcribe the court's ruling in that case. (*Id.* at 10, ¶ 33). The Chancery Court specifically ordered Garrett Necaise to pay those fees into the decedent's estate,

[10] It is unclear when she opened her checking account at Hancock Bank, but Cynthia Necaise testified at Trial that Mildred Necaise had not had the account for very long.

which would then pay them to M. Channing Powell. (*Id.* at 12). The Plaintiffs assert that those fees are nondischargeable. (Adv. Dkt. No. 1 at 5).

4. The Setoff Defense

The Debtors assert that they are entitled to credit against any judgment in the amount of the expenses that they incurred to pay for the funeral of Mildred Necaise and also for amounts spent for her care prior to her death. The Court allowed Garrett Necaise to testify regarding some of the expenses the Debtors incurred while caring for Mildred Necaise, but reserved ruling as to the admissibility of that testimony as evidence. The Court now finds that that testimony is inadmissible because—as discussed below—under Mississippi law Garrett Necaise is not entitled to a claim for the expenses incurred for the care of Mildred Necaise. The Plaintiffs assert that, because the Debtors never scheduled or asserted any claim against the estate of Mildred Necaise, the Debtors are judicially estopped from asserting a claim for setoff.

III. CONCLUSIONS OF LAW

A. The Plaintiffs' Claims Against Cynthia Necaise

In its Memorandum Opinion and Order, entered on August 28, 2013, the Court denied summary judgment as to any claims the Plaintiffs' asserted against Cynthia Necaise. (Adv. Dkt. No. 50 at 13). The Court specifically stated that "it is unclear, what, if anything, Cynthia Necaise received as a result of undue influence, and therefore, summary judgment is denied as it relates to any claims against her." (*Id.*). The evidence at trial established that—at the time of Mildred Necaise's death—Cynthia Necaise was not listed as a beneficiary under the Liberty National policy, and that she was only listed as a secondary beneficiary on the Guardian policy. (Adv. Dkt. Nos. 85-1, Exh. 2 at 7; 85-2, Exh. 5 at 6). And the checks issued by Liberty National and The Guardian were made payable solely to Garrett Necaise. (Adv. Dkt. Nos. 85-1. Exh. 2 at 8–

10; 85-2, Exh. 5 at 1). Further, the checking charge authorizations for the cash withdrawals in the amounts of $10,500.00 and $6,200.00 were signed by Garrett Necaise. (Adv. Dkt. No. 85, Exh. 1 at 3). Indeed, no evidence was presented indicating that Cynthia Necaise was ever an owner or authorized user of the Hancock Bank account. And, Cynthia Necaise testified that she was unsure how any of the proceeds from the insurance policies or the cash withdrawals from the Hancock Bank account were spent because Garrett Necaise handled the finances, not her. Thus, based on the evidenced adduced at trial, Plaintiffs have failed to establish that Cynthia Necaise owes a debt to them; and therefore, Plaintiffs have failed to establish that they are entitled to a judgment of nondischargeability against her.

B. The Life Insurance Proceeds and Cash Withdrawals

In its Memorandum Opinion and Order, entered on August 28, 2013, (Adv. Dkt. No. 50), the Court found that—based upon the findings of the Chancery Court—the debts resulting from the removal of funds from the Hancock Bank account and the change in beneficiary designations on the life insurance policies were nondischargeable pursuant to § 523(a)(6). (*Id.* at 11). The evidence presented at trial established that Garrett Necaise received $36,100.80 in life insurance proceeds from The Guardian and $10,028.49 in life insurance proceeds from Liberty National. The evidence also established that Garrett Necaise never shared any of these funds with either his siblings or the decedent's estate.

When a change of beneficiary designation is set aside, it is as if the change never occurred, and the prior designation controls the distribution of the proceeds. *See, e.g.*, *In re Conservatorship of Simpson*, 3 So.3d 804, 810 (Miss. Ct. App. 2009) (affirming the lower court ruling finding undue influence and ordering that the proceeds be paid in accordance with the prior designation). The evidence at trial established that the prior designees for both life

insurance policies were Garrett L. Necaise, Garrie Necaise (listed as "Gary Necaise" in the Liberty National policy), Gabriel A. Necaise, and Garland J. Necaise. Thus, the proceeds should have been distributed to all four designees rather than solely to Garrett Necaise, and Garrett Necaise was only entitled to one fourth of the proceeds from each policy. Gabriel Necaise did not join in this nondischargeability action, therefore the debt Garrett Necaise owes to him is not excepted from discharge. *See* 11 U.S.C. § 523(c)(1) ("Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request *of the creditor to whom such debt is owed*, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.") (emphasis added). Accordingly, the amount of nondischargeable debt resulting from the receipt of the insurance proceeds totals $23,064.64: $5,014.24 from the Liberty National policy and $18,050.40 from The Guardian policy. One half of this amount is owed to Garrie Necaise and the other half is owed to Garland Necaise.

The evidence at Trial established that Garrett Necaise made two withdrawals totaling $16,700.00 from Mildred Necaise's Hancock Bank account. As noted above, Garrett Necaise testified that he no longer had the money that was withdrawn and that he never shared the money with his siblings or repaid the decedent's estate for the withdrawals. Based on the Court's prior ruling, the $16,700.00 in withdrawals is a nondischargeable debt subject to Garrett Necaise's defense of setoff.

C. Setoff

The Debtors assert in their answer that they have a right to setoff as a defense to the Plaintiffs' claims against them. (Adv. Dkt. No. 9 at 3). They argued recoupment at trial, but did

not assert it as a defense in their answer. Further, the Court has already found that the Plaintiffs are not entitled to judgment against Cynthia Necaise because they have failed to establish she owes a debt to any of the Plaintiffs. Accordingly, the Court only considers the defensive setoff claim as it relates to Garrett Necaise. Garrett Necaise asserts that he incurred expenses both for the care of Mildred Necaise and for her funeral, which he should now be able to offset against any amounts owed to the Estate of Mildred Necaise (the "Estate").

1. Expenses for the Care of Mildred Necaise

In their post-trial brief, the Plaintiffs argue that the Debtors "should be judicially estopped from now asserting a claim for compensation for having cared for Mrs. Necaise prior to her death" because they did not disclose any claims against the Estate in their schedules, and they never pursued any claim against the probate estate. (Adv. Dkt. No. 88 at 1). The Court agrees that Garrett Necaise cannot assert a setoff claim against the Estate for the care of Mrs. Necaise, but not because he is judicially estopped from doing so. In Mississippi, to recover compensation for the care of a relative prior to his death when the claim is first raised after the death of the decedent, the evidence must clearly establish the presence of either an express or implied contract between the claimant and the decedent for the payment of compensation for his care. *Liddell v. Jones,* 482 So.2d 1131, 1132 (Miss. 1986). No evidence was presented indicating the existence of either an implied or express contract with Mildred Necaise for compensation for her care. Therefore, under Mississippi law, Garrett Necaise cannot recover those expenses now. Accordingly, he does not have a claim against the Estate that he can assert as defensive setoff to reduce the Plaintiffs' recovery. The Court now turns to his claim of setoff regarding the funeral expenses.

2. Funeral Expenses

Garrett Necaise also paid the funeral costs for Mrs. Necaise, and he now wishes to assert defensive setoff for that amount. The Plaintiffs do not address this claim in their post-trial brief; instead, their sole argument is that the Debtors are not entitled to setoff for any claims they may have against the Estate regarding expenses incurred for the care of Mildred Necaise. But, at Trial, the Plaintiffs argued that setoff of the funeral expenses paid should not be allowed because the Debtors never brought a claim for those expenses against the Estate. The Bankruptcy Code does not create an independent right to setoff, but it does specifically preserve the right of setoff existing under applicable non-bankruptcy law in § 553(a).[11] Though § 553 "speaks in terms of the creditor's right of setoff, the debtor has the right to assert setoff as well." *In re Braniff Airways, Inc.*, 42 B.R. 443, 447 (Bankr. N.D. Tex. 1984). And "the Bankruptcy Code implicitly recognizes the use of offset by a debtor as a 'defense'[,] which the debtor may assert under" § 558. *Id.*[12] Thus, when setoff is being asserted defensively by the debtor, § 558 and not § 553 is applicable. *Galaz v. Galaz (In re Galaz),* 480 Fed. App'x 790, 793 (5th Cir. 2012) (unreported).

"The only requirements for setoff are that the debts and claims be mutual and prepetition." *Fredric v. Fredric (In re Fredric),* No. 00-43542-BJH-13, Adv. No. 01-4035, 2001 Bankr. LEXIS 2236, at *24 (Bankr. N.D. Tex. Sept. 27, 2001) (citing *Braniff*, 814 F.2d at 1037). "Mutuality" is not defined in the Code, but "it is well settled that the right to setoff exists only

[11] Section 553(a) states that:

> (a) [e]xcept as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case . . .

11 U.S.C. § 553(a).

[12] *Braniff* cites former § 541(e), which is now § 558 and states that "[t]he estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. . . ." 11 U.S.C. § 558.

where there is mutuality and, in turn, that mutuality exists only when the claim and the debt are due to and from the same person." *In re Eng. Motor Co.,* 426 B.R. 178, 187 (Bankr. N.D. Miss. 2010) (citing *Braniff*, 814 F.2d at 1036). The debts themselves need not be similar, but they must be owed between the same parties. *Id.* In this case, both debts arose pre-petition and are owed between the same parties: Garrett Necaise and the Estate.[13]

The Plaintiffs essentially argued at Trial that setoff of funeral expenses is time barred because no claim for funeral expenses was ever brought against the Estate. In Mississippi, "[t]he fact that a setoff is barred shall not preclude the defendant from using it as such if he held it against the debt sued on before it was barred." Miss. Code. Ann. § 15-1-71. Thus, even if Garrett Necaise's claim against the estate is time barred, his right to assert the claim defensively is preserved, though he may not affirmatively recover any amount from the Estate. *See Feld v. Coleman*, 72 Miss. 545, 17 So. 378, 379 (1895) ("the right of the defendant to interpose his demand, though barred, defensively is preserved. He may not recover over against the plaintiff any excess of his demand above that of the plaintiff, but may defeat any recovery by the plaintiff."). Accordingly, Garrett Necaise is not prohibited from asserting his claim of setoff defensively against the Estate.

According to the receipts entered into evidence, Garrett Necaise paid $8,882.49 in expenses related to the funeral of Mildred Necaise. Specifically, $7,904.07 was paid in cash to Gulf Coast Funeral Homes on March 8, 2006; $104.96 was paid to Gulf Publishing Company for Mildred Necaise's obituary on August 14, 2006; $535.00 was paid in the form of a check for

[13] Claims for funeral expenses are not claims against the decedent in Mississippi, rather "[i]t is the duty of an administrator to bury the deceased and to pay the expenses incident thereto out of the property of the deceased." *Gaulden v. Ramsey*, 123 Miss. 1, 85 So. 109, 110 (Miss. 1920) (citing *Donald v. McWhorter*, 44 Miss. 124 (Miss. 1870)). Further, "if this expense has been incurred prior to the appointment of the administrator, it becomes a charge against him after his appointment payable out of the property of the deceased." *Id.* And funeral expenses are not claims against the deceased, therefore they need not be probated at all. *Gaulden*, 85 So. at 110. Thus, the Debtors' claim for funeral expenses is against the estate of Mildred Necaise, and not Mildred Necaise individually.

Mildred Necaise's Monument on May 11, 2006; $256.80 was paid in cash to Three Sisters Florist on March 2, 2006 for flowers for the funeral service; and $81.66 was paid in cash to Sears on February 20, 2006 for the attire Mildred Necaise was buried in. (Adv. Dkt. No. 86-3, Exh. 11 at 23–28). Additionally, there is an itemized receipt from Gulf Coast Funeral Homes that is illegible and was submitted with the other receipts. (*Id.* at 25). Because the receipt is illegible, it is unclear whether it is merely an itemization of the $7,904.07 charged or if it is for expenses over and above the $7,904.07 already paid. Garrett Necaise may present a legible copy of the receipt for the Court to make a final determination as to the total amount of funeral expenses paid. The current total of $8,882.49 for funeral expenses should be offset against the cash withdrawals made from the Hancock Bank account, which total $16,700.00. Accordingly, $7,817.51 should be repaid to the Estate.

D. The Attorney's Fees

Finally, the Plaintiffs argue that the $12,208.92 in attorney's fees the Chancery Court ordered Garrett Necaise to pay is nondischargeable. The Court agrees. The Fifth Circuit has stated that "[w]hen the primary debt is nondischargeable due to willful and malicious conduct, the attorney's fees and interest accompanying compensatory damages . . . are likewise nondischargeable." *Matter of Gober*, 100 F.3d 1195, 1208 (5th Cir. 1996) (collecting cases), *abrogated on other grounds by In re Caton*, 157 F.3d 1026, 1030 n.18 (5th Cir. 1998). *See also Matter of Luce*, 960 F.2d 1277, (5th Cir. 1992) ("When a bankruptcy court determines that the underlying debt is nondischargeable, then 'attorney's fees awarded by a state court based on state statutory or contractual grounds are [also] nondischargeable.'") (quoting *Klingman v. Levinson (In re Levinson)*, 58 B.R. 831, 837 n.7 (Bankr. N.D. Ill. 1986)).

IT IS THEREFORE ORDERED AND ADJUDGED that the debt owed by Garrett Necaise to Garland Joseph Necaise in the amount of $11,532.32 is not dischargeable.

IT IS FURTHER ORDERED AND ADJUDGED that the debt owed by Garrett Necaise to Garrie Patrick Necaise in the amount of $11,532.32 is not dischargeable.

IT IS FURTHER ORDERED AND ADJUDGED that the debt owed by Garrett Necaise to The Estate of Mildred R. Necaise in the amount of $7,817.51 is not dischargeable.

IT IS FURTHER ORDERED AND ADJUDGED that the debt owed by Garrett Necaise in the amount of $12,258.92 in attorney's fees, which the Chancery Court ordered to be paid to the Estate of Mildred R. Necaise, is not dischargeable.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiffs' Complaint against Cynthia Necaise is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED AND ADJUDGED that Garrett Necaise may file a legible copy of the receipt from Gulf Coast Funeral Homes within 14 days of the entry of this order so that the Court may enter final judgment on the matter.

##END OF ORDER##