

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE:	)	Chapter 7
	)	
Tracey Chambers Coleman,	)	Case No. 11-12145(CSS)
	)	
Debtor.	)	Related Docket Nos. 19
	)	
	)	

**MEMORANDUM ORDER**

Upon consideration of the Motion to Avoid Lien [D.I. 19] filed on August 22, 2011 (the "Motion"); the Court having reviewed the Motion and the objections thereto; the Court having heard the statements of counsel and parties in interest regarding the Motion at a hearing before the Court on October 5, 2011 (the "Hearing"); and the Court finding that (1) the Court has jurisdiction over these matters, pursuant to 28 U.S.C. § 1334; (2) this is a core proceeding, pursuant to 28 U.S.C. § 157(b); (3) this Court has the judicial power to enter a final order; and (4) notice of the Motion and the Hearing was adequate under the circumstances;

IT IS HEREBY FOUND, ORDERED AND DECREED THAT,

1) Tracey Chambers Coleman (the "Debtor") filed a petition under Chapter 7 on July 7, 2011.

2) The Debtor filed a Motion to Avoid Judicial Lien on August 22, 2011. The Debtor's former spouse, George Fisher ("Fisher"), filed an objection. Through the motion, the Debtor seeks, under 11 U.S.C. §§ 522(b) and (f), to avoid a judicial lien entered in the Court of Common Pleas of Delaware County against the Debtor's

personal property, including a bank account with Trumark Financial Credit Union. The lien is entered of record as follows:

**George Fisher vs. Tracey Chambers-Coleman**

**In the amount of \$12,381.00, Praeipie to Enter Judgment was filed on March 14, 2011 pursuant to an Order dated February 1, 2011.**

3) Under section 522(f)(1), a debtor “may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under [section 522(b)], if such lien is - (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5).” Section 523(a), in turn, provides that a debtor’s discharge does not apply to any debt that is for a “domestic support obligation” which is defined in section 101(14A). “The elements that must be satisfied for a domestic support obligation to arise are as follows: (i) the payee of the obligation must be either a governmental unit or a person with a particular relationship to the debtor or a child of the debtor; (ii) the nature of the obligation must be support; (iii) the source of the obligation must be an agreement, court order, or other determination; and (iv) the assignment status of the obligation must be consistent with paragraph (D).” *In re Anthony*, 453 B.R. 782, 786 (Bankr. D. N. J. 2011)(emphasis added).

4) In this case, the debt is for (a) \$4,000 in attorney’s fees initially ordered in 2009 for violation of 2008 orders, which order was reiterated in 2010; (b) \$5,381 in “interest penalties” for non-payment of the attorney’s fees initially ordered; and (c)

\$3,000 in new attorney's fees ordered in 2011. The debt totals \$12,381. The threshold issue is whether this debt is in the nature of alimony, maintenance or support. That portion of the debt, in whole or in part, that is a domestic support obligation is not subject to discharge and the judicial lien in connection with that debt cannot be avoided. If the debt is not a domestic support obligation, in whole or in part, the judicial lien in connection with that debt may be avoided, provided the other elements of section 522(f) are met.

5) The definition of "domestic support obligation" was added to the Bankruptcy Code in 2005. Nonetheless, the amendment "did not alter the standard for determining whether an obligation is in the nature of support." *Id.*

A debt is in the nature of support and consequently non-dischargeable under 11 U.S.C. § 523(a)(5) only when it is "in substance support." This determination is made according to federal bankruptcy law, not state law. The critical question in determining whether a debt is truly in the nature of support is "the function served by the obligation at the time of [its entry]." *Id.* (internal citations omitted).

Thus, the Court must review the nature of the citations for contempt and the awards of attorneys fees and "interest penalties" in this case to determine, as a factual matter, whether they are in the nature of "support."

6) The order upon which the judgment lien is based was issued by the Court of Common Pleas of Delaware County, Pennsylvania on February 1, 2011. Debtor appealed that order. On April 27, 2011, Judge Cartisano of the Court of Common Pleas, who entered the February 1, 2011, order, issued an opinion in support of her order and

requested the appellate court (Pennsylvania Superior Court) to affirm her order and to direct the Debtor to abide by the trial court's future orders.

7) The factual background in support of the February 1<sup>st</sup> order is set forth in pp. 1-6 of the opinion. The salient points follow.

- The Debtor and Fisher are divorced and are the natural parents of three children. The sole dispute before this Court is over the custody of the children. There is no dispute over alimony nor child support.
- On June 23, 2008, both parties appeared before a Master in the Court of Common Pleas and agreed to a temporary custody order, which granted shared custody of the children with primary physical custody granted to the Debtor. The order contained other provisions delineating when Fisher would have physical custody of the children, including holidays, vacations, etc. The order also required counseling.
- On August 27, 2008, the parties appeared before a different Master in the Court of Common Pleas relating to the Debtor's request to relocate to Texas. The Master required that the children continue to attend school in Delaware County pending a hearing on the merits of the relocation request, ordered the parties "to stop playing games with each other," reiterated the provisions of the June 23<sup>rd</sup> order and issued additional provisions. On November 12, 2008, the relocation request was denied.

- On January 21, 2009, the parties agreed and the Court of Common Pleas ordered that the children were to remain with the Debtor in the martial home until a custody hearing, which was scheduled for May 27, 2009.
- On May 20, 2009, Fisher filed Petition Special Relief in Custody for Contempt of Court and an Award of Counsel Fees. On May 29, 2009, the Court of Common Pleas issued an order grating the petition, finding the Debtor in contempt and awarding \$4,000 in counsel fees.<sup>1</sup> There is no recitation in the 2011 opinion as to the specific conduct for which the Debtor was held in contempt.
- On August 24, 2010, the Debtor sought to change venue to the State of Delaware and a hearing in the Court of Common Pleas was scheduled for February 14, 2011.
- On December 14, 2010, Fisher once again filed an Emergency Petition for Contempt of Court and for Temporary Order for Sole Custody Pending Final Custody Trial and Attorneys Fees.
- The same day, the Court of Common Pleas entered a Temporary Custody Order directing the parties to comply with the Court's previous orders and directing the Debtor to pay the \$4,000 in attorneys fees as ordered on May 29, 2009. On December 15<sup>th</sup>, the Court issued an amended order making minor changes to the December 14<sup>th</sup> order.

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<sup>1</sup> It is unclear whether the custody hearing occurred on May 27<sup>th</sup>. Indeed, it appears that a custody hearing has never occurred.

- On December 20, 2010, Debtor appealed the orders dated December 14<sup>th</sup> and 15<sup>th</sup> to the Pennsylvania Superior Court. Presumably as a result of the appeal, the Court of Common Pleas continued the venue hearing scheduled for February 14, 2011.<sup>2</sup>
- On January 26, 2011, the Court of Common Pleas held a hearing on Plaintiff's Emergency Petition for Contempt filed on December 14<sup>th</sup>. The Debtor did not appear. The Court heard extensive, uncontested testimony from Fisher.
- The Court of Common Pleas issued its order on February 1<sup>st</sup> in which it reiterated that the Debtor must pay the \$4,000 in attorney's fees initially ordered on May 20, 2009 for violation of the 2008 orders, which award was reiterated in the December 14<sup>th</sup> and 15<sup>th</sup>, 2010 orders. In addition, for the first time, the Court attached "interest penalties" for the non-payment of the \$4,000 in attorney's fees. The Court calculated the interest penalties as \$5,381. Finally, the Court awarded \$3,000 in new attorney's fees in connection with the December 14<sup>th</sup> and 15<sup>th</sup> orders and the January 26<sup>th</sup> hearing.
- On February 7, 2011, the Superior Court quashed the Debtor's appeals from the December 14<sup>th</sup> and 15<sup>th</sup> orders as it found the orders were not final.

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<sup>2</sup> A venue hearing has not been held. Nonetheless it appears that the Debtor has moved to Delaware with the children.

- On February 9, 2011, the February 1<sup>st</sup> order was “registered as a Delaware Order” by the Family Court of the State of Delaware.
- On March 3, 2011, Debtor appealed the Common Pleas Court’s February 1<sup>st</sup> order to the Pennsylvania Superior Court.
- In response to the appeal, Judge Cartisano of the Court of Common Pleas issued an opinion on April 27, 2011 in the which the judge addressed the merits of the pending appeal and “respectfully requested[ed] that [the Common Pleas] Court’s entry of a Contempt Order be affirmed and [Debtor] be directed to abide by any and all orders entered in the future.”  
There is no evidence as to the current status of the appeal.
- In her opinion, Judge Cartisano summed up her frustration with the Debtor.

[T]his Court was within its right to hold [Debtor] in Contempt for blatantly disobeying earlier Orders of this Court. As [Fisher’s] Counsel stated at the Contempt Hearing, the [Debtor] has taken the children to Delaware without permission of the Court, tried to move all the support matters to Montgomery County twice and failed, appealed every Order that’s been entered by any Judge in this case and failed to complete her scheduled appointment with [the Court appointed counselor]. Fisher himself testified that the Debtor did not allow him to see the children during Christmas and that he hasn’t had contact with his children in the past few months.

This Court does not look lightly upon any party who through willful misconduct makes a mockery of the judicial system and judicial Orders. As the

Pennsylvania Superior Court stated in Langendorfer vs. Spearman, 797 A.2d 303, 308 (Pa. Super. 2002) “the contempt power is essential to the preservation of the court’s authority and prevents the administration of justice from falling into disrepair.”

- Finally, there is evidence that, as of May 24, 2011, the children were in the physical custody of Debtor but their location was unknown to Fisher. As a result, a criminal complaint was filed in Delaware County, Pennsylvania and there was a request for the issuance of a warrant for Debtor’s arrest. It is unclear whether a warrant was, in fact, issued.

8) It is not this Court’s place to judge (morally or otherwise) the conduct of the Debtor and/or Fisher. The task is to determine whether the awards of attorney’s fees and interest penalties are in the nature of support. More precisely what was the function served by the awarding of a attorney’s fees and “interest penalties” by the awards at the time of their entry. Anthony, 453 B.R. at 786. In making that determination, this Court “balances the policy that exceptions to discharge should be construed narrowly to effectuate the fresh start purpose of bankruptcy with the policy underlying section 523(a)(5).” *Id.*

9) First, we consider the \$4,000 attorney’s fees order in 2009 for violation of the 2008 orders. The purpose of that award in 2009 is unclear from the record.<sup>3</sup> In all likelihood it was designed to reimburse Fisher for the cost of having to come to the court to get the relief he had already been given. Nonetheless, we don’t know. On the

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<sup>3</sup> Although the \$4,000 award was reiterated in 2010 and 2011 the award must be examined as of its initial issuance.

record before the Court it would be speculation to make such a finding. Thus, the fresh start policy prevails and the \$4,000 award is not in the nature of support. Thus, it is not a domestic support obligation.

10) Second, we turn to the award in 2011 of \$5,281 in interest penalties for failure to pay the 2009 attorney's fees award for violation of the 2008 orders. Examining the award as of February, 2011 it is clear that the interest penalties had less to do with the failure to pay the fees and more to do with the Debtors course of conduct in 2010 and 2011. That much is clear from the Common Pleas Court's opinion. Slapping a retroactive interest penalty for failure to pay a 2009 award due to unrelated conduct in 2010 and 2011 has nothing to do with support. Rather, it is designed to penalize Debtor from her alleged abuse of the system. The Common Pleas Court appears to have had every provocation to issue the order. That, however, isn't the issue. The issue is whether the award was in the nature of support. It was not. Thus, it is not a domestic support obligation.

11) Third, what of the \$3,000 award for attorney's fees? This award was in the nature of support. Unlike the 2009 award, the opinion set forth a thorough basis for the Court's action in 2011. Unlike the interest penalties award, this citation is directly related to the events of December, 2010 and January 2011. Thus, the \$3,000 award of attorneys fees is in the nature of support. It follows that it is a non-dischargeable domestic support obligation.

12) To sum up, the debt for \$3,000 in attorney’s fees is a domestic support obligation and not dischargeable. Moreover, the supporting judicial lien cannot be avoided as a matter of law.

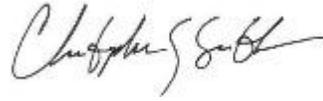
13) The remainder of the debt is not a domestic support obligation and is subject to discharge. The lien may be avoided, provided the other requirements of section 522 (f) are met.

14) The next question is whether the lien “impairs an exemption” 11 U.S.C. §522(f)(1). If so, it is avoidable. The Debtor’s Amended Schedule C - Property Claimed as Exempt provides:

<u>Property</u>	<u>Value of Exemption</u>	<u>Current Value of Property</u>
Cash	\$ 250.00	\$ 500.00
Checking Account	\$11,725.00	\$12,755.00
Household goods & Furnishings	\$ 1,500.00	\$ 3,000.00
Books	\$ 25.00	\$ 50.00
Clothing	\$ 200.00	\$ 200.00
Jewelry	\$ 800.00	\$ 800.00
IRA	\$ 3,500.00	\$ 3,500.00
Child Support	\$ 2,500.00	\$ 2,500.00
Car	<u>\$ 3,450.00</u>	<u>\$ 5,000.00</u>
	\$23,950.00	\$28,305.00

15) Under the amended schedule, the Debtor has \$4,355 in non-exempt personal property that remains subject to the judicial lien. Thus, although all but \$3,000 of the debt is discharged, the judicial lien survives in the amount of \$4,355. Fisher has requested the Court to direct payment of some or all of the contents of the checking account for payment on account of the lien. That is not the Court’s purview. Fisher has

a secured claim of \$3,000 is not discharged. He may pursue his state court remedies to collect on that claim and/or to proceed against the collateral but only to the total value of \$4,355. The remainder of the lien is avoidable.



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Christopher S. Sontchi  
United States Bankruptcy Judge

Date: March 16, 2012