



SO ORDERED,

**Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: September 27, 2024**

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: LEE JAY ROMERO III

CASE NO. 23-01862-KMS

DEBTOR

CHAPTER 13

**ORDER SUSTAINING IN PART AND OVERRULING IN PART
DEBTOR'S OBJECTIONS TO CLAIMS OF ALISA SMITH (DKT. ##22, 23)**

THIS MATTER is before the Court on Debtor Lee Jay Romero III's objections to Proofs of Claim 2 and 4 filed by his ex-wife Alisa Smith, ECF Nos. 22, 23; Alisa's Responses, ECF Nos. 26, 27; Jay's Memorandum Brief in Support of Objections to Claims, ECF No. 48; and Alisa's Reply to Memorandum Brief of Debtor, ECF No. 50. Having considered the arguments and applicable law, the Court determines that Jay's Objections should be sustained in part and overruled in part.

I. Jurisdiction

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

II. Factual and Procedural Background

Jay and Alisa were previously married. By 2015, the parties were separated and involved in what could be described as a contentious divorce proceeding. The Chancery Court entered various judgments and orders, the relevant provisions of which are described below.

- (1) **May 18, 2016, Order** (ECF No. 50-2) (referred to as the Temporary Order in the September 20, 2018, Final Judgment,¹ Cl. 2-2, Part 2 at 9) (“Temporary Order”):
- “Lee Jay Romero, Defendant/Counter-Plaintiff, shall pay to Alisa B. Romero the sum of \$2,300 per month as reasonable **child support** for the support and maintenance of the minor child” ECF No. 50-2 at 1 (emphasis added).
 - “Lee Jay Romero, Defendant/Counter-Plaintiff, shall pay the **monthly house note on the marital domicile** occupied by the Plaintiff/Counter-Defendant, Alisa B. Romero, and some of the minor children; that such house note to be paid by the Defendant/Counter-Plaintiff, Lee Jay Romero, III, is in the amount of \$2,410.00 and payable to United Mississippi Bank beginning June 1, 2016, and continuing each and every month thereafter, until further order of the Court.” *Id.* at 1-2 (emphasis added).
 - “[T]he parties entered into an agreement before the court on October 15, 2015, . . . and . . . Mr. Romero was to pay the **house note** in the sum of \$2,410 beginning October 1, 2015” *Id.* at 3 (emphasis added).
- (2) **September 20, 2018, Final Judgment** (ECF No. 50-1; Cl. 2-2, Part 2; Cl. 4-2 at 4-21):

In the **Contempt section** of the Order –

- Court noted that “Jay is in arrears with regard to his **child support obligations** and had been **paying the house note on the marital dwelling** from store funds instead of his personal funds.” Cl. 2-2, Part 2 at 6-7 (emphasis added).
- The Court awarded Alisa “a Judgment against Jay in the sum of \$9300 for unpaid **child support** for the months of December, 2017, and January, February, and March, 2018. Jay shall have 60 days from the date of entry of the Judgment within which to shall [sic] pay the arrearage of \$4820 to Alisa due for **house notes** . . . Jay shall have 30 days from the date of the entry of this order to pay the child support arrearage determined hereinabove and the attorney fees ordered.” *Id.* at 8 (emphasis added).

In the **Equitable Distribution section** of the Order –

- The court noted that “**all assets and debts are marital in nature and subject to equitable distribution.**” *Id.* at 9 (emphasis added).
- The marital dwelling is included as a marital asset. *Id.*

¹ The Final Judgment was signed by the Chancery Court judge on September 17, 2018, and filed stamped by the Clerk on September 20, 2018. *See* ECF No. 50-1; Cl. 2-2, Part 2.

- Marital debts (liabilities incurred during the marriage) totaled \$784,672 and included the **home mortgage** to UMB for \$259,532 and **taxes** owed in the amount of \$450,000. *Id.* at 10.
- The court ordered certain assets, including the **marital dwelling**, “shall be sold and the proceeds used first to pay the mortgage on the marital dwelling . . . leaving an approximate marital debt remaining of \$402,424.75.” *Id.* at 10, 17 (emphasis added).
- “[T]he court so finds that Jay should have paid, pursuant to the agreement of the parties, as set forth in Paragraph X of the Agreed Order of May 18, 2016, **child support** from October 15, 2015, to May 18, 2016, in the amount of \$18,400, and **mortgage payments on the marital dwelling** in the amount of \$19,280, or a total of \$37,680. This figure was to be reduced by the amount Alisa withdrew . . . which has been determined by the CPA to be \$5783 . . . leaving an amount due and owing from Jay to Alisa of **\$31,897 for unpaid child support and house notes** for the aforesaid period of time.” *Id.* at 12 (emphasis added).
- In considering the factor of “expenditure and disposal of the marital assets by each party,” the Court found that Alisa was entitled to **\$89,710** as “**her share of the assets dissipated** by Jay **together with** the October, 2015, to May, 2016, **deficiency in house note payments and child support.**”² *Id.* at 11-12 (emphasis added). This amount consisted of \$40,000 (one half of sale of Apothecare, LLC); \$2,000 (reimbursement of one-half of MS Medical Supplies Inc. debt); \$31,897 (for **unpaid child support and house note** – noted above); and \$15,813 (reimbursement of one-half of amount that Jay withdrew over and above that withdrawn by Alisa). *Id.*
- The court stated it was “of the opinion that the division in this case, considering the overwhelming amount of debt, will eliminate the necessity of alimony.” *Id.* at 13.
- The court determined that, “The debts of the parties, after sale of the items contained in List A [that included the **marital dwelling**], is determined by the court to be \$402,424.75. This debt shall be **equally divided** between the parties. The court notes that the experts in the cause believe some of the indebtedness due the **Internal Revenue Service** might be forgiven. Should that occur, the amount forgiven shall be **divided equally** between Alisa and Jay.” *Id.* at 14 (emphasis added).
- The court found the distribution to be a **fair division of marital assets**, although noting a substantial disparity of earnings since the separation of the parties. *Id.*
- The court stated that, “In addition to the division made herein, there is also due from Jay to Alisa the sum of **\$89,710** for assets he dissipated during the marriage.” *Id.* at 14, 17 (emphasis added).

² In her post-trial brief, Alisa asserts that the “portion of the award concerning unpaid child support and unpaid house notes . . . comprised 35.5% of the total award. ECF No. 50 at 3.

- The court stated that, “The court finds that the parties shall, **beginning with** the payment due on October 1, 2018, be **equally responsible for the payment of the mortgage on the marital dwelling** as well as all insurance costs and taxes due on the marital dwelling **until same is sold.**” *Id.* at 15, 18 (emphasis added).
- The court granted Alisa \$675 per month per **child as support** beginning October 1, 2018. *Id.* at 15, 18.
- The court found Jay in contempt of prior orders by “failing to make **house mortgage and child support payments.**” *Id.* at 16 (emphasis added). “Jay has failed to pay **house notes for the marital dwelling** in the amount of \$4820 and is in in arrears in **child support** for four months in the amount of \$9300.” *Id.* (emphasis added).

(3) **June 21, 2021 Order** on Petition to Modify Judgment (ECF No. 50-6; Cl. 4-2 at 22-31):

- The court found obligations owed on a prior contempt order dated September 17, 2019, and found various amounts due from Jay to Alisa, and **amounts due to United Mississippi Bank** [mortgage lender] or Alisa, noting that Jay is to pay **one-half** of the note effective March 31, 2021. ECF No. 50-6 at 3-7.
- The court referenced an outstanding **IRS lien** accumulated during the marriage stating the following:

The Court has reviewed the Final Judgment that was filed on September 20, 2018 (MEC 179). This Order specifically includes **taxes** owed in the amount of \$450,000.00 (Page 10). This issue is also noted on Page 14, and **specifically states that this debt will be equally divided between the parties.** The Court finds that **the prior Order (MEC 179) does emphatically provide that the parties are to be jointly responsible for this debt and it will be equally divided.**

ECF No. 50-6 at 7-8 (emphasis added).

- The court found that Jay would be responsible to pay **one-half the payment due to the IRS** and ordered payment to Alisa of \$16,862.50 for payments made. *Id.* at 8-9.
- The court further found that Jay would be responsible to pay **one-half of the IRS** payment directly to Alisa to continue until the debt is paid in full. *Id.* at 9.

(4) **July 20, 2022, Agreed Judgment of Modification**³ (ECF No. 50-3):

- This judgment modified a paragraph of the Final Judgment of September 20, 2018, to change the monthly payment from \$1000 to \$500.

³ The Agreed Judgment of Modification was signed on July 19, 2022, and filed on July 20, 2022. *See* ECF No. 50-3.

(5) **July 20, 2022, *Agreed Judgment***⁴ (ECF No. 50-4; Cl. 2-2, Part 3, at 1-2):

- In this order the court stated that the parties had reached a resolution of matters pending before the Chancery Court and the Mississippi Supreme Court and entered a final judgment of **\$38,000** against Jay in favor of Alisa. ECF No. 50-4 at 1. Judgment was stayed for eight months and the court would review payment status and sale of land to satisfy the judgment. *Id.*

(6) **May 12, 2023, *Agreed Order*** (ECF No. 50-5):

- The parties agreed to a settlement and satisfaction of the Agreed Judgment dated July 20, 2022, in the amount of **\$38,000**, by the conveyance of 32.81 acres from Jay to Alisa, in the amount of \$49,215. ECF No. 50-5 at 1-2. The **\$38,000 judgment being fully satisfied** with \$11,215 to be applied to balance due to Alisa “as originally granted her by this Court for dissipation of assets, [in original amount of **\$89,710**] now payable at the rate of \$500.00 per month.” *Id.*

(7) **August 15, 2023, *Satisfaction of Judgment***⁵ (ECF No. 50-7):

- The Satisfaction of Judgment was submitted by Alisa’s attorney acknowledging satisfaction of the \$38,000 judgment, with \$49,215 having been received and the balance of \$11,215 applied to Jay’s “equitable distribution balance originally in the amount of **\$89,710.00**, which now after crediting \$11,215.00 remains outstanding in the amount of **\$30,495.00.**” ECF No. 50-7 at 1 (emphasis added).

On August 15, 2023, Jay filed a Petition under Chapter 13 of the Bankruptcy Code. ECF No. 1. Alisa filed five proofs of claim, and two amendments.⁶ Jay filed objections to Alisa’s Claims 2 (\$30,495) and 4 (\$7,885) for domestic support obligations asserting the claims do not specify whether they are for child support, alimony, or a property settlement, and do not specify if the debts originate from the divorce decree. ECF Nos. 22, 23. At the hearing and in his post-trial brief, Jay asserts that both claims are dischargeable as property settlements. ECF No. 48 at 6. Alisa

⁴ The Agreed Judgment was signed on July 19, 2022, and filed on July 20, 2022. *See* ECF No. 50-4; Cl. 2-2, Part 3.

⁵ The Satisfaction of Judgment was dated August 14, 2023, and filed on August 15, 2023. *See* ECF No. 50-7.

⁶ The amended claims supersede the original claims. *See In re Okorie*, No. 19-50379-KMS, 2023 WL 7311173, at *2 n.2 (Bankr. S.D. Miss. Nov. 6, 2023).

asserts that both claims are for domestic support obligations and therefore non-dischargeable. ECF Nos. 26 at 1, 27 at 1, 50 at 1.

III. Law and Analysis

In Chapter 13, domestic support obligations are not dischargeable. 11 U.S.C. § 1328(a)(2) (after completion of plan payments, discharge of debts shall be granted except of the kind specified in “section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a)”); 11 U.S.C. § 523(a)(5) (“A discharge under section . . . 1328(b) of this title does not discharge an individual debtor from any debt . . . for a domestic support obligation.”).

A “domestic support obligation” is “a debt (1) owed to or recoverable by a former spouse; (2) in the nature of alimony, maintenance or support, regardless of whether the debt is expressly designated as such; (3) established by the applicable provisions of a divorce decree or other court order before, on, or after the date the bankruptcy case was filed; and (4) not assigned to a nongovernmental entity.” *In re Dillon*, 619 B.R. 357, 361 (Bankr. S.D. Miss. 2020) (citing 11 U.S.C. § 101(14A)). So, obligations to a former spouse for alimony, maintenance, or support are domestic support obligations that are not discharged under § 1328(a)(2).⁷ All other obligations that arise from divorce proceedings as described in 11 U.S.C. § 523(a)(15)⁸ are discharged in Chapter 13.

⁷ However, if a hardship discharge is granted under § 1328(b) when plan payments have not been completed, discharge of debts of the kind under § 523(a)(5) and under § 523(a)(15) are excepted from discharge. *See* 11 U.S.C. § 523(a)(5), (15); § 1328(c)(2) (“A discharge granted under subsection (b) [for hardship discharge] . . . discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt . . . of a kind specified in section 523(a) of this title.”).

⁸ Under § 523(a)(15), a discharge under § 1328(b) does not discharge an individual from any debt “to a spouse, former spouse, or child of the debtor and *not of the kind described in paragraph (5)* that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record” 11 U.S.C. § 523(a)(15) (emphasis added).

“Whether a particular obligation constitutes alimony, maintenance, or support . . . is a matter of federal bankruptcy law, not state law.” *Biggs v. Biggs (In re Biggs)*, 907 F.2d 503, 504 (5th Cir. 1990). Regardless of how the obligation was labeled in the divorce court, the bankruptcy court “must place substance over form to determine the true nature and purpose of the award.” *Joseph v. J. Huey O’Toole, P.C. (In re Joseph)*, 16 F.3d 86, 88 (5th Cir. 1994). “In reviewing the nature of a particular obligation, a bankruptcy court must consider the factors relevant to characterizing the debt and determine the intent of the court in imposing the obligation.” *In re Biggs*, 907 F.2d at 506 n.2 (citation omitted). “[T]he Chancellor’s reasoning and intent carry evidentiary weight.” *Rustin v. Rustin (In re Rustin)*, No. 04-50890-NPO, Adv. No. 09-05100-NPO, 2011 WL 5443067, at *8 (Bankr. S.D. Miss. Nov. 9, 2011); *see In re Beacham*, 520 B.R. 561, 564 (Bankr. S.D. Tex. 2014) (noting “the decree itself provided sufficient evidence that the parties intended to equalize the distribution of marital property through monthly payments” (quoting *In re Evert*, 342 F.3d 358, 368 (5th Cir. 2003))). And “[w]hen . . . ‘the Judgment was not achieved by the parties through settlement, but by [a state] court after a full-blown trial,’ [the] Court must consider the intent of the State Court rather than the parties themselves.” *Davidson v. Havard (In re Havard)*, No. 19-12983, Adv. No. 20-1001, 2020 WL 6701344, at *3 (Bankr. E.D. La. Nov. 12, 2020) (citing *Woodward v. Ehrler-Nugent (In re Nugent)*, 484 B.R. 671, 679 (Bankr. S.D. Tex. 2012). “If the Judgment’s intent is clear, then this should control the Court’s characterization of the Obligations [but if] the Judgment’s intent is ambiguous, then this Court may consider extrinsic evidence, including a non-exclusive list of factors” *Id.*; *see also In re Hunsucker*, 631 B.R. 610 (Bankr. N.D. Miss. 2021) (“[t]he Court may independently evaluate the divorce and/or separation decree and if it is ambiguous, may look to extrinsic evidence.”).

Here, the Temporary Order required Jay to pay both child support and the house note until further order of the Chancery Court. ECF No. 50-2 at 1-2. This order preceded the Final Judgment of Divorce and did not contain any equitable division of property or debt. Clearly, the Chancellor was awarding temporary support. *See* Matthew Thompson, *Mississippi Divorce, Alimony, and Child Custody* § 8:2 (database updated October 2023) (temporary support awarded because “spouse who originally shouldered the responsibility of support continues to be liable for the support and maintenance of the other spouse and the minor children” since merits of case have not yet been evaluated and determined).

On September 20, 2018, the Chancery Court entered a Final Judgment that addressed not only the complaints for divorce but also claims of contempt by both parties. ECF No. 50-1 at 1. As part of the judgment, Alisa was awarded \$89,710 from Jay. *Id.* at 12, 14, 17. Although the judgment contradicts itself regarding the \$89,710 owed to Alisa,⁹ simple math establishes that the award is made up of both past due support (\$31,897) and funds Jay dissipated (\$15,813 + \$2,000 + \$40,000 = \$57,813). *Id.* at 11-12.

According to the parties, Claim 2-2 in the amount of \$30,495 is the balance due on the \$89,710 award. There is no evidence to show how much of this balance is for the past due child support and mortgage payments, if any. Alisa’s argument that it all should represent domestic support obligations is not supported by any evidence presented. In the absence of other evidence, 35.5% of Claim 2-2 or \$10,826 is a fair representation of the amount still due for both child support

⁹ Compare page 12 (“Alisa is entitled to the sum of \$89,710 as her share of the assets dissipated by Jay together with the October, 2015, to May, 2016, deficiency in house note payments and child support.”) with page 17 (“Alisa is hereby awarded the sum of \$89,710 for assets dissipated by Jay.”). ECF No. 51-1 at 12, 17.

and marital home payments (35.5% representing the portion of the original \$89,710 judgment for child support and marital home payments).¹⁰

The Final Judgment and June 21, 2021, Order both establish that the IRS obligation was an equitable division of debt. ECF Nos. 50-1 at 10, 17; 50-6 at 7-9. As required by Mississippi law regarding equitable distribution, the Chancellor classified the debt as marital debt in the Final Judgment. ECF No. 50-1 at 10; *see* Deborah H. Bell, *Bell on Mississippi Family Law* § 6.08[4], at 181-83 (2d ed. 2011) (debts are classified like assets for purposes of equitable distribution); *Walker v. Walker*, 36 So. 3d 483, 487 (Miss. Ct. App. 2010) (for equitable distribution, Chancellor must classify each asset and debt as marital or non-marital). As part of the equitable distribution, Alisa and Jay were each ordered to pay half of the debt. ECF Nos. 50-1 at 17, 50-6 at 7-9. The clear wording of the Final Judgment and June 21, 2021, Order establish that the debt evidenced by Claim 4-2 is in the nature of a property settlement and not a domestic support obligation.

V. Conclusion

The Court determines that 35.5% of Claim 2-2 in the amount of \$10,826 represents a non-dischargeable domestic support obligation. The IRS obligation in Claim 4-2 is the result of equitable distribution of debt and is dischargeable to the extent not paid through the Chapter 13.

IT IS THEREFORE ORDERED that Debtor's objection to Claim 2-2 is sustained to the extent that debt over and above \$10,826 is dischargeable. The objection is otherwise overruled.

IT IS FURTHER ORDERED that Debtor's objection to Claim 4-2 is sustained.

##END OF ORDER##

¹⁰ See *supra* note 2.