

ORDERED.

Dated: June 08, 2017



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re: Case No. 8:16-bk-10117-CPM
Laura Lynn Pescod, Chapter 7
Debtor.

**SUPPLEMENTAL ORDER ON FIRST AMENDED MOTION
FOR RELIEF FROM STAY AND OBJECTION TO CLAIM NO. 3**

THIS CASE came on for hearing before me on March 28, 2017, for consideration of the First Amended Motion for Relief from Stay (the “Motion for Stay Relief”) (Doc. 19) filed by creditor Christopher G. Irvin (“Irvin”), the Debtor’s response thereto (Doc. 20), and the Debtor’s Objection (“Objection”) (Doc. 23) to Claim No. 3 filed by Irvin (the “Claim”). The Objection opposes the Claim to the extent it purports to be a priority claim. The Claim is based on a judgment (the “Judgment”) entered in a state court paternity action by the Honorable Patricia Muscarella, Circuit Court Judge for the Sixth Judicial Circuit in and for Pinellas County. The Judgment awards Irvin \$8,125.00 (the “Debt”) as half of the fee for a court-ordered parenting plan evaluation. Irvin asserts that the Debt constitutes a “domestic support obligation” as defined in 11 U.S.C. § 101(14A) and that the Claim, therefore, has priority status pursuant to 11 U.S.C. § 507(a)(1) and is not subject to the automatic stay in accordance with 11 U.S.C. § 362(b)(2)(B).

I determined, that as between Judge Muscarella and me, she sits in the better position to make a determination of whether her award to Irvin was in the nature of a domestic support obligation.¹ Consequently, following the hearing, I entered an order (Doc. 37) modifying the automatic stay to allow Judge Muscarella, “on an expedited basis as her caseload may permit,” to make such determination. On May 8, 2017, Judge Muscarella entered an order in the paternity action, in which she ruled that the award of \$8,125.00 for parenting plan evaluation fees “is not in the nature of alimony, maintenance, or support within the meaning of 11 U.S.C. § 101(14A).” *See* Order on Nature of Claim Number 3 (Doc. 41). In accordance with Judge Muscarella’s order and my prior order referenced above, it is

ORDERED:

1. The Debtor’s Objection to Claim No. 3 is SUSTAINED and Claim No. 3 is allowed as a general unsecured claim.
2. The Motion for Stay Relief is DENIED, and the Debtor’s Objection thereto is SUSTAINED.

Debtor’s Counsel is directed to serve a copy of this order on interested parties and file a Proof of Service within three days of the date of entry of this order. However, as to any party that is represented by counsel or has consented to service via CM/ECF, service upon such party will be effectuated by CM/ECF and counsel need not file a separate Proof of Service reflecting such service.

¹ At a prior hearing in this case, the parties informed me that Judge Muscarella had rotated out of the Sixth Judicial Circuit Court’s Family Division in which the paternity action was filed. Believing that I stand in as good a position as a different judge assigned to the Circuit Court’s Family Division (i.e., a judge other than Judge Muscarella) to second-guess Judge Muscarella’s intent with respect to the Judgment award at issue, but preferring to avoid *any* such second-guessing if possible, I contacted Judge Muscarella and asked if she could entertain this discrete issue, notwithstanding her having rotated out of the Family Division. Judge Muscarella obtained approval to do so and subsequently entered an order on this issue, relieving all doubt as to her original intent.