

ORDERED.

Dated: April 10, 2017



Catherine Peek McEwen  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

IN RE:

LAURA LYNN PESCOD,

Case Number: 8:16-bk-10117-CPM

Chapter: 7

Debtor.

**ORDER ON FIRST AMENDED MOTION FOR RELIEF  
FROM STAY AND OBJECTION TO CLAIM NUMBER 3**

THIS CASE came on for hearing on March 28, 2017 upon the First Amended Motion for Relief from Stay [Doc. 19] (the “**Motion**”) filed by creditor CHRISTOPHER G. IRVIN (“**Irvin**”), upon the Objection to First Amended Motion for Relief from Stay [Doc. 20] (“**Objection to Stay Relief**”) filed by LAURA LYNN PESCOD (“**Debtor**”), upon the Objection to Allowance of Claim No. 3 [Doc. 23] (the “**Objection to Claim**”) filed by Debtor, and upon the Response and Opposition to Debtor’s Objection to Claim Number 3 [Doc. 24] filed by Irvin.

In this case, Irvin filed Proof of Claim Number 3 (the “**Claim**”) alleging a domestic support obligation owed by Debtor as a priority unsecured claim. The Claim is based upon a Final Judgment of Paternity (the “**Judgment**”) entered on October 4, 2016 by The

Honorable Patricia Ann Muscarella, Judge of the Circuit Court, in the Circuit Court in and for Pinellas County, Florida, Uniform Case Number: 52-2014-DR-005520-XXFDFD. Specifically, the Judgment awarded Irvin the sum of \$8,125.00 representing “one-half of the fee charged by Dr. Robert Evans, to perform the Court appointed parenting plan evaluation.” Whether the Claim will be allowed with priority status and whether Irvin will be entitled to stay relief to enforce the Claim will depend on whether Judge Muscarella finds that the Claim was in the nature of alimony, maintenance, or support. Specifically, 11 U.S.C. §101(14A) provides:

The term “domestic support obligation” means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, 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; or
- (ii) a governmental unit;

**(B) in the nature of alimony, maintenance, or support** (including assistance provided by a governmental unit) 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; ... (emphasis added).

Accordingly, it is:

ORDERED:

1. The automatic stay in this case is hereby modified for the limited purpose to allow Judge Muscarella, on an expedited basis as her caseload may permit, to make a separate determination as to whether the award in favor of Irvin for reimbursement of one-half of Dr. Robert Evans’ fee is in the nature of alimony, maintenance, or support within the meaning

set forth in 11 U.S.C. §101(14A).

2. If Judge Muscarella determines that the award was in the nature of alimony, maintenance or support, and enters an order so finding, upon the filing of that order in this case:

- a. the Claim will be ALLOWED as a priority unsecured claim;
- b. the Objection to Claim will be OVERRULED;
- c. pursuant to 11 U.S.C. §362(b)(2)(B), the Motion will be GRANTED to allow Irvin to enforce the Claim against any post-petition earnings by Debtor and against any other property, not property of the estate, acquired by Debtor subsequent to the filing of the Voluntary Petition in this case; and
- d. the Objection to Stay Relief will be OVERRULED.

3. If Judge Muscarella determines that the award was not in the nature of alimony, maintenance or support, and enters an order so finding, upon the filing of that order in this case:

- a. the Claim will be ALLOWED as a general unsecured claim;
- b. the Objection to Claim will be SUSTAINED;
- c. the Motion will be DENIED; and
- d. the Objection to Stay Relief will be SUSTAINED.

4. The Court shall retain jurisdiction to enter any further orders as may be necessary to enforce the provisions of this Order.

Attorney Timothy B. Perenich is directed to serve a copy of this order on interested parties and to file a proof of service within three (3) days of entry of this order.

The Clerk of this Court shall serve a copy of this order on The Honorable Patricia Ann Muscarella, Circuit Judge, 315 Court St., Rm. 484, Clearwater, FL 33756.