UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

MICHELLE DIANNE MURRAY, CASE NO.: 19-30380-KKS
CHAPTER: 13

Debtor.
_____/

ORDER DENYING "*MOTION FOR RELIEF REGARDING: DOC. 69 GRANTING ADDITIONAL TIME TO FILE SUPPLEMENTAL OR AMENDED PAPERS, DOC. 54: MOTION TO BE HEARD ON CONTESTED MATTERS OBJECTION TO DISCHARGE, DOC. 55: MOTION TO BE HEARD REGARDING CONTINUAL HARASSMENT FROM DEBTOR"* FILED BY PHILLIP D. MURRAY, JR. (DOC. 82)

THIS CASE is before the Court on the paper entitled "*MOTION FOR RELIEF Regarding: Doc 69 Granting Additional Time to File Supplemental or Amended Papers, Doc 54: Motion to Be Heard on Contested Matters Objection to Discharge, Doc 55: Motion to Be Heard Regarding Continual Harassment from Debtor,"* filed by Phillip D. Murray, Jr. on February 20, 2020 ("Motion for Relief," Doc. 82). The Court held a status hearing on the Motion for Relief and other matters on May 28, 2020.

KKS with assistance from SK

The issues before the Court stem from and relate to the unfortunate aftermath of a dissolution of marriage between Debtor, Michelle Signore, f/k/a Michelle Murray ("Debtor") and her former husband, Phillip D. Murray, Jr. ("Mr. Murray"). By the Motion for Relief, Mr. Murray asks this Court to award him monetary and injunctive relief. For the reasons set forth below, the Motion for Relief is due to be denied.

The Dissolution of Marriage

Debtor and Mr. Murray married in 1990; their marriage was dissolved by a *Marital Separation and Property Settlement Agreement* entered by the District Court of Sedgwich County, Kansas on April 26, 2017 ("Marital Settlement Agreement").[1] Under the terms of the Marital Settlement Agreement, the following occurred or was to occur:

1. The parties were to sell their real property in Bel Aire, Kansas and equally divide the proceeds or remaining debt. They listed the property, which was subject to a $329,000 mortgage, with a realtor and agreed to reduce prices periodically until the property was sold.

[1] Claim 29-1, Part 6. All facts set forth in this portion of this Order derive from the Marital Settlement Agreement.

2. If the sale of the property resulted in a deficiency, the parties agreed to pay that deficiency from Mr. Murray's thrift savings plan retirement account. If there was any additional deficiency that the lender would not forgive and that would not be dischargeable in bankruptcy, the parties agreed to equally divide the debt. If the property needed any specified "major repairs" the parties would split those costs. If the sale resulted in income tax liability, the parties would share that liability equally.
3. The "Privacy" section of the Marital Settlement Agreement contained in paragraphs 21-23 provided injunctive relief in favor of both parties.
4. The parties agreed to divide their personal property, with each keeping one or more vehicles and associated debts, their own bank and retirement accounts, and various household goods.
5. In paragraphs 27-32 of the Marital Settlement Agreement the Kansas court awarded Debtor, "as a marital asset," a portion of Mr. Murray's military retirement accrued during the marriage.[2] In lieu of "certain marital debts being apportioned to [Debtor],

[2] Claim 29-1, Part 6 at ¶ 27.

including back debts, IRS responsibility, and credit card debt, and in equalization for disproportionate division of household goods," Debtor would not receive any portion of Mr. Murray's military retirement for thirty (30) months from the first retirement payment due to Mr. Murray.[3] In other words, Mr. Murray would retain $1,300 per month of his retirement for thirty (30) months (a sum equal to $39,000) before Debtor would be entitled to receive any retirement funds; in exchange, Debtor was relieved of responsibility for listed joint debts.

6. Mr. Murray agreed to assume and hold Debtor harmless from the parties' joint federal and state tax debt (less payments made by Debtor pursuant to the Marital Settlement Agreement) and their USAA credit card debt.

7. As to income taxes, the parties agreed to jointly file their 2016 federal income tax return and split any refund or liability; Debtor agreed to pay fifty percent (50%) of Kansas State taxes due for 2016; and for 2017 and beyond, the parties agreed to

[3] *Id.* at ¶ 28.

separately file returns and pay their respective income tax liabilities, other than:

a. income tax due on the sale of the real property, which the parties agreed to split equally;

b. income due if their lender reported debt forgiveness, which they agreed to split equally; and

c. income due from any audit of prior years' taxes, which they agreed would be borne by whichever of them under-reported income or otherwise caused the liability.[4]

The Court cannot allow Mr. Murray's late-filed claim as timely.

Debtor filed her Chapter 13 petition and plan on April 3, 2019.[5] Debtor listed Mr. Murray as an additional party to be notified about a debt on her Schedule E/F, Part 3, filed on April 3, 2019.[6] The Court issued Official Form 3091, "Notice of Chapter 13 Bankruptcy Case," (the "341 Notice") on April 4, 2019;[7] the Bankruptcy Noticing Center mailed a copy

[4] The parties agreed that if the tax liability could not "be attributed to either Party, then the taxes, penalties and interest" would be divided equally. *Id.* at ¶ 46.
[5] Docs. 1 and 2.
[6] Doc. 1, p. 35. Mr. Murray was also listed on Schedule H as a co-debtor on debt owed to the IRS. *Id.* at p. 40.
[7] Doc. 6.

of that Notice to all creditors and parties in interest, including Mr. Murray, on April 6, 2019.[8] The 341 Notice states, in pertinent part:

> Confirmation of a chapter 13 plan may result in a discharge. Creditors who assert that the debtors are not entitled to a discharge under 11 U.S.C. § 1328(f) must file a motion objecting to discharge in the bankruptcy clerk's office within the deadline specified in this notice. Creditors who want to have their debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office by the same deadline. (See line 13 below for more information.)[9]

Section 8 of the 341 Notice sets forth in **bold text:**

> "**Deadline for all creditors to file a proof of claim (except governmental units):** filing deadline 6/12/19 . . . . If you do not file a proof of claim by the deadline, you might not be paid on your claim. To be paid, you must file a proof of claim even if your claim is listed in the schedules that the debtor filed."[10]

Mr. Murray did not file a claim within the deadline set by the Court. Rather, he filed his proof of claim on February 20, 2020, more than eight (8) months after the deadline expired.[11]

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[8] Doc. 12.

[9] Doc. 6, p. 1. Section 13 states, in pertinent part, "If you want to have a particular debt excepted from discharge under 11 U.S.C. § 523(a)(2) or (4), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1328(f), you must file a motion. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 8."

[10] Doc. 6, p. 2.

[11] Claim 29-1.

In the Motion for Relief, Mr. Murray requests that this Court allow his late claim as timely and require Debtor to include payment of his claim in her Chapter 13 Plan. Mr. Murray cites no legal authority for this request and the Court is unaware of any that would apply. The Bankruptcy Code is strict with respect to timely filing of claims in Chapter 13 cases. The applicable Code section and Bankruptcy Rules are 11 U.S.C. § 502(b)(9), Rule 3002(c) and Rule 9006(b).[12] Together, those provisions give bankruptcy courts virtually no leeway to allow late-filed claims in Chapter 13 cases.[13]

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[12] 11 U.S.C § 502(b)(9) (2020); Fed. R. Bankr. P. 3002(c); and Fed. R. Bankr. P. 9006(b)(3). Pursuant to the Bankruptcy Code, if an objection to claim is filed, a court should determine the amount of and allow such claim except to the extent that: "proof of such claim is not timely filed. . . ." 11 U.S.C. § 502(b)(9) (2020). Rule 3002(c) provides that in Chapter 13 cases, "a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13." Fed. R. Bankr. P. 3002(c). Rule 3002(c) provides seven (7) exceptions to the timeliness requirement, none of which are applicable here. Fed. R. Bankr. P. 3002(c)(1)-(7). While courts have some power to enlarge deadlines under the Bankruptcy Code and Rules, "[t]he court may enlarge the time for taking action under Rules . . . 3002(c) . . . only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006(b)(3).

[13] *In re Tench,* No. 15-8026, 2016 WL 2892497, *5 (B.A.P. 6th Cir. May 11, 2016) ("Bankruptcy Rule 3002(c) provides a deadline for the filing of proofs of claim in Chapter 13 cases and § 502(b)(9) of the Bankruptcy Code provides for disallowance of claims not timely filed, with certain exceptions not applicable to this case. The bankruptcy court did not have the authority to extend that deadline under either its equitable powers or the doctrine of equitable tolling."); and *In re Gardenhire,* 209 F.3d 1145, 1148 (9th Cir. 2000) ("Our precedents support the conclusion that a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules.").

Here, there is no question that Mr. Murray received the 341 Notice before the claim deadline expired. Mr. Murray admits in his pleadings that: "I, Phillip D. Murray, Jr., received a copy of Debtor's Chapter 13 Bankruptcy [sic] in July 2019."[14] Although Mr. Murray reports that he thought he was receiving the 341 Notice because he was Debtor's ex-spouse and "[t]here was no mention" that he was a creditor, the case law gives no quarter for failure to file a proof of claim because of a misunderstanding of the law.[15]

Mr. Murray does not raise a justiciable issue of excusable neglect. No reported cases equate "excusable neglect" with misunderstanding, or even with being convinced by a debtor not to file a timely claim, which is in part what Mr. Murray avers. Even if Mr. Murray's allegations pled excusable neglect, the Bankruptcy Rules and case law do not allow courts to extend the deadline to file a claim on that basis.[16]

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[14] Claim 29-1, Part 5, *Notice of Objection by Creditor on basis of Defrauding Creditor.*

[15] *In re Bailey,* 521 Fed. Appx. 920, 921-22 (11th Cir. 2013) (citing *Albra v. Advan, Inc.,* 490 F.3d 826, 829 (11th Cir. 2007) ("Pleadings filed by a *pro se* litigant are construed liberally, but *pro se* litigants must nonetheless conform to procedural rules, including deadlines.")); and *Advanced Estimating System, Inc. v. Riney*, 130 F.3d 996, 998 (11th Cir. 1997) ("attorney error based on a misunderstanding of the law was an insufficient basis for excusing a failure to comply with a deadline.").

[16] *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship,* 507 U.S. 380, 409 n.4 (1993) ("Subsections (b)(2) and (b)(3) of Rule 9006 enumerate those time requirements excluded from the operation of the 'excusable neglect' standard."); *In re Tench,* No. 15-8026, 2016 WL 2892497, *3 (B.A.P. 6th Cir. May 11, 2016) ("Bankruptcy Rule 9006(b)(1) provides for the allowance of late-filed claims due to 'excusable neglect.' However, this Rule is not applicable

Regardless of the timing, and as the Court noted at the hearing, it remains unclear that Mr. Murray has a claim against Debtor at all, apart from a possible claim for indemnification for Debtor's portion of the couples' joint tax liabilities. Nothing in the Marital Settlement Agreement, Mr. Murray's proof of claim or the Motion for Relief points to any monetary claim due directly to Mr. Murray from Debtor. Further, it appears that in her Chapter 13 plan Debtor proposes to pay all sums due from her on account of the parties' joint tax obligations directly to the IRS and Kansas Department of Revenue.[17]

Mr. Murray's claim for injunctive relief must be addressed to a different court.

Mr. Murray requests a Temporary Restraining Order ("TRO") against Debtor for her alleged "years of abuse," threats and harassment.

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to the deadlines set by Rule 3002(c)."); *In re Mullen,* Case No. 3:13-bk-5879-PMG, 2015 WL 8252928, * 3 (Bankr. M.D. Fla. Nov. 16, 2015) (citing *In re Matthews,* 313 B.R. 489, 493 (Bankr. M.D. Fla. 2004) ("'The applicable Bankruptcy Rules do not permit allowance of a late-filed claim in a Chapter 13 case, even where the facts would otherwise support a finding of 'excusable neglect.'")); *In re Stone,* 473 B.R. 465, 468 (Bankr. M.D. Fla. 2012) ("The express language of Rule 9006(b)(3) states that 'the court may enlarge the time for taking action under Rule . . . 3002(c) . . . only to the extent and under the conditions stated [within Rule 3002(c)].' . . . As such, the 'excusable neglect' standard of 9006(b)(1) does not apply to Chapter 13 cases."); 9 Collier on Bankruptcy ¶ 3002.03 (16th ed. 2020) ("The excusable neglect standard provided by Rule 9006(b) does not permit the court to extend the time for filing proofs of claim under Rule 3002(c).").

[17] *Chapter 13 Plan*, Doc. 2, p. 5; *see also* Claims 25-1 and 26-1.

This is not the type of relief customarily requested of or granted by a bankruptcy court, and no such relief is justified here.[18]

The Marital Settlement Agreement issued by the Kansas court already contains injunctive relief in favor of Mr. Murray and the Debtor. Paragraphs 21 through 23 of that agreement provide, in part, that the parties shall "continue to be free from any interference by the other;" neither "shall interfere with the privacy, bother, threaten the other nor assault or batter the other . . . by word of mouth, telephone, text message, email, social media or otherwise."[19]

Mr. Murray claims that Debtor has violated this injunction in connection with this bankruptcy case. If that claim is true, Mr. Murray may pursue any remedies that may be available to him in state court. But it is beyond the scope of this Court's role to enforce an injunction imposed by another court in a dissolution of marriage case merely because one of the parties has filed bankruptcy.

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[18] Injunctions and restraining orders are governed by Rule 65 of the Federal Rules of Civil Procedure, made applicable by Rule 7065 of the Federal Rules of Bankruptcy Procedure and must be requested in an adversary proceeding. Fed. R. Bankr. P. 7065.

[19] Claim 29-1, Part 6, pp. 5-6.

The Court will address Mr. Murray's objection to confirmation of Debtor's Chapter 13 plan at the confirmation hearing.

Because the May 28 hearing was noticed as a status hearing on all pending matters, the Court briefly addressed Mr. Murray's allegations in conjunction with his objection to confirmation of Debtor's Chapter 13 plan.

Confirmation of a Chapter 13 plan must necessarily include consideration of the Bankruptcy Code's good faith requirement.[20] The concept of good faith is integral to consumer bankruptcies and is a mandatory requirement for plan confirmation.[21] While not defined in the Bankruptcy Code, *Black's Law Dictionary* defines "good faith" as "a state of mind consisting in (1) honesty in belief or purpose . . . or (4) absence of intent to defraud or to seek unconscionable advantage."[22] Courts apply the "totality of the circumstances" test to determine good or bad faith on a case-by-case basis and have developed non-exhaustive lists of factors to consider.[23] In looking at the totality of the circumstances, courts bear in

[20] 11 U.S.C. § 1325(a)(3) and (7) (2020).
[21] *Id.*; *In re Gonzales,* 172 B.R. 320, 325 (E.D. Wash. 1994) (citing *In re Chinichian*, 784 F.2d 1440, 1442–44 (9th Cir.1986)).
[22] *Good Faith*, *Black's Law Dictionary* (11th ed. 2019).
[23] *See* Comment, *Good Faith and Disposable Income: Should the Good Faith Inquiry Evaluate the Proposed Amount of Repayment?*, 36 Gonz. L. Rev. 375, 379 & n.26 (2001) (noting that the "totality of the circumstances" approach is used in the Third, Fourth, Fifth, Sixth,

mind the purpose and spirit of the Bankruptcy Code: "to afford the honest but unfortunate debtor a fresh start. . . ."[24]

Mr. Murray maintains that Debtor convinced him not to file a claim and that he would not need to participate in her bankruptcy case. According to Mr. Murray, once the claim deadline expired Debtor reached out and, essentially, taunted him for having failed to file a timely claim.[25] At the May 28 hearing, this Court urged Debtor's counsel to caution Debtor that a Chapter 13 plan can only be confirmed if, among other things, the plan has been proposed and the action of the debtor in filing the petition were in good faith.[26]

This Court should not condone a party improperly using this Court or the protections of the Bankruptcy Code as a weapon. Regardless of their feelings, debtors in bankruptcy are not to use bankruptcy to bully or otherwise adversely influence a party's action or inaction in a case. If evidence of inappropriate action on the part of the Debtor is presented at

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Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits). *E.g., Kitchens v. Georgia R.R. Bank & Trust Co.* (*In re* Kitchens), 702 F.2d 885, 889 (11th Cir. 1983).

[24] *Molitor v. Eidson (In re Molitor),* 76 F.3d 218, 220 (8th Cir. 1996) (citing *Graven v. Fink (In re Graven),* 936 F.2d 378, 385 (8th Cir. 1991)); *see also Grogan v. Garner*, 498 U.S. 279, 287 (1991); and *In re Wilson,* 168 B.R. 260, 262 (Bankr. N.D. Fla. 1994) (citing *In re St. Laurent*, 991 F.2d 672, 680 (11th Cir. 1993)).

[25] Claim 29-1, Part 5, p. 8.

[26] 11 U.S.C. § 1325(a)(3) and (7) (2020).

confirmation, and if the Court finds that Debtor has not been proceeding in good faith, confirmation of her plan may be denied.

CONCLUSION

The Motion for Relief must be denied. No authority supports allowing Mr. Murray's late-filed claim as a timely unsecured claim; regardless, Mr. Murray has not demonstrated that he has a monetary claim against Debtor.[27] Mr. Murray's request for a temporary restraining order based on the Marital Settlement Agreement is also due to be denied, without prejudice to Mr. Murray bringing that matter before a court of competent jurisdiction over the parties' dissolution of marriage.

For the reasons stated,

It is ORDERED:

1. The Motion for Relief ("*MOTION FOR RELIEF Regarding: Doc 69 Granting Additional Time to File Supplemental or Amended Papers, Doc 54: Motion to Be Heard on Contested Matters Objection to Discharge, Doc 55: Motion to Be Heard*

[27] Any claim Mr. Murray may have against Debtor arises out of the Marital Settlement Agreement and may survive a Chapter 13 discharge. *See* 11 U.S.C. §§ 523(a)(5), 523(a)(15), 1328(a)(2) and 1328(c)(2) (2020).

Regarding Continual Harassment from Debtor," Doc. 82) filed by Phillip D. Murray, Jr. is DENIED.

2. This Order is without prejudice to Mr. Murray pursuing injunctive relief pursuant to the Marital Settlement Agreement in a court with jurisdiction over the parties' dissolution of marriage.

3. The automatic stay is vacated as to Phillip D. Murray, Jr. to permit him to seek such appropriate relief as may be necessary or appropriate to enforce the injunction contained within the Marital Settlement Agreement; provided, however, that the stay remains in effect to prevent Mr. Murray from attempting to collect pre-petition debt from Debtor.

4. All relief requested in the Motion for Relief pertaining to Docs. 69, 54 and 55 is DENIED.

DONE and ORDERED on June 10, 2020.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Debtor's attorney is directed to serve a copy of this Order on interested parties and file a certificate of service within three (3) days of entry of this Order.