



A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 15, 2015

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

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:

STEVE A. DEZELL,

CASE NO. 15-10596-NPO

DEBTOR.

CHAPTER 13

**ORDER SUSTAINING IN PART AND OVERRULING IN PART
THE INITIAL OBJECTION TO CONFIRMATION AS TO THE
DEBTOR'S LIABILITY FOR ANNA DEZELL'S AUTOMOBILE INSURANCE**

This matter initially came before the Court for hearing on April 16, 2015 (the "Hearing") on, *inter alia*, the Motion to Lift Automatic Stay Filed by Anna Jean Purnell Dezell (the "Motion for Relief") (Dkt. 11) and the Objection to Debtor's Amended Chapter 13 Plan Filed by Anna Jean Purnell Dezell (the "Initial Objection to Confirmation") (Dkt. 41) both filed by Anna Jean Purnell Dezell ("Anna Dezell"), the wife of debtor, Steve A. Dezell (the "Debtor"), in the above-styled bankruptcy case (the "Bankruptcy Case"). At the Hearing, the Court ruled from the bench denying the Motion for Relief and sustaining in part and denying in part the Initial Objection to Confirmation. The Court, however, took the following issues (the "Insurance Issues") regarding the Initial Objection to Confirmation under advisement: whether the court-ordered obligations of the Debtor (a) to reinstate Anna Dezell and the vehicles in her possession (the "Anna Dezell Vehicles") on his automobile insurance policy (the "Automobile Insurance Issue") and (b) to maintain Anna Dezell on his health insurance policy (the "Health Insurance Issue") are ongoing

domestic support obligations (“DSOs”) within the meaning of 11 U.S.C. § 101(14A)¹ that must be provided for in the Debtor’s chapter 13 plan. Prior to the Court issuing a written order memorializing the Court’s bench ruling and rendering a decision on the Insurance Issues, Anna Dezell filed the Objection to Debtor’s Amended Chapter 13 Plan Filed by Anna Jean Purnell Dezell (the “Post-Hearing Objection”) (Dkt. 60) and the Motion to Withdraw Objection to Amended Chapter 13 Plan Filed by Anna Jean Purnell Dezell (the “Post-Hearing Motion to Withdraw” or, together with the Post-Hearing Objection, the “Anna Dezell Post-Hearing Brief”) (Dkt. 72). The Court then issued (a) the Order on the Motion for Relief and the Objection to Confirmation (the “Order on the Motion for Relief and Initial Objection to Confirmation”) (Dkt. 74) memorializing the Court’s bench ruling from the Hearing and (b) the Order on the April 21 Objection and the Motion to Withdraw (the “Order Requesting Briefs”) (Dkt. 75) determining that the Post-Hearing Objection and the Post-Hearing Motion to Withdraw were, according to their collective substance rather than their labels, a post-hearing brief on the Insurance Issues. In the Order Requesting Briefs, the Court allowed the Debtor and Locke D. Barkley, the standing chapter 13 trustee (the “Trustee”), to file their own post-hearing briefs on the Insurance Issues on or before May 29, 2015. The Trustee filed the Post-Hearing Brief Re: Order on the April 21 Objection and the Motion to Withdraw (Dkt. #75) (the “Trustee Post-Hearing Brief”). The Debtor, however, did not file a post-hearing brief notwithstanding the Court’s instructions.

In light of the Anna Dezell Post-Hearing Brief, which narrowed the issues, the only matter now before the Court is the Automobile Insurance Issue. Being fully advised in the premises, the Court finds as follows:

¹ Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the United States Code and all rules refer to the Federal Rules of Bankruptcy Procedure unless otherwise noted.

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). Notice of the Initial Objection to Confirmation, the Anna Dezell Post-Hearing Brief, the Court's Order Requesting Briefs, and the Trustee Post-Hearing Brief was proper under the circumstances.

Facts

1. On October 28, 2014, Anna Dezell initiated Cause No. CV2014-000514 by filing the Complaint for Separate Maintenance (Anna Dezell Ex. 2 at 1-7)² in the Chancery Court of Sunflower County, Mississippi (the "Chancery Court") seeking temporary support and maintenance.

2. On January 29, 2015, the Chancery Court issued the Order of Separate Maintenance (the "Chancery Court Order") (Anna Dezell Ex. 2 at 12-16) ordering the Debtor, *inter alia*, (a) to reinstate Anna Dezell and the Anna Dezell Vehicles on his automobile insurance policy and (b) to maintain Anna Dezell on his health insurance policy.

3. On February 12, 2015, Anna Dezell filed the Plaintiff's Petition for Citation for Contempt (the "Contempt Petition") (Anna Dezell Ex. 2 at 24-27) alleging that the Debtor failed to comply with the Chancery Court Order and requesting the Chancery Court to "impose sanctions including, but not limited to, the imposition of attorney fees and costs, and incarceration in the Sunflower County Jail."

4. On February 17, 2015, the Debtor filed a petition for relief (the "Petition") (Dkt. 1) pursuant to chapter 13 of the Bankruptcy Code.

² Anna Dezell introduced into evidence three (3) exhibits at the Hearing without objection. Hereinafter, these exhibits are cited as "(Anna Dezell Ex. ____)".

5. On March 2, 2015, Anna Dezell filed the Motion for Relief requesting the Court to allow her to proceed with the Contempt Petition in the Chancery Court to enforce the Chancery Court Order.

6. On March 24, 2015, the Debtor filed the Amended Chapter 13 Plan (the “First Amended Plan”) (Dkt. 34).

7. On March 31, 2015, Anna Dezell filed the Initial Objection to Confirmation (Dkt. 41) requesting the Court to deny confirmation of the First Amended Plan.

8. At the Hearing on the Motion for Relief and the Initial Objection to Confirmation, John Kirkham Povall represented Anna Dezell, Jim Arnold represented the Debtor, and W. Jeffrey Collier represented the Trustee. At the conclusion of the Hearing, the Court ruled from the bench denying the Motion for Relief and sustaining in part and denying in part the Initial Objection to Confirmation. The Court, however, took the Insurance Issues regarding the Initial Objection to Confirmation under advisement.

9. On April 21, 2015, Anna Dezell filed the Post-Hearing Objection stating that because the Debtor failed to comply with the Chancery Court Order by not reinstating her and the Anna Dezell Vehicles on his automobile insurance policy, she was forced to purchase automobile insurance herself. Therefore, Anna Dezell requested the Court to deny confirmation of the First Amended Plan because it did not provide for the reimbursement of her payments to purchase and maintain automobile insurance. Anna Dezell attached a copy of an Account Billing Statement from Alfa Insurance Companies (the “Billing Statement”) to the Post-Hearing Objection. According to the Billing Statement, Anna Dezell’s monthly premium for automobile insurance covering a 2014 Chevy Tahoe and a 2010 Chevy Impala is \$207.77.

10. On April 27, 2015, Anna Dezell filed the Post-Hearing Motion to Withdraw requesting to “withdraw her objection to the Amended Chapter 13 Plan **AS TO ONLY** the failure of the Debtor . . . to provide health insurance” because the Debtor had complied with that requirement of the Chancery Court Order.

11. On May 11, 2015, the Court issued the Order on the Motion for Relief and Initial Objection to Confirmation and the Order Requesting Briefs.

12. On May 20, 2015, the Debtor filed the Modified Chapter 13 Plan (the “Second Amended Plan”) (Dkt. 80) in accordance with the Order on the Motion for Relief and Initial Objection to Confirmation.

13. On May 29, 2015, the Trustee filed the Trustee Post-Hearing Brief taking the position that the Chancery Court Order’s requirements regarding the automobile insurance and the health insurance both constituted DSOs under the Bankruptcy Code. The Debtor did not file a post-hearing brief on the Insurance Issues.

Discussion

The Court initially took both of the Insurance Issues under advisement. Following the Hearing, Anna Dezell filed the Anna Dezell Post-Hearing Brief informing the Court that the Debtor had complied with the Chancery Court Order’s requirement that he maintain Anna Dezell on his health insurance policy. Accordingly, it is not necessary for the Court to determine the Health Insurance Issue or its impact on the confirmation of the Second Amended Plan. Regarding the Automobile Insurance Issue, Anna Dezell informed the Court that due to the Debtor’s failure to reinstate her on his automobile insurance policy, she had to secure automobile insurance on the Anna Dezell Vehicles. Thus, the only issue before the Court is the Automobile Insurance Issue. The Debtor asserts that he does not have to comply with the Chancery Court

Order's automobile insurance requirement because he has abandoned his interest in the Anna Dezell Vehicles in the Bankruptcy Case. Anna Dezell contrarily argues that the Second Amended Plan cannot be confirmed unless it provides for the monthly payments of \$207.77 for the cost of insurance on the Anna Dezell Vehicles. The Trustee takes the position that the Debtor's automobile insurance obligation constitutes a DSO under the Bankruptcy Code, and, as a result, the Debtor must be current on said obligation before the Second Amended Plan can be confirmed under § 1325(a)(8). *See* 11 U.S.C. § 1325(a)(8) (“[T]he court shall confirm a plan if— the debtor has paid all amount that are required to be paid under a [DSO] and that first become payable after the date of the filing of the petition . . .”).

Before the Court can decide how the confirmation of the Second Amended Plan is impacted by the Chancery Court Order's provision requiring the Debtor to maintain automobile insurance on the Anna Dezell Vehicles, the Court must first determine if the requirement falls within the Bankruptcy Code's definition of a DSO. The Bankruptcy Code defines, in relevant part, a DSO as a debt that is:

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative;

* * *

(B) in the nature of alimony, maintenance, or support . . . of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) 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—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; [and]

* * *

(D) not assigned to a nongovernmental entity

11 U.S.C. § 101(14A). For the Debtor’s automobile insurance obligation to meet the definition of a DSO, it must be (1) owed to or recoverable by a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; (2) in the nature of alimony, maintenance, or support; (3) established by an order of a court of record; and (4) not assigned to a nongovernmental entity. *Id.* Here, the Court finds that the Chancery Court Order’s requirement that the Debtor must reinstate Anna Dezell and the Anna Dezell Vehicles on his automobile insurance policy satisfies these four (4) components and, thus, is included within the Bankruptcy Code’s definition of a DSO.

As for the first requirement, the Court finds that the obligation is one that is “owed to or recoverable by a spouse.” While the original obligation is technically payable to a third party, in this case, an insurance company, the Court finds that this is included within the meaning of subsection (A) because the Debtor’s payment for insurance coverage relieves Anna Dezell of an obligation for which she would be legally required to pay. *See Tritt v. Tritt (In re Tritt)*, No. 12-42446, 2014 WL 1347763, at *6 (Bankr. E.D. Tex. Apr. 4, 2014) (noting that the inclusion of fees paid directly to a former spouse’s attorney, as opposed to the former spouse herself, within the definition of a debt owed “to a spouse” is especially compelling when the fee award will satisfy a financial obligation owed by the former spouse or result in reimbursement to the former spouse for amounts previously expended); *Hutton v. Ferguson (In re Hutton)*, 463 B.R. 819, 827-831 (Bankr. W.D. Tex. 2011) (explaining how a payment to a third party was included in the definition of DSO because it actually benefitted the former spouse “by relieving her of an obligation for which she would otherwise be liable”); *Morris v. Allen (In re Morris)*, 454 B.R.

660, 663 (Bankr. N.D. Tex. 2011) (“[T]he true focus here is on the nature of the debt and not to whom the debt is owed.”); *see also Dvorak v. Carlson (In re Dvorak)*, 986 F.2d 940, 941 (5th Cir. 1993) (concluding that fees charged by a former spouse’s attorney and a child’s guardian ad litem constituted a “debt to a spouse, former spouse, or child of the debtor” under a prior version of § 523(a)(5)³).

This view is consistent with the courts that have analyzed whether an obligation to maintain automobile insurance on vehicles driven by a debtor’s dependents is considered a “debt to a spouse, former spouse, or child of the debtor.” *See Bell v. Bell (In re Bell)*, 357 B.R. 167, 172 (Bankr. M.D. Ala. 2006) (holding that a debtor’s obligation to pay the insurance on the vehicles driven by his children were debts “to a spouse, former spouse, or child of the debtor” under the pre-BAPCPA version of § 523(a)(5)); *Cavin-Elmore v. Elmore (In re Elmore)*, No. 02-9019, 2002 WL 1842457, at *6 (Bankr. N.D. Iowa July 28, 2002) (holding that a debtor’s obligation to pay future vehicle insurance premiums for former spouse fell within the definition of the pre-BAPCPA version of § 523(a)(5)); *Pekin Ins. v. Budka (In re Budka)*, 135 B.R. 338, 343-44 (Bankr. N.D. Ind. 1992) (holding that a debtor’s obligation to pay for the automobile insurance for the mother of his children was support obligation within the meaning of the pre-BAPCPA version of § 523(a)(5)); *Stamper v. Stamper (In re Stamper)*, 131 B.R. 433, 435-36 (Bankr. W.D. Mo. 1991) (holding that a debtor’s obligation to maintain insurance on vehicle in his former spouse’s possession was a debt to the former spouse within the meaning of the pre-BAPCPA version of § 523(a)(5)).

³ Prior to being amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. (“BAPCPA”), § 523(a)(5) provided that a “discharge under . . . this title does not discharge an individual from any *debt to a spouse, former spouse, or child of the debtor* for alimony to, maintenance for, or support of such spouse or child” (emphasis added).

With respect to the second requirement of the Bankruptcy Code's definition of a DSO, the Court finds that the Debtor's insurance obligation is in the nature of alimony, maintenance, or support. When a state court judgment is issued after a full trial on the merits and the judgment's intent is clear, that intent should govern the Court's characterization of the obligation. *Woodard v. Ehrler-Nugent (In re Nugent)*, 484 B.R. 671, 679 (Bankr. S.D. Tex. 2012). Here, the Chancery Court Order is unambiguous that the purpose of the separate maintenance award, including the requirement that the Debtor provide insurance coverage for the Anna Dezell Vehicles, is to "provide . . . support and maintenance for the wife." (Anna Dezell Ex. 2 at 12-16) (quoting *McDonald v. McDonald*, 69 So. 3d 61 (Miss. Ct. App. 2011)). Indeed, in Mississippi, separate maintenance is a "command from the court that the married couple resume cohabitation, and, failing that, the party at fault for the separation must provide suitable maintenance to his or her spouse until they are reconciled." *Huseth v. Huseth*, 135 So. 3d 846, 851 (Miss. 2014) (citation omitted). Consequently, the Court finds that the Debtor's automobile insurance obligation is in the nature of alimony, maintenance, or support.

The third and fourth requirements under § 101(14A) also are met. The Chancery Court Order established the automobile insurance obligation, and the debt has not been assigned to a nongovernmental entity. For these reasons, the Court finds that the Debtor's obligation to reinstate Anna Dezell and the Anna Dezell Vehicles on his automobile insurance policy is a DSO under the Bankruptcy Code. Moreover, the Court rejects the Debtor's argument that he no longer has to satisfy this obligation because he has abandoned his interest in the Anna Dezell Vehicles. Nothing in the Chancery Court Order suggests that the obligation to provide automobile insurance is somehow dependent on the Debtor's ownership or possessory interest in the Anna

Dezell Vehicles. Instead, the obligation is predicated on Anna Dezell's possession of the vehicles and her need for his continued support, not the Debtor's interests or needs.

Having determined that the Debtor's obligation to reinstate Anna Dezell and the Anna Dezell Vehicles on his insurance policy is a DSO, the Court turns to the Initial Objection to Confirmation, the Anna Dezell Post-Hearing Brief, and the Trustee Post-Hearing Brief. As the Trustee notes in the Trustee Post-Hearing Brief, § 1325(a)(8) requires that a debtor be current on all post-petition DSOs as a prerequisite for having their chapter 13 plan confirmed. 11 U.S.C. § 1325(a)(8). Therefore, the Debtor must be current on his automobile insurance obligations to Anna Dezell before the Second Amended Plan can be confirmed. The Court accordingly finds that the Initial Objection to Confirmation should be sustained to the extent that the Debtor must be current on the payments to Anna Dezell for insurance coverage of the Anna Dezell Vehicles. To this end, the Court finds that within fourteen (14) days from the date of this Order, the Debtor should reimburse Anna Dezell for the costs required to insure the Anna Dezell Vehicles from the Petition date to the date the reimbursement is made. In the event the Debtor and Anna Dezell cannot agree on the post-petition amount owed, either party may file a motion with the Court requesting an evidentiary hearing to determine the exact amount.

As for Anna Dezell's contention that the Second Amended Plan must provide for the ongoing obligation to provide automobile insurance on the Anna Dezell Vehicles, the Court notes that there is no Bankruptcy Code section or Federal Rule of Bankruptcy Procedure that requires a debtor to include an ongoing DSO in their chapter 13 plan as a prerequisite to confirmation. *See* HENRY J. SOMMER & MARGARET DEE MCGARITY, *COLLIER FAMILY LAW AND THE BANKRUPTCY CODE* ¶ 8.03[2][b] (2015) ("None of the Bankruptcy Code sections governing permissible or necessary provisions in a chapter 13 plan mentions current alimony or support.")

Thus, the Court rejects this narrow argument and finds that the Initial Objection to Confirmation should be overruled in this regard.⁴ The Court, however, emphasizes that while the Debtor does not have to provide for his ongoing post-petition DSOs in the Second Amended Plan as a prerequisite to confirmation, the Debtor still has the duty to pay his ongoing post-petition DSOs. First, as previously explained, the Debtor must be current on his post-petition DSOs in order to get the Second Amended Plan confirmed under § 1325(a)(8). *See* 11 U.S.C. § 1325(a)(8). Second, the Debtor’s failure to pay his ongoing DSOs as they become due is a ground for conversion or dismissal of his Bankruptcy Case under § 1307(c)(11). *See* 11 U.S.C. 1307(c)(11) (“[O]n request of a party in interest . . . the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter . . . for cause, including - failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.”). For this reason, the Court finds that in the event the Debtor (a) does not bring the post-petition DSO arrearage related to the insurance coverage of the Anna Dezell Vehicles current within the time specified in this Order or (b) fails to reinstate the Anna Dezell Vehicles on his automobile insurance policy, or otherwise provide for the automobile insurance coverage of said vehicles, Anna Dezell may then file a motion to convert or dismiss the Bankruptcy Case under § 1307(c)(11).

⁴ The Court’s holding on this aspect of the Initial Objection to Confirmation is limited to whether a chapter 13 debtor’s plan *must* provide for the payment of an ongoing DSO as a prerequisite to confirmation. The issue of whether a chapter 13 debtor *may* voluntarily provide for the payment of their ongoing DSOs in their plan is not before the Court. Therefore, it is not necessary for the Court to make a determination on this recognizably uncertain issue. *See* HENRY J. SOMMER & MARGARET DEE MCGARITY, *COLLIER FAMILY LAW AND THE BANKRUPTCY CODE* ¶ 8.03[2][b] (2015) (describing the provisions of the Bankruptcy Code regarding chapter 13 plan provisions dealing with ongoing DSOs as “not altogether clear”); KEITH M. LUNDIN & WILLIAM H. BROWN, *CHAPTER 13 BANKRUPTCY*, 4TH EDITION, § 301.1[11] (noting that the issue is “problematic” and “suggests that Congress did not focus well on management of domestic obligations in Chapter 13 cases”).

Conclusion

For the foregoing reasons, the Court finds that the Chancery Court Order's requirement that the Debtor reinstate Anna Dezell and the Anna Dezell Vehicles on his automobile insurance policy is a DSO as defined by the Bankruptcy Code. Further, the Court finds that the Initial Objection to Confirmation should be (a) sustained to extent that the Debtor must be current on the payments to Anna Dezell for automobile insurance coverage of the Anna Dezell Vehicles and (b) overruled to the extent that it requests the Court to deny confirmation of the Second Amended Plan unless it provides for the ongoing obligation to provide automobile insurance on the Anna Dezell Vehicles.

IT IS, THEREFORE, ORDERED the Initial Objection to Confirmation hereby is sustained in part and overruled in part.

IT IS FURTHER ORDERED that within fourteen (14) days from the date of this Order, the Debtor hereby shall reimburse Anna Dezell for the costs required to insure the Anna Dezell Vehicles from the Petition date to the date the reimbursement is made.

IT IS FURTHER ORDERED that in the event the Debtor and Anna Dezell cannot agree on the post-petition amount owed regarding the automobile insurance coverage, either party may file a motion with the Court requesting an evidentiary hearing to determine the exact amount.

##END OF ORDER##