

ORDERED.

Dated: January 26, 2022


Grace E. Robson
United States Bankruptcy Judge

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

In re)	
)	
Stephen P Frick,)	Case No. 6:20-bk-05511-GER
)	Chapter 7
Debtor.)	
_____)	
)	
Jeannine Pierce,)	
)	
Plaintiff,)	
)	
vs.)	Adversary No. 6:21-ap-00097-GER
)	
Stephen P Frick,)	
)	
Defendant.)	
_____)	

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
AMENDED COMPLAINT FILED IN ADVERSARY PROCEEDING**

This case came before the Court on *Defendant's Motion to Dismiss Amended Complaint Filed in Adversary Proceeding*¹ (the "Motion") and Plaintiff's Response thereto.² The Court, having

¹ Doc. No. 29. All "Doc. No." citations refer to pleadings in this adversary proceeding, No. 6:21-ap-00097-GER, unless otherwise noted.

² *Plaintiff's Response in Opposition to Defendant's Motion to Dismiss Amended Complaint Filed in Adversary Proceeding* (the "Response"), Doc. No. 38.

reviewed the Motion, the Response, and the record, **FINDS, ORDERS, AND ADJUDGES** as follows:

Plaintiff, Jeannine Pierce, is the ex-wife of Debtor/Defendant, Stephen P Frick (“Debtor”). Plaintiff filed Proof of Claim No. 5 in the main case³ and asserted Debtor owed a non-dischargeable domestic support obligation to Plaintiff in the amount of \$1,907.98. The Chapter 7 Trustee recovered assets in the main case sufficient to pay Plaintiff’s claim in full and did so.⁴

After receiving payment, Plaintiff filed this adversary proceeding to deny Debtor’s discharge pursuant to § 727(a)(4) of the Bankruptcy Code.⁵ Debtor now seeks to dismiss this adversary proceeding, arguing that because Plaintiff’s claim was paid in full, she has no standing to prosecute the complaint objecting to discharge.

“The jurisdiction of federal courts is defined and limited by Article III of the Constitution,”⁶ and “the judicial power of federal courts is constitutionally restricted to ‘cases’ and ‘controversies.’”⁷ “Standing is an essential part of the case or controversy requirement.”⁸ “Because standing is jurisdictional, a dismissal for lack of standing has the same effect as a dismissal for lack of subject matter jurisdiction under Fed.R.Civ.P. 12(b)(1).”⁹ “The constitutional minimum requirements of standing require a plaintiff to demonstrate (1) an injury in fact; (2) that the injury is fairly traceable to the alleged misconduct of the defendant; and (3) that a favorable decision is likely to redress the injury.”¹⁰ “When addressing a motion to dismiss for lack of standing, the court

³ Plaintiff also filed Proof of Claim No. 6, but she has since withdrawn that claim.

⁴ Main Case, No. 6:20-bk-05511-GER, Doc. No. 49. Plaintiff subsequently filed a proof of claim (Claim No. 6) based on post-petition periods of time, which was objected to by Debtor (Doc. No. 58), and which Plaintiff agreed to withdraw (Doc. No. 67). Therefore, the Court does not address Claim No. 6 in deciding the Motion.

⁵ Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.

⁶ *Flast v. Cohen*, 392 U.S. 83, 94, 88 S. Ct. 1942, 1949 (1968).

⁷ *Id.*

⁸ *Abbott v. Arch Wood Prot., Inc. (In re Wood Treaters, LLC)*, 479 B.R. 122, 127 (Bankr. M.D. Fla. 2012).

⁹ *Stalley ex rel. U.S. v. Orlando Reg’l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (quoting *Cone Corp. v. Fla. Dep’t of Transp.*, 921 F.2d 1990, 1203 n.42 (11th Cir. 1991)).

¹⁰ *In re Wood Treaters*, 479 B.R. at 127-28.

evaluates standing based on the facts of the complaint. However, the court may not speculate concerning the existence of standing or piece together support for the plaintiff.”¹¹

Debtor argues that Plaintiff does not have standing because her pre-petition claim has been paid in full; the Court agrees.¹² However, even if the claim was not paid in full, Plaintiff has a non-dischargeable debt under § 523(a)(15) and therefore lacks standing because she does not have a redressable injury.¹³

In a case with similar facts, *In re Rosenfeld*,¹⁴ a bankruptcy court found that it did not have subject matter jurisdiction over the adversary proceeding brought by debtor’s former husband seeking denial of debtor’s discharge because it could not award meaningful relief to the plaintiff. The court recognized that even if the plaintiff was successful in obtaining an order denying a discharge under § 727(a), he would gain nothing for himself because any debt owed to the plaintiff was non-dischargeable under § 523(a)(15).¹⁵ The court also recognized that the plaintiff did not have standing to object to the debtor’s discharge on behalf of any other creditor.¹⁶ Accordingly, the court dismissed the plaintiff’s argument that because he is a “creditor” he is authorized to file an adversary proceeding objecting to the debtor’s discharge under § 727(c)(1).¹⁷

¹¹ *Correa v. BAC Home Loans Servicing LP*, 853 F. Supp. 2d 1203, 1207 (M.D. Fla. 2012) (citation and quotation marks omitted).

¹² See *In re Rizzo*, No. 2:13-bk-30580-RK, 2016 WL 908237 (Bankr. C.D. Cal. Mar. 9, 2016) (determining that a pre-petition creditor, whose claim had been paid in full, lacked standing to join a motion to reopen and motion to direct a Rule 2007 examination of the debtor).

¹³ See *Rosenfeld v. Rosenfeld (In re Rosenfeld)*, 535 B.R. 186 (Bankr. E.D. Mich. 2015).

¹⁴ *Id.*

¹⁵ *Id.* at 191-93 (“Because plaintiff already has the entire relief he seeks for himself in this adversary proceeding, he has no personal stake in pursuing a denial of the Debtor’s discharge, and the Court cannot afford him any meaningful relief beyond what he already has received.”).

¹⁶ *Id.* at 193 (“[U]nder the Bankruptcy Code, a private party creditor can litigate dischargeability issues only for himself, even though a single creditor’s success in blocking a discharge under § 727(a) may have the *effect* of benefitting other creditors. A private party creditor *with a nondischargeable debt* may not object to a debtor’s discharge *on behalf of* other creditors.”).

¹⁷ *Id.* (stating that § 727’s “general authorization for a ‘creditor’ to object to a discharge does not override, but rather is necessarily subject to, the constitutional ‘case or controversy’ requirement”).

The Court agrees with the analysis in *Rosenfeld*. Here, Plaintiff has a non-dischargeable debt under § 523(a)(15) that was satisfied, so the Court cannot provide “meaningful relief beyond what [she] already has received.”¹⁸ Since Plaintiff fails to allege a redressable injury, the Court must dismiss this case for lack of subject matter jurisdiction.¹⁹ Accordingly, it is

ORDERED:

1. The Motion (Doc. No. 29) is **GRANTED**.
2. The Clerk is directed to close this adversary proceeding.

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Attorney K Hunter Goff is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within three days of its entry.

¹⁸ *Id.*

¹⁹ In her Response, Plaintiff relies on *Lussier v. Sullivan (In re Sullivan)*, 455 B.R. 829 (1st Cir. BAP 2011). In that case, a chapter 7 debtor’s former domestic partner brought an adversary proceeding to deny him a discharge based on false oaths. It was not a case involving a non-dischargeable debt under § 523(a)(5) or (15). Additionally, it was not a case where a claim was paid in full after recovery of assets.