

MAR 18 2009

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-08-1193-DCPa
)	
RANDOLPH VALENTINE BECKX,)	
)	Bk. No. SA 07-13803-RK
Debtor.)	
_____)	
RANDOLPH VALENTINE BECKX,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
IRENE BECKX,)	
)	
Appellee.)	
_____)	

Argued and Submitted on February 18, 2009
at Pasadena, California

Filed - March 18, 2009

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Robert N. Kwan, Bankruptcy Judge, Presiding

Before: DUNN, CARLSON² and PAPPAS, Bankruptcy Judges.

¹This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

²Hon. Thomas E. Carlson, U.S. Bankruptcy Judge for the Northern District of California, sitting by designation.

1 This appeal requires that we determine whether a former
2 spouse's express waiver of support in a marriage settlement
3 agreement ("MSA") precludes a bankruptcy court from determining
4 that a payment obligation in the MSA that is labeled a property
5 equalization payment nonetheless constitutes a "domestic support
6 obligation" for purposes of 11 U.S.C. § 507(a)(1)(A).³ We
7 AFFIRM.

8
9 **I. FACTS**

10 Randolph Beckx ("Randolph"), the debtor/Appellant, and Irene
11 Beckx ("Irene"), the claimant/Appellee, were married on January
12 20, 2001, and separated on November 14, 2005. In December of
13 2005, Randolph initiated dissolution proceedings in the Superior
14 Court of California for the County of Orange ("Family Law
15 Court").

16 From May 2005 until her benefits ended in February 2006,
17 Irene received state disability benefits. During this period,
18 Irene was not employed. In December 2006, Irene was cleared by
19 her physician to return to work, and she took a position as a
20 part-time office assistant at a significant pay reduction from
21 her pre-disability employment as a community income manager for
22 the American Cancer Society, where her annual salary had been
23 \$46,000. At the time proceedings were initiated in the Family
24 Law Court, Randolph had been a police officer in Santa Ana,
25

26
27

³Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 California for more than 25 years, and his annual salary was
2 \$72,000.

3 In June 2006, Irene obtained in the dissolution proceedings
4 an order requiring Randolph to show cause why he should not pay
5 Irene spousal support in the amount of \$4,000 per month. At the
6 same time, Randolph obtained an order requiring Irene to show
7 cause why she should not be compelled to sell the marital
8 residence ("Residence") to him. Randolph and Irene reached an
9 agreement on both of these issues, which was incorporated into
10 the Family Law Court's interlocutory order ("Interlocutory
11 Order") entered October 30, 2006.

12 The Residence and the Interlocutory Order

13 The Interlocutory Order awarded the Residence to Randolph.
14 By the time the Interlocutory Order was entered, Randolph and
15 Irene already had agreed to divide evenly their equity in the
16 Residence. In the meantime, with Irene's consent, Randolph
17 refinanced the Residence and paid \$91,275 to Irene. This payment
18 represented a portion of Irene's share of the equity attributable
19 to her community property interest in the Residence. The
20 Interlocutory Order recognized this payment, and awarded Irene a
21 further payment of \$15,325 ("Additional Equity") for her
22 community property interest in the Residence. However, Irene's
23 right to receive the \$15,325 payment was subject to adjustment
24 "for credits and reimbursements as later determined by order or
25 further agreements."

26 Spousal Support and the Interlocutory Order

27 The Interlocutory Order required Randolph to pay Irene
28 \$46,000 as his buyout of her right to spousal support ("Support

1 Buyout"). The Support Buyout was to be paid in full within
2 eighteen months or from the sale of the Residence, whichever
3 occurred first. No monthly payments were required, and the
4 Support Buyout was expressly made non-taxable to Irene. The
5 Interlocutory Order further required Randolph to provide health
6 insurance coverage for Irene until further order or agreement.
7 Finally, the Interlocutory Order awarded Irene \$10,000 for her
8 attorneys' fees ("Attorney Fee Award").

9 Randolph was to secure the payment of his obligations under
10 the Interlocutory Order by executing a deed of trust on the
11 Residence in favor of Irene in the amount of \$61,375,
12 representing the \$46,000 Support Buyout, the \$15,375 Additional
13 Equity, and the \$10,000 Attorney Fee Award. Randolph never
14 executed the trust deed, and he never made any of the payments
15 required under the Interlocutory Order.

16 The Stipulated Judgment

17 Randolph and Irene thereafter continued their negotiations
18 with respect to the outstanding issues between them. Ultimately,
19 on August 28, 2007, the Family Law Court entered a final
20 stipulated judgment, to which was attached the MSA ("Stipulated
21 Judgment"). The Stipulated Judgment provided for a waiver of
22 spousal support by both Randolph and Irene, required Randolph to
23 provide insurance coverage to Irene through December 31, 2009,
24 and, after dividing assets and liabilities, provided for an
25 equalization payment ("Equalizing Payment") from Randolph to
26 Irene in the amount of \$50,000. The Equalizing Payment was to be
27 paid from the sale of the Residence; if the Equalizing Payment
28 had not been paid by April 1, 2008, Randolph was to commence

1 monthly payments to Irene in the amount of \$500. These monthly
2 payments were to continue through August 1, 2012, at which time
3 the entire balance was to have been paid. If Randolph missed one
4 of the monthly payments, Irene was authorized to accelerate the
5 balance of the Equalizing Payment. The Equalizing Payment bore
6 interest at the rate of five percent (5%) per annum from August
7 1, 2007. Randolph was to execute a deed of trust in Irene's
8 favor in the amount of \$50,000 to secure the payment of the
9 Equalizing Payment. No trust deed was ever executed.

10 The Stipulated Judgment also required Randolph to pay the
11 Attorney Fee Award set forth in the Interlocutory Order. A copy
12 of the Interlocutory Order was attached to the Stipulated
13 Judgment.

14 The Bankruptcy Case

15 Subsequent to the entry of the Stipulated Judgment, the
16 housing market in the Orange County area declined significantly,
17 and Randolph was unable to sell the Residence. Randolph filed a
18 voluntary petition for chapter 13 relief on November 14, 2007.
19 The secured lender on the Residence obtained relief from the
20 automatic stay to commence foreclosure proceedings.

21 In his proposed chapter 13 plan, Randolph treated the
22 Attorney Fee Award as a priority debt, and the Equalizing Payment
23 as a general unsecured debt. Irene promptly filed a proof of
24 claim ("Claim") asserting that the Equalizing Payment was a
25 "domestic support obligation," entitled to priority treatment
26 pursuant to § 507(a)(1)(A). Randolph objected to the Claim, on
27 the basis that the Stipulated Judgment provided both that Irene
28 had expressly waived any right to support and that the Equalizing

1 Payment represented a negotiated amount to equalize the division
2 of community property.

3 Over Randolph's parol evidence rule objection, the
4 bankruptcy court took testimony from Irene and Randolph to
5 determine the intent of the parties regarding the
6 characterization of the Equalizing Payment. The bankruptcy court
7 determined (1) that \$46,000 of the Equalizing Payment represented
8 the Support Buyout and was entitled to treatment as a priority
9 claim in Randolph's bankruptcy case, and (2) that the remaining
10 \$4,000 portion of the Claim constituted a general unsecured
11 claim. Randolph timely appealed the bankruptcy court's order
12 entered July 22, 2008.

13 14 **II. JURISDICTION**

15 The bankruptcy court had jurisdiction under 28 U.S.C.
16 §§ 1334 and 157(b) (2) (A) and (B). We have jurisdiction under
17 28 U.S.C. § 158.

18 19 **III. ISSUES**

20 Whether the bankruptcy court erred when it "waived" Irene's
21 compliance with its established trial procedures.

22 Whether the bankruptcy court erred in its questioning of
23 Irene at the Hearing in order to elicit her testimony.

24 Whether the bankruptcy court erred, in light of the express
25 waiver of support contained in the MSA, when it took evidence to
26 determine whether Randolph and Irene intended the Equalizing
27 Payment to be in the nature of support.

1 Our review of a mixed question begins by ascertaining
2 whether the bankruptcy court committed clear error in its
3 findings of fact. Thus, in the context of this appeal, “[w]e
4 review the bankruptcy court’s factual determination that a debt
5 was for alimony, maintenance, or support for clear error.”
6 Seixas v. Booth (In re Seixas), 239 B.R. 398, 401 (9th Cir. BAP
7 1999). “A finding is ‘clearly erroneous’ when although there is
8 evidence to support it, the reviewing court on the entire
9 evidence is left with the definite and firm conviction that a
10 mistake has been committed.” United States v. U.S. Gypsum Co.,
11 333 U.S. 364, 395 (1948). “If two views of the evidence are
12 possible, the trial judge’s choice between them cannot be clearly
13 erroneous.” Anderson v. Bessemer City, 470 U.S. 564, 573-75
14 (1985); In re Hansen, 368 B.R. at 874-75.

15 The next step in our review of a mixed question is
16 determining whether the facts satisfy a legal rule. This is a
17 matter of statutory construction. We review a bankruptcy court’s
18 statutory construction and conclusions of law, including
19 interpretation of provisions of the Bankruptcy Code, de novo.
20 Einstein/Noah Bagel Corp. v. Smith (In re BCE W., L.P.), 319 F.3d
21 1166, 1170 (9th Cir. 2003); Mendez v. Salven (In re Mendez), 367
22 B.R. 109, 113 (9th Cir. BAP 2007); Trejos v. VW Credit, Inc. (In
23 re Trejos), 374 B.R. 210, 214 (9th Cir. BAP 2007). We therefore
24 review de novo the bankruptcy court’s determination that a debt
25 constitutes a “domestic support obligation” within the meaning of
26 § 507(a)(1)(A). De novo means review is independent, with no
27 deference given to the trial court’s conclusion. Rule 8013.

1 **V. DISCUSSION**

2 Before we reach the substance of this appeal, we address the
3 procedural issues Randolph has raised.

4 First, Randolph asserts in the "Statement of Issues
5 Presented" in his opening brief that the bankruptcy court erred
6 by "excusing" Irene from compliance with its trial procedures.
7 In contravention of Rule 8010(a)(1)(E),⁴ Randolph does not
8 discuss this issue either in his opening brief or in his reply
9 brief. Generally, neither opposing parties nor this panel are
10 obliged to search the entire record unaided for error. See Dela
11 Rosa v. Scottsdale Memorial Health Systems, Inc., 136 F.3d 1241
12 (9th Cir. 1998); Syncom Capital Corp. v. Wade, 924 F.2d 167, 169
13 (9th Cir. 1991). Accordingly, we need not reach this issue.
14 Nevertheless, we observe that the bankruptcy court offered to set
15 over the Hearing to allow Randolph time to prepare further for
16 the Hearing in light of the waiver of the local rules as to
17 Irene's Hearing submissions. Randolph declined the offer, and
18 thereby waived any error on appeal with respect to the bankruptcy
19

20
21 ⁴Rule 8010(a) provides:

22 (1) Brief of the appellant. The brief of the appellant
23 shall contain under appropriate headings and in the
24 order here indicated:

25

26 (E) An argument. The argument may be preceded by
27 a summary. The argument shall contain the
28 contentions of the appellant with respect to the
issues presented, and the reasons therefor, with
citations to the authorities, statutes and parts
of the record relied on.

1 court having "excused" Irene from compliance with its trial
2 procedures.

3 Second, Randolph asserts, again in the "Statement of Issues
4 Presented" in his opening brief, that the bankruptcy court erred
5 by asking Irene leading questions in its examination of her at
6 the Hearing. It appears Randolph's primary concern was that by
7 asking leading questions of Irene, who was appearing pro se, the
8 bankruptcy court at least gave the appearance that it may have
9 become Irene's advocate. We note that Randolph raised no
10 objection at the Hearing to the bankruptcy court's questioning of
11 Irene. However, the case law appears to suggest that our review
12 of the extent of the bankruptcy court's questioning is
13 appropriate even in the absence of an objection at the Hearing.
14 See United States v. Shwayder, 312 F.3d 1109, 1120 (9th Cir.
15 2002) (A party's failure to object to a trial court's supervision
16 of a trial, including the examination of witnesses, limits review
17 on appeal to plain error.).

18 "A judge's participation during trial warrants reversal only
19 if the record shows actual bias or leaves an abiding impression
20 that the jury perceived an appearance of advocacy or partiality."
21 Price v. Kramer, 200 F.3d 1237, 1252 (9th Cir. 2000). See also
22 Russell, Bankr. Evid. Manual § 614.2 (2008 ed.). The manner in
23 which the bankruptcy court takes evidence is in the nature of an
24 evidentiary ruling. To reverse an evidentiary ruling, we must
25 conclude both that there was an abuse of discretion and that the
26 error was prejudicial. Latman v. Burdette, 366 F.3d 774, 786
27 (9th Cir. 2004).

1 Randolph does not assert on appeal that he suffered any
2 prejudice as a result of the bankruptcy court's questioning of
3 Irene, nor does he assert actual bias on the part of the
4 bankruptcy court. Reviewing the record as a whole, we find no
5 prejudice to Randolph by the bankruptcy court's questioning in
6 this case.⁵

7 We turn now to the substantive issues on appeal.

8 Section 507(a)(1), enacted as part of the Bankruptcy Abuse
9 Prevention and Consumer Protection Act of 2005 ("BAPCPA"),⁶
10 provides first priority status for a debt which is a "domestic
11 support obligation." As relevant to this appeal, § 507(a)(1)
12 provides:

13 The following expenses and claims have priority in the
14 following order:

15 (1) First:

16 (A) Allowed unsecured claims for domestic support
17 obligations that, as of the date of the filing of
the petition in a case under this title, are owed
to or recoverable by a . . . former spouse. . . .

18 Randolph concedes that if the Equalizing Payment is a "domestic
19 support obligation," it must be accorded priority status.

20 Further, § 1322(a)(2) requires that the plan "provide for the
21 full payment . . . of all claims entitled to priority under
22 _____

23 ⁵As noted above, the issue here involved the bankruptcy
24 court's examination of Irene using leading questions. While the
25 bankruptcy court has broad discretion to tailor its examination
26 of witnesses to the circumstances, in cases involving a pro se
27 litigant, the perception that the court is acting as an advocate
can perhaps be minimized by asking the litigant to speak
narratively, followed by clarifying questions from the court.

28 ⁶Pub. L. No. 109-8 § 212 (April 20, 2005).

1 section 507 of [title 11]. . . ." Thus, if the Equalizing
2 Payment is a "domestic support obligation," it must be paid in
3 full through Randolph's chapter 13 plan, unless Irene agrees
4 otherwise.

5 Randolph asserts he is unable to propose a feasible chapter
6 13 plan which would pay Irene \$46,000 as a priority claimant.
7 However, if the Equalizing Payment is, as Randolph asserts, a
8 division of property, it would constitute a debt under
9 § 523(a)(15), and could be discharged in Randolph's chapter 13
10 case, even if not paid.

11 The term "domestic support obligation" is a new term under
12 BAPCPA, and is defined in § 101(14A). For purposes of the
13 bankruptcy code, "domestic support obligation" means:

14 **a debt that accrues before, on, or after the date of**
15 **the order for relief in a case under this title,**
16 including interest that accrues on that debt as
17 provided under applicable nonbankruptcy law
18 notwithstanding any other provision of this title, **that**
19 **is -**

20 (A) **owed to or recoverable by -**

21 (I) **a spouse, former spouse, or child of the debtor or**
22 **such child's parent, legal guardian, or responsible**
23 **relative; or**

24 (ii) a governmental unit;

25 (B) **in the nature of alimony, maintenance, or support**
26 **(including assistance provided by a governmental unit)**
27 **of such spouse, former spouse, or child of the debtor**
28 **or such child's parent, without regard to whether such**
debt is expressly so designated;

(C) **established** or subject to establishment before, on,
or after the date of the order for relief in a case
under this title, **by reason of applicable provisions**
of-

(I) **a separation agreement, divorce decree, or property**
settlement agreement; [or]

1 (ii) **an order of a court of record;** or

2 (iii) a determination made in accordance with
3 applicable non-bankruptcy law by a governmental unit;
and

4 (D) **not assigned to a nongovernmental entity,** unless
5 that obligation is assigned voluntarily by the spouse,
6 former spouse, child of the debtor, or such child's
parent, legal guardian, or responsible relative for the
purpose of collecting the debt.

7 Section 101(14A) (emphasis added).

8 Randolph does not dispute that the Equalizing Payment is a
9 debt (1) that accrued before the order for relief in Randolph's
10 chapter 13 case, (2) that is owed to his former spouse, (3) that
11 was established prepetition by reason of applicable provisions of
12 a "divorce decree . . . or property settlement agreement," and
13 (4) that has not been assigned to a nongovernmental entity. The
14 only issue in dispute is whether the Equalizing Payment is "in
15 the nature of alimony, maintenance, or support."

16 Obligations for or in the nature of alimony, maintenance or
17 support have been protected from discharge since the enactment of
18 the Bankruptcy Code in 1978, specifically in § 523(a)(5). In
19 1994, debts for or in the nature of alimony, maintenance, or
20 support first were given status as priority debts.⁷ Courts that
21 have addressed the issue of the meaning of "in the nature of
22 alimony, maintenance, or support," under BAPCPA's new § 101(14A),
23 agree that pre-BAPCPA case law construing the phrase remains
24 applicable. See, e.g., Wis. Dep't of Workforce Dev. v. Ratliff,
25 390 B.R. 607, 612 (E.D. Wis. 2008). Given that BAPCPA was

27 ⁷Bankruptcy Reform Act of 1994, Pub. L. 103-394 § 304(c)
28 (Oct. 22, 1994).

1 intended to expand the protection afforded to support
2 obligations, we agree.

3 Whether a debt is actually in the nature of support is a
4 “factual determination made by the bankruptcy court as a matter
5 of federal bankruptcy law.” Beaupied v. Chang (In re Chang), 163
6 F.3d 1138, 1140 (9th Cir. 2000). The overriding general
7 considerations guiding a bankruptcy court in deciding whether a
8 debt is in the nature of support are “the intent of the parties
9 . . . in fixing the obligation and the purpose of the obligation
10 in light of the parties’ circumstances at that time.” COLLIER
11 FAMILY LAW AND THE BANKRUPTCY CODE ¶ 6.04[2], at p. 6-32 (2008). See
12 also Friedkin v. Sternberg (In re Sternberg), 85 F.3d 1400, 1405
13 (9th Cir. 1996), overruled on other grounds by Murray v. Bammer
14 (In re Bammer), 131 F.3d 788, 792 (9th Cir. 1997) (en banc). The
15 primary circumstance with which the bankruptcy court is concerned
16 is whether the recipient spouse actually needed support at the
17 time of the divorce. In re Sternberg, 85 F.3d at 1405. This
18 involves an inquiry into the relative incomes of the parties at
19 the time of the divorce. Id.

20 As a threshold matter, Randolph contends that the
21 bankruptcy court erred when it took evidence for the purpose of
22 determining whether the Equalizing Payment was in the nature of
23 support. Randolph asserts error in the bankruptcy court’s
24 consideration of intent evidence because the Stipulated Judgment
25 contained an express waiver of support by Irene, and because the
26 stated purpose of the Equalizing Payment was to equalize the
27 division of community property.

1 The admissibility of parol evidence in the context of
2 determining whether, as a matter of bankruptcy law, a debt is in
3 the nature of support, has long been decided in this circuit.

4 In ascertaining its meaning and even in deciding
5 whether the decree is ambiguous, the court should
6 consider the surrounding circumstances and all other
7 relevant incidents bearing on the intent of the parties
8 when they entered into the agreement embodied in the
9 decree . . . Parol evidence, therefore, is admissible.

8 Shaver v. Shaver, 40 B.R. 964, 968 (D. Nev. 1983), aff'd, 736
9 F.2d 1314 (9th Cir. 1984).

10 We similarly have rejected the suggestion that the parol
11 evidence rule bars the admission of any evidence regarding the
12 parties' intent as to whether an obligation provided in a marital
13 settlement agreement is "in the nature of support." See Kritt v.
14 Kritt (In re Kritt), 190 B.R. 382, 387 (9th Cir. BAP 1995). In
15 fact, consideration of parol evidence will almost always be
16 necessary in making this determination.

17 In order to determine whether a debt is a
18 nondischargeable spousal support obligation or a
19 dischargeable property settlement, the court must
20 ascertain the intention of the parties at the time they
21 entered in their stipulation agreement, and not the
22 current circumstances of the parties.

21 Leppaluoto v. Combs (In re Combs), 101 B.R. 609, 615 (9th Cir.
22 BAP 1989) (citations omitted) (emphasis added). Further, "[t]he
23 court should look to the substance of the obligation in the
24 agreement, and generally should disregard labels and titles."
25 Id.

26 In light of the clarity of the law with respect to the
27 bankruptcy court's obligation to look behind labels assigned by
28 the parties to a debt to determine whether that debt is "in the

1 nature of support," the bankruptcy court did not err when it took
2 evidence to evaluate the parties' intent with respect to the
3 character of the Equalizing Payment.

4 The bankruptcy court found that at the time Randolph filed
5 his petition for dissolution of his marriage to Irene in December
6 2005, Irene was unemployed and receiving disability benefits.
7 Once those disability benefits ended in February 2006, Irene had
8 no other income. As a result, she petitioned the Family Law
9 Court for spousal support. Based on these facts, the bankruptcy
10 court determined that at the time of the divorce, Irene had an
11 actual need for spousal support.

12 The bankruptcy court also found that at the time the
13 Stipulated Judgment was entered, there was an imbalance in the
14 relative incomes of Randolph and Irene. This finding is not
15 challenged on appeal.

16 Based on the testimony of the parties at the Hearing, the
17 bankruptcy court found that the Equalizing Payment represented
18 Randolph's unpaid obligation for the Support Buyout.

19 First, the bankruptcy noted that "[Irene] testified that the
20 \$50,000 obligation represented the \$46,000 spousal support
21 obligation originally agreed to by [Randolph], which was unpaid,
22 as adjusted for additional marital debts." This testimony is
23 consistent with the terms of the Interlocutory Order, which set
24 the amount of the Support Buyout, but reserved for negotiation
25 the award of the Additional Equity to incorporate the final
26 division of assets and liabilities. The Support Buyout was a
27 fixed amount; the Additional Equity was subject to change based
28 on further negotiation.

1 Second, the bankruptcy court noted that, in his testimony,
2 Randolph "could not explain that the amount of \$50,000 was
3 attributable to anything else, but the unpaid support
4 obligation." In fact, when pressed by the bankruptcy court for
5 clarification of his intent in agreeing to the Equalizing
6 Payment, Randolph conceded that his motivation was to ensure he
7 had no support obligation.⁸

8 Randolph concedes both that the Support Buyout included in
9 the Interlocutory Order was intended as Irene's support, and that
10 he made no payments on the Support Buyout. However, he contends
11 that because Irene waived all rights to spousal support,
12 including past spousal support, in the Stipulated Judgment, which
13 superseded the Interlocutory Order, the bankruptcy court erred
14 when it determined that the Support Buyout constituted a portion
15 of the Equalizing Payment, rendering that portion "in the nature
16 of support."

17
18
19 ⁸Hearing Transcript at 122:18 - 123:2:

20 THE COURT: Just so I understand your testimony, Mr.
21 Beckx, about paragraph 15, which [your
22 counsel] asked you a question about,
23 your understanding of the settlement
24 between - the final settlement between
25 you and Ms. Beckx was that you basically
26 wanted to have no support obligations so
27 you were willing to give her a \$50,000
28 payment as long as she gave up that
right to support and that was part of
the deal as you understood it?

THE WITNESS: Yes, sir, that's exactly as I understood
it.

1 With respect to Irene's waiver of spousal support contained
2 in the Stipulated Judgment, the bankruptcy court determined that
3 the waiver was made in exchange for a buyout of the support
4 rights for \$46,000, and therefore was not a complete waiver of
5 Irene's right to support.

6 Finally, Randolph asserts that Irene's voluntarily agreement
7 to forego installment payments until 2008 is evidence of the fact
8 that the Equalizing Payment does not constitute support. The
9 bankruptcy court determined that Irene, in effect, agreed to use
10 her community assets as support until the Residence sold and
11 Randolph could satisfy the Support Buyout. However, this finding
12 did not change the determination that the Support Buyout and the
13 Equalizing Payment were "in the nature of support."

14 The record before us reflects that there was an imbalance in
15 the relative incomes of the parties both at the time the
16 Interlocutory Order was entered and at the time the Stipulated
17 Judgment was entered; that the Interlocutory Order contained a
18 very specific amount for support which was never paid; that
19 Irene's explanation of why she waived support in the Stipulated
20 Judgment is consistent with a conditional, rather than an
21 absolute waiver; that there is no explicit consideration to
22 support Irene's waiver of support in the Stipulated Judgment; and
23 that the parties' explanations of the basis for the Equalizing
24 Payment are consistent with an intent to use the Equalizing
25 Payment to satisfy the Support Buyout, which Randolph concedes
26 was itself a domestic support obligation. Accordingly, we find
27 no clear error in the bankruptcy court's findings of fact. Nor
28 do we find error in its conclusion, based upon these facts and

1 our independent review of the record, that the Equalizing Payment
2 is a domestic support obligation, and therefore a priority claim,
3 to the extent of \$46,000.

4 **VI. CONCLUSION**

5 The bankruptcy court properly took evidence to determine
6 whether the Equalizing Payment constituted a domestic support
7 obligation for purposes of § 507(a)(1)(A). The bankruptcy
8 court's factual determination that the Equalizing Payment was in
9 the nature of support was not clearly erroneous. Based upon our
10 independent review of the record, the bankruptcy court correctly
11 concluded that the Equalizing Payment was a domestic support
12 obligation to the extent of the unpaid Support Buyout.

13 We AFFIRM.