FILED

AUG 06 2007

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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NOT FOR PUBLICATION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. AZ-07-1063-PaAK
MICHAEL G. ACKERMAN,	Bk. No. 05-23358
Debtor.	
REBECCA J. ACKERMAN,	
Appellant,	**M E M O R A N D U M**[1]
v.	
MICHAEL G. ACKERMAN,	
Appellee.	

Submitted Without Oral Argument on July 26, 2007

Filed – August 6, 2007

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Sarah Sharer Curley, Bankruptcy Judge, Presiding.

Before: PAPPAS, AHART[2] and KLEIN, Bankruptcy Judges.

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[1] This 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.

[2] Hon. Alan M. Ahart, United States Bankruptcy Judge for the Central District of California, sitting by designation.

This appeal presents a fairly routine issue in an odd procedural context. In connection with her ex-husband's chapter 13[3] case, Appellant Rebecca Ackerman challenges the bankruptcy court's jurisdiction to determine whether a debt she owed to him had been discharged in Appellant's prior chapter 7 bankruptcy case. We AFFIRM.

FACTS

Appellant and Appellee, Michael G. Ackerman, were divorced in 1995. In 2003, the parties engaged in litigation in Arizona state court concerning child support and custody. Ultimately, the state court concluded that Appellee had overpaid child support to Appellant in the amount of $7,885.57; a money judgment was entered in Appellee's favor against Appellant for this overpayment. In addition, applying Arizona law, the state court ordered Appellant to pay Appellee's attorney fees incurred in the litigation amounting to $9,936.27, based on the reasonableness of the positions taken by the parties and their respective financial resources.

On April 19, 2004, Appellant filed a chapter 7 petition. Both Appellee and his family law attorney were listed on the mailing matrix used in Appellant's case and presumably received notice of her bankruptcy filing. On August 18, 2004, Appellant received a discharge. The case was closed on December 12, 2004.

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[3] Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. 109-8, 119 Stat. 23 (Apr. 20, 2005).

On October 12, 2005, Appellee filed a chapter 13 petition; he filed his proposed plan on October 28, 2005. In his amended schedules, Appellee listed his claims against Appellant for the overpayment of support and attorney fees based on the state court's judgments as assets. Appellee took the value of these assets into account in determining the amount of payments to be made to creditors under his plan. See § 1325(a)(4) (providing, that to be confirmed, a chapter 13 plan must pay "each allowed unsecured claim [an amount that] is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 . . . .")

While her purpose in doing so remains unclear, Appellant (who was not a creditor of Appellee) objected to confirmation of Appellee's chapter 13 plan, contending the debts she owed to Appellee should not have been included in the calculation of his plan payments.[4] Appellant's position was that her obligations to Appellee had been discharged in her chapter 7 case and, therefore, it was not appropriate for Appellee to represent that Appellant owed him money.[5]

The parties agreed to present the issues raised by

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[4] It is difficult to understand how Appellant would have been adversely impacted by the confirmation by the bankruptcy court of Appellee's chapter 13 plan. However, because of our disposition, we need not speculate about Appellant's motives in challenging the plan.

[5] In arguments to the bankruptcy court, Appellant suggested that Appellee had recorded his judgment for overpayment of child support as a lien against Appellant's real property. But Appellee's counsel conceded that the judgment was not recorded and no lien existed. No issue regarding the validity of any judgment lien is raised in this appeal, nor do we express any opinion on that topic.

Appellant's objection to confirmation to the bankruptcy court by way of stipulated facts and written argument, followed by oral argument at a January 30, 2007 hearing. At that hearing, Appellee conceded that the debt for the child support overpayment had been discharged in Appellant's chapter 7 bankruptcy case. He acknowledged this debt was the type specified in § 523(a)(15), and that he failed to timely commence the required adversary proceeding under § 523(c) and Rule 4007(c) in Appellant's bankruptcy case to except the debt from her discharge.

The parties and bankruptcy court next turned their attention to whether the debt owed by Appellant to Appellee for attorney fees had been discharged. Appellant maintained that debt was also discharged. Appellee countered that because the debt was incurred in connection with litigation regarding custody and support of the parties' children, and the fees award by the state court were based on his financial need, the debt was excepted from discharge without the need of any order from the bankruptcy court under § 523(a)(5). However, in order to avoid further litigation, Appellee offered to stipulate that only half of the fees incurred were directly related to child support issues, and to agree that the remainder was discharged in Appellant's chapter 7 bankruptcy. Appellant's counsel agreed to accept Appellee's position that one-half of the fee award had been incurred in dealing with child support issues. However, Appellant disagreed that this debt was excepted from discharge.

The bankruptcy court announced its ruling, accepting Appellee's position:

> So as I take a look at the positions of the parties, I believe at this point and so conclude as a matter of

> fact in law that debtor has set forth a sufficient basis on this record with the stipulated facts and Mr. Smith's [Appellee's counsel] concession on the record today that at least one half of the attorney's fees of Mr. Delgado [Appellee's family law counsel] would be in the nature [of] support. They would be and the nature of a custody or other child-support issues and should be nondischargeable under the analysis under Section 523 A5. I don't require a separate proceeding, but come to those findings based upon what the parties previously agreed to do on the record.

Tr. Hr'g 18:13-23 (January 30, 2007).

Following the court's oral decision, Appellant questioned the procedure the bankruptcy court utilized to reach the dischargeability issue. The bankruptcy court reminded the parties that this was the procedure they had requested be employed to resolve the issues raised by Appellant's objection.

On February 6, 2007, the bankruptcy court entered its Order Re: Dischargeability of Claim Re: Rebecca Ackerman. Appellant timely filed a notice of appeal from this order on February 12, 2007, contesting that portion of the order determining that one-half of the attorney fee debt was not discharged in her earlier bankruptcy pursuant to § 523(a)(5).

JURISDICTION

Appellant challenges the jurisdiction of the bankruptcy court to decide the issues. As discussed below, we find that the bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2). We have jurisdiction pursuant to 28 U.S.C. § 158(b).

ISSUES

Whether the bankruptcy court had jurisdiction to determine, in Appellee's chapter 13 case, if the debts owed by Appellant to

Appellee had been discharged in Appellant's previous chapter 7 bankruptcy.

Whether the bankruptcy court correctly determined that a portion of the debt was nondischargeable pursuant to § 523(a)(5).

STANDARDS OF REVIEW

In general, "[t]he standard of review is de novo for legal questions and clearly erroneous for factual questions." Beaupied v. Chang (In re Chang), 163 F.3d 1138, 1140 (9th Cir. 1998) (citing In re Bammer, 131 F.3d 788, 792 (9th Cir. 1992)(en banc)). "Questions of subject matter jurisdiction are reviewed de novo[.]" Montana v. Goldin (In re Pegasus Gold Corp.), 394 F.3d 1189, 1193 (9th Cir. 2005) (citing In re McGhan, 288 F.3d 1172, 1178 (9th Cir. 2002)). "We review the bankruptcy court's factual determination that a debt was for alimony, maintenance, or support for clear error." Seixas v. Booth (In re Seixas), 239 B.R. 398, 401(9th Cir. BAP 1999). Whether the bankruptcy court correctly interpreted § 523(a)(5) is a question of law we review de novo. County of El Dorado v. Crouch (In re Crouch), 199 B.R. 690, 691 (9th Cir. BAP 1996).

DISCUSSION

I.
The bankruptcy court had jurisdiction to determine the dischargeability of the debts.

Appellant contends that the bankruptcy court in Appellee's chapter 13 case lacked jurisdiction to determine whether the debt she owed Appellee under the state court's attorney fee order was

excepted from discharge in her prior chapter 7 case. Appellee argues that Appellant agreed to have the dischargeability issues resolved in the confirmation proceedings in his chapter 13 case.

The bankruptcy court's jurisdiction is established in 28 U.S.C. § 1334 and 28 U.S.C. § 157. Under these statutes, "[a] bankruptcy court has jurisdiction over 'all civil proceedings arising under title 11, or arising in or related to cases under title 11.'" Pegasus Gold Corp., 394 F.3d at 1193 (quoting 28 U.S.C. § 1334(b)). The statute implementing this jurisdictional grant provides that:

> [b]ankruptcy judges may hear and determine all cases under title 11, and any or all proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
>
> (2) Core proceedings include, but are not limited to - . . .
>
> (I) determinations as to the dischargeability of particular debts; . . .
>
> (K)determinations of the validity, extent, or priority of liens;
>
> (L) confirmations of plans[.]

28 U.S.C. § 157(b).

In addition to hearing and adjudicating core proceedings, "a bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11." 28 U.S.C. § 157(c)(1). "A bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 868-69 (9th Cir. 2005) (quoting Mann v. Alexander Dawson (In re Mann), 907 F.2d 923, 926

n. 4 (9th Cir. 1990)).

If the parties consent, the bankruptcy court may enter appropriate final orders and judgments in non-core proceedings rather than providing proposed findings of fact and conclusions of law to the district court for entry. 28 U.S.C. § 157(c)(1)-(2). The Ninth Circuit Court of Appeals has held that a party's failure to object to the bankruptcy court's exercise of jurisdiction over a non-core matter

> indicates a willingness to have the bankruptcy court adjudicate its state law claims. Moreover, appellant should not now, after fully litigating its case in bankruptcy court, be permitted to object to that court's jurisdiction. We hold that appellant's failure to object to the bankruptcy court's jurisdiction constitutes consent to that jurisdiction.

Daniels-Head & Assoc. v. William M. Mercer, Inc. (In re Daniels-Head & Assoc.), 819 F.2d 914, 919 (9th Cir. 1987). Thus, consent to the bankruptcy court's jurisdiction need not be express.

In this case, the issues arose in proceedings in the bankruptcy court to consider whether Appellee's proposed chapter 13 plan should be confirmed. § 1324(a) (providing that "the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.") In connection with confirmation, the parties sought a ruling from the bankruptcy court determining whether Appellant's obligation to Appellee for attorneys fees had been discharged in Appellant's prior chapter 7 case. The proceeding before the bankruptcy court was one "arising in" Appellee's chapter 13 case and "arising under" the Bankruptcy Code. However, even characterizing the bankruptcy court's role most favorably to Appellant's position, the bankruptcy court was determining an issue that was clearly

"related to" both Appellant's and Appellee's bankruptcy cases.

The bankruptcy court had the power to enter a final order in this case. Its ruling came in a proceeding dealing with confirmation of Appellee's plan, and implicated a determination about the dischargeability of Appellant's debts to Appellee and the validity of any lien that may exist to secure such debts. The proceeding was "core" as provided by the several paragraphs of 28 U.S.C. § 157(b) set forth above.

Finally, contrary to Appellant's position, the bankruptcy court's jurisdiction to determine the dischargeability of debts is not contingent upon Appellant's chapter 7 bankruptcy case being open and pending at the time:

> Thus, while principles of ripeness require that a bankruptcy case have been commenced before [the bankruptcy court] can exercise § 1334(b) "arising under" jurisdiction to determine if a debt is excepted from discharge, the status of the case as open or closed makes no difference so long as nothing has mooted the controversy.

Menk v. LaPaglia (In re Menk), 241 B.R. 896, 905-906 (9th Cir. BAP 1999). Here, Appellant brought the dischargeability issue to the bankruptcy court by way of her objection to confirmation of Appellee's chapter 13 plan. It was not a necessary condition to reopen Appellant's bankruptcy case in order for the bankruptcy court to exercise its jurisdiction to determine the dischargeability issue.

Moreover, the Ninth Circuit has recognized that the bankruptcy court presiding over a debtor's case does not exercise exclusive jurisdiction over determinations of whether debts are excepted from discharge under § 523(a)(5). Rein v. Providian Fin. Corp., 270 F.3d 895, 904 n. 15 (9th Cir. 2001) (citing In re

Siragusa, 27 F.3d 406, 408 (9th Cir. 1994)). For example, a state domestic relations court may make a dischargeability determination under § 523(a)(5) after entry of a bankruptcy discharge. Aldrich v. Imbrogno (In re Aldrich), 34 B.R. 776, 781 (9th Cir. BAP 1983). Only exceptions to discharge based on §§ 523(a)(2) (debts for fraud), (a)(4) (embezzlement or fraud by a fiduciary), (a)(6) (debts for willful and malicious injuries), or (a)(15) (nonsupport debts arising from a divorce) must be decided by the bankruptcy court within the time constraints imposed by Rule 4007(c). Under the facts presented here, either the state court or the bankruptcy court in Appellee's chapter 13 case would have jurisdiction to decide whether Appellant's obligation to pay Appellee's attorneys fees incurred in the custody and support litigation was excepted from discharge under § 523(a)(5).

Finally, the record demonstrates that Appellant effectively and expressly consented that the determination regarding the dischargeability of her debts to Appellee could be made by the bankruptcy court in Appellee's chapter 13 case. It was not until the bankruptcy court ruled against Appellant that she objected to the procedure employed, contending that the dischargeability determination should have been made by way of an adversary proceeding filed and decided by the bankruptcy court in her chapter 7 bankruptcy case. The bankruptcy court, in response to Appellant's complaint, explained:

> We get to the bigger issue as to Mr. Fatta's [Ms. Ackerman's attorney] concerns, how do we present as to the Court? Well, back in December the parties basically said they wanted to submit a number of issues to me through the statement of facts and memoranda of law.

> Now, I could've set it up where there would have been a separate adversary proceeding under Section 523 A5 I suppose, but that wasn't how the parties presented it to me. In other words, they said that basically this is how they wanted to submit the issues; they thought that there were some remain [sic] issues; and that they would present again a stipulated statement of facts, memorandum of law, and that ultimately I was going to decide the matter. So I don't see Mr. Fatta, a basis at least on this record, to go back now and say, all right. I want an underlying complaint and I want to get into the Section 523 A15 issues. I don't think that's appropriate given the consent of the parties as to how they wanted to proceed.

Tr. Hr'g 15:25-16:17.

When Appellant again raised her contention that her bankruptcy case would need to be reopened and an adversary proceeding commenced to determine the amount, if any, of the debt that was nondischargeable, the bankruptcy court responded

> So where we are right now and this gets back to the agreement of the parties, where we are right now is the parties back in December said we're going to submit these various issues.
>
> We've got a number of issues obviously some of them you've resolved, but some of them have not been resolved. Your client has won on some of these issues, Mr. Fatta. Mr. Smith's client has won on some of the other issues. So that's kind of the nature of it, but given the fact that you set it up to be resolved this way I don't see a basis to now go back and say separate and apart from the agreement of the parties I now want to have a complaint filed and now I want to explore Section 523 A5. I just don't think that's what the parties agreed to.

Tr. Hr'g 20:9-21.

Appellant's counsel continued to question the bankruptcy court as to how it reached the dischargeability issue until he apparently understood the bankruptcy court's reasoning:

> MR. FATTA: I guess - - I guess I'm looking for the nexus to how do you get to the A5 [issue]? How do you know it's an A5 issue without some sort of determination? I mean - -

> THE COURT: Because she presented it to me through stipulated facts.
>
> MR. FATTA: Okay. We've got - - we've got an affidavit that's right. All right.
>
> THE COURT: Yeah.
>
> MR. FATTA: I guess I'm just having trouble with that nexus determining how you get there, but I understand what you're saying.

Tr. Hr'g 21:16-22:1.

The record is clear that Appellant raised both the question of the discharged status of the debts she owed Appellee, and the validity of any liens held by Appellee, in the chapter 13 case. Under 28 U.S.C. § 1334(b), these issues are firmly within the purview of the bankruptcy court's jurisdiction. Under 28 U.S.C. § 157(b)(2), the matter before the bankruptcy court was a core proceeding in which it was authorized to enter a final judgment. But even if these issues are somehow considered non-core proceedings, Appellant consented to the bankruptcy court's power to enter a final decision when she agreed to present the issues to the bankruptcy court by way of stipulated facts and oral argument. See Daniels-Head & Assoc., 819 F.2d at 919.[6]

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[6] We acknowledge that Rule 7001(6) prescribes that a determination regarding the dischargability of a debt should normally be sought via an adversary proceeding, and not in connection with confirmation of a chapter 13 plan. We discussed the legitimacy of the procedure when chapter 13 plan confirmation proceedings are employed to resolve two-party disputes that ordinarily require separate litigation in a recent decision, Litton Loan Serv'g v. Garvida (In re Garvida), 347 B.R. 697(9th Cir. BAP 2006). In Garvida, we noted that caution is required when ersatz procedure is used, but that in some cases the litigation choices of the parties may legitimize otherwise incorrect procedure, and that any procedural error may be rendered harmless by the manner in which the parties actually conducted the litigation. Id. at 703-04. This is such a case.

We conclude that the bankruptcy court had jurisdiction to adjudicate the issues raised in this case.[7]

II.

The bankruptcy court did not clearly err in determining that one-half of the attorney fees awarded by the state court to Appellee constituted a debt in the nature of support and thus had not been discharged in Appellant's chapter 7 bankruptcy case.

Presumably in the alternative, Appellant also argues that the bankruptcy court erred in determining that even a portion of the attorney fee debt was nondischargeable pursuant to § 523(a)(5).[8] She contends the entire debt should have been discharged pursuant to § 523(a)(15).[9] Appellee disagrees, and so

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[7] Recall, Appellant prevailed on several issues: the lien securing the overpaid child support was invalid because that debt was discharged in Appellant's earlier bankruptcy, and Appellee conceded that one-half of the attorney fees awarded by the state court could also be discharged. To be sure, Appellant has not argued that the bankruptcy court lacked jurisdiction to rule in her favor.

[8] The version of Section 523(a)(5)(B) applicable in Appellee's case instructs that a debt will not be discharged if it is a debt

> to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that -
> (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

[9] The applicable version of § 523(a)(15), in effect at the time both Appellant and Appellee filed their bankruptcy cases, provided:

(continued...)

do we.

An award of attorney fees by a state court in custody litigation involving the debtor may be in the nature of support and, therefore, nondischargeable in the debtor's bankruptcy case under § 523(a)(5). Marks v. Catlow (In re Catlow), 663 F.2d 960, 961 (9th Cir. 1981). Although federal law determines whether the debt in question is in the nature of support, the bankruptcy court may look to state law for guidance. Gard v. Gibson (In re Gibson), 103 B.R. 218, 220 (9th Cir. BAP 1989). Whether a debt is actually in the nature of support as contemplated by § 523(a)(5) is a factual determination. Chang, 163 F.3d at 1146. "A relevant factor for the bankruptcy court to consider when making this determination is how the particular state law characterizes the debt." Id. (citing Catlow, 663 F.2d 960, 962-63 (9th Cir. 1981)). "Where the award was rendered in a contested proceeding, another relevant fact is the intent of the

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[9](...continued)
A discharge . . . does not discharge an individual debtor from any debt – not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless–
(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or
(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

state court." Gionis v. Wayne (In re Gionis), 170 B.R. 675, 682 (9th Cir. BAP 1994). Another "factor in characterizing an obligation as one intended for support is the need of the recipient spouse." Gibson, 103 B.R. at 221.

The only evidence submitted to the bankruptcy court concerning the nature of the obligation as support was the state court's order requiring Appellant to pay Appellee's attorney's fees, included in the parties' Joint Statement of Facts. The state court awarded the attorney fees pursuant to Ariz. Rev. Stat. § 25-324, governing attorney fee awards in marital and domestic relations litigation, which provides in pertinent part:

> The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter[.]

ARIZ. REV. STAT. ANN. § 25-324 (2004). The attorney's fee order in this case specified, "[h]aving considered the reasonableness of the positions taken by the parties and the financial resources, the Court finds that Respondent [Appellee] shall be entitled to attorney fees pursuant to ARS 25-324." Arizona case law is explicit that attorney fees may be awarded any time there is a financial disparity between the parties. Magee v. Magee, 81 P.3d 1048, 1051 (Ariz. App. 2004) ("Recognizing that payment of attorneys' fees is an aspect of the support duty permits us to make this point: every spouse regardless of wealth owes a duty of support to his or her marital partner[.]") Given the state statute upon which the fee award was based, and the case law construing that statute, the bankruptcy court could find that the

attorney fees were awarded to Appellee, at least in part, based upon the parties' relative financial needs.

Accepting Appellee's suggestion, the bankruptcy court also found that at least one-half of the fees awarded were directly attributable to the litigation in the state court of custody and support issues:

> I suspect I could probably find attorney's fees and costs in excess of the one half amount as proposed by Mr. Smith, but that's all his client is requesting at this point in time. And I don't find that position unreasonable to say that at least half of the attorney's fees and costs requested by Mr. Delgado as reflected in his affidavit would be in the nature of custody or support.

Tr. Hr'g 15:18-24. The bankruptcy court considered the relevant state law, noting that all decisions involving child custody and support must be based upon the best interests of the child, concluding, "therefore any attorney's fees that are awarded are along the lines of what is in the best interest of the child and also support this idea that [the attorney fee award] is in the nature of child-support as a result." Tr. Hr'g 17:22-25.

This conclusion is supported by Ninth Circuit case law that the bankruptcy court also considered. In Catlow, the court addressed the dischargeability of attorney fees awarded under the same Arizona statute.[10] The court pointed out that "Arizona

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[10] The version of the statute in effect at that time was slightly different, not requiring the state court to consider the reasonableness of the parties arguments:

> The court from time to time, after considering the financial resources of both parties, may order a party

(continued...)

courts have ruled consistently that this statutory obligation is founded upon a spouse's duty of support to his or her spouse." Catlow, 663 F.2d at 962. In addition, the statute "permits a fee award upon a showing of financial necessity and requires a court to consider the respective needs and incomes of both spouses prior to making the award." Id. See also In re Marriage of Zale, 972 P.2d 230, 235 (Ariz. 1999) ("The purpose of the statute [A.R.S. § 25-324] is to provide a remedy for the party least able to pay."). In Catlow, the Ninth Circuit concluded that the attorney fees awarded under this statute during the custody litigation were in the nature of support and were therefore nondischargeable under the prior Bankruptcy Act.[11]

Based upon the record, the bankruptcy court's factual findings that a portion of the attorney fee debt was in the nature of support for purposes of § 523(a)(5) was not clearly erroneous, and its conclusion that the debt was not discharged in

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[10](...continued)
to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter.

Catlow, 663 F.2d at 963 n.4 (quoting ARIZ. REV. STAT. ANN. § 25-324 (1976)).

[11] In Chang, the Ninth Circuit explained that Catlow, although an Act case, remains good law under the Code because both statutes except support obligations from discharge. 163 F.3d at 1141. In Chang, the Ninth Circuit affirmed a bankruptcy court's decision that fees incurred for the appointment in a custody dispute of a guardian ad litem, as well as other experts to consider the child's best interests, constituted support obligations and were nondischargeable under § 523(a)(5) even though the expenses were payable to the third parties providing the services. Id. at 1141-42.

Appellant's earlier bankruptcy was correct.[12]

CONCLUSION

The bankruptcy court had jurisdiction to decide the issues presented by the parties. The bankruptcy court did not clearly err when it found that one-half of the attorneys fees awarded by the state court to Appellee from Appellant constituted a nondischargeable debt in the nature of support under § 523(a)(5). We AFFIRM the decision of the bankruptcy court.

[12] Appellee, in his brief, argues that this appeal was frivolous, without a basis in law or fact, and should be dismissed, and that Appellee should be awarded attorney's fees. Although we find Appellant's arguments unpersuasive, they were not so lacking in legal and factual foundation as to be frivolous. We decline to dismiss or award attorney's fees to Appellees.