

DEC 16 2013

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-12-1591-TaDPa
)
 MATTHEW BANKS ASHWORTH,) Bk. No. 11-10946-RK
)
 Debtor.)
 _____)
)
 MATTHEW BANKS ASHWORTH,)
)
 Appellant,)
)
 v.) MEMORANDUM*
)
 KATHRYN EHRGOTT; AMRANE COHEN,)
 Chapter 13 Trustee,)
)
 Appellees.)
 _____)

Argued and Submitted on November 22, 2013
at Pasadena, California

Filed - December 16, 2013

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

Honorable Robert N. Kwan, Bankruptcy Judge, Presiding

Appearances: Richard G. Heston of Heston & Heston for Appellant
Matthew Banks Ashworth; Scott H. Talkov of Reid &
Hellyer, APC for Appellee Kathryn Ehr Gott.

Before: TAYLOR, DUNN, and PAPPAS, Bankruptcy Judges.

* 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.

1 INTRODUCTION

2 Chapter 13¹ debtor Matthew Ashworth appeals from the
3 bankruptcy court's order overruling Ashworth's objection to the
4 proof of claim for domestic support obligations filed by his
5 ex-spouse, Kathryn Ehrgott. Ashworth objected, not to the
6 amount, but to § 507(a)(1)(A) priority classification of the
7 claim, asserting that the claim is, instead, a general unsecured
8 claim based on a pre-petition settlement of a civil action that
9 Ehrgott filed against him for personal injury. He argued that
10 the parties settled the civil action concurrently and in
11 conjunction with their divorce settlement and that they did not
12 intend any of the obligation to be for domestic support.

13 The bankruptcy court held a trial at which it considered
14 testimony and evidence regarding what the parties intended at the
15 time they agreed to the settlement terms. The bankruptcy court
16 followed the controlling Ninth Circuit authority established in
17 Friedkin v. Sternberg (In re Sternberg), 85 F.3d 1400 (9th Cir.
18 1996) and determined that Ehrgott proved by a preponderance of
19 the evidence that, at the time of the parties' stipulated
20 agreement, they intended the entire obligation to be for
21 Ehrgott's support. We conclude that the bankruptcy court
22 committed no error and AFFIRM.

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27 ¹ Unless specified otherwise, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 **BACKGROUND FACTS²**

2 Ashworth and Ehr Gott³ married in Georgia in 1999. During
3 the marriage, Ashworth worked in the banking industry and
4 received multiple promotions with substantial increases in salary
5 and bonuses. Ehr Gott worked as a school teacher for the first
6 three years of the marriage, but remained at home after the birth
7 of their first child.

8 In April 2005, the parties separated and Ehr Gott filed for
9 divorce in Tennessee, where they resided at the time. In
10 December 2005, during the pendency of the divorce proceeding,
11 Ehr Gott also filed a civil action against Ashworth in the
12 Chancery Court for Knox County, Tennessee (the "Civil Action"),
13 seeking \$10 million in general and punitive damages for battery,
14 fraud, intentional and negligent infliction of emotional
15 distress, and negligence.⁴ Later that month, Ehr Gott gave birth
16 to the parties' second child.

17 The Tennessee divorce court issued several orders that
18 required Ashworth to pay child support and alimony to Ehr Gott
19 during the pendency of the divorce. In 2006, Ashworth's annual
20 salary was \$150,000, while Ehr Gott had no outside source of
21 income and cared for their two young children.

22 _____
23 ² We base the background facts, which are not in dispute, on
24 the Joint Pretrial Order entered by the bankruptcy court on
January 13, 2012 ("JPTO").

25 ³ Ehr Gott is Ashworth's ex-spouse's current name, after
26 remarriage.

27 ⁴ In support of her claims in the Civil Action, Ehr Gott
28 alleged that Ashworth contracted herpes simplex 1 as a result of
an extramarital affair and transmitted it to her. Ashworth later
stipulated that he infected Ehr Gott with the virus.

1 Eventually, the parties appeared in response to notices of
2 deposition in the Civil Action. At that time and with counsel
3 present, the parties discussed and then entered into a settlement
4 of all claims that arose in the divorce proceeding and the Civil
5 Action. The parties recited the settlement terms, which were
6 stenographically recorded, and then filed them in the form of a
7 Final Judgment in the divorce proceeding.

8 In the Final Judgment, the divorce court accepted the
9 agreement of the parties "for the settlement of property rights
10 and the equitable division of their marital property."
11 Dkt. #24-1 at 2. As relevant here,⁵ Ashworth agreed and was
12 ordered to pay to Ehrgott the sum of \$306,000 as alimony (the
13 "\$306,000 Obligation"), payable in the amount of \$1,500 per month
14 commencing November 1, 2006 and ending December 31, 2023 (a
15 period of over 17 years). For the period of time between
16 November 1, 2006 and May 31, 2008, however, Ashworth was required
17 to pay only \$1,000 per month, accruing the balance of \$500 per
18 month. The deferred alimony incurred interest at the rate of 8%,
19 with the unpaid total due on or before December 31, 2008.

20 The Final Judgment provides that Ashworth's "alimony
21 obligation" is "not dischargeable in bankruptcy and terminates
22 only upon the death of [Ehrgott]" or upon full payment.
23 Dkt. #24-1 at 5. It further required Ashworth to obtain a life
24 insurance policy insuring the full amount, prohibited
25 modification of the amount, and provided that the paid amounts be

27 ⁵ Parenting and child support issues were addressed
28 separately in a Permanent Parenting Plan, but fully incorporated
into, and ordered and decreed by, the Final Judgment.

1 tax deductible by Ashworth and reportable as taxable income by
2 Ehrgott.

3 Three paragraphs of the Final Judgment directly or
4 indirectly refer to the resolution of the Civil Action.
5 Paragraph 17 assigns responsibility to Ashworth for any uninsured
6 expenses Ehrgott incurred related to medical treatment for
7 herpes, while requiring Ehrgott to make reasonable efforts to
8 maintain her own health insurance coverage. Paragraph 18 recites
9 Ehrgott's agreement to sign a release and to dismiss the Civil
10 Action. And the final paragraph provides for Ashworth to pay all
11 costs associated with both the divorce and the Civil Action.⁶

12 As agreed, Ehrgott executed a written "Release" of the
13 claims asserted in the Civil Action. The Release provides that
14 Ehrgott executed it "in consideration of the payment to [her] of
15 the sum of One Dollar (\$1.00), and other good and valuable
16 consideration, as set forth in a transcript of the Agreed
17 Settlement, dated September 29, 2006, and the Final Judgment
18" Dkt. #24-3 at 2.

19 Ehrgott remarried in August 2007 and not long thereafter she
20 relocated with the parties' minor children to Indiana, with
21 permission of the Tennessee divorce court and over Ashworth's
22 objection. In 2009 and 2010, the parties litigated over child
23 support or alimony issues in multiple Indiana and Tennessee
24
25

26 ⁶ The Final Judgment also provides for Ashworth to pay, "as
27 alimony," \$40,000 of Ehrgott's attorney's fees directly to her
28 attorney in five equal annual payments. Dkt. #24-1 at 6. And it
labeled such payments as "a domestic support obligation" that is
"nondischargeable in bankruptcy." Id.

1 courts.⁷

2 Ashworth made the required monthly payments to Ehr Gott on
3 the \$306,000 Obligation up until mid-2009.⁸ On January 7, 2011,
4 Ehr Gott filed a notice of entry of sister-state judgment in
5 Orange County Superior Court,⁹ to collect on the \$306,000
6 Obligation.¹⁰ Ashworth filed a chapter 13 petition on
7 January 21, 2011, in the Central District of California.

8 Ehr Gott filed proof of claim no. 2 in Ashworth's bankruptcy
9 case, seeking priority for a domestic support obligation under
10 § 507(a)(1)(A) in the amount of \$259,682.81 (the "Claim"). She
11 attached copies of a payment history spreadsheet and the Final

12
13 ⁷ Ehr Gott first registered the child support order for
14 enforcement in Indiana, and amounts were ordered withheld from
15 Ashworth's wages. Ashworth unsuccessfully petitioned in Indiana
16 to stay the child support withholding order. The Indiana court
17 thereafter entered a revised child support withholding order,
18 from which Ashworth appealed, arguing that his payments on the
19 \$306,000 Obligation should be deducted from his income when
20 calculating child support payments. Ashworth also petitioned the
21 Tennessee court to extinguish the \$306,000 Obligation on various
22 grounds. The Tennessee court denied Ashworth's petition and
23 specifically found that the lump sum alimony agreed upon by the
24 parties did not violate public policy. The court thereafter
25 dismissed Ashworth's petition as a matter of law. The Tennessee
26 court also stated that it would not entertain any further
27 petitions seeking to modify the \$306,000 Obligation. Thereafter,
28 the Indiana Court of Appeals reversed the Indiana trial court's
child support order, agreeing with Ashworth that the payments on
the \$306,000 Obligation should reduce his child support payments.

22 ⁸ Ashworth's payments did not resume until 2011 when
23 garnishment of his paychecks commenced pursuant to the
24 garnishment order obtained by Ehr Gott in February 2011 for
25 support and unpaid arrears on the \$306,000 Obligation. Ashworth
26 testified that the garnishment continued during his chapter 13
27 case.

26 ⁹ The record is not clear, but at some point Ashworth moved
27 to and now resides in California.

27 ¹⁰ Ehr Gott shortly thereafter commenced garnishment of
28 Ashworth's wages for support and unpaid arrears on the \$306,000
Obligation.

1 Judgment. Ashworth objected to the Claim ("Claim Objection"),
2 commencing a contested matter.

3 After completion of discovery¹¹ the parties submitted the
4 JPTO. Ashworth and Ehrgott presented their direct testimony by
5 declarations, and the bankruptcy court held trial on the Claim
6 Objection on April 19, 2012. The bankruptcy court ultimately
7 filed and entered its Memorandum Decision finding that the Claim
8 was a domestic support obligation. The Order Overruling Debtor's
9 Objection to Claim No. 2 was entered on November 2, 2012
10 ("Order"), and Ashworth timely filed a notice of appeal from the
11 Order.

12 JURISDICTION

13 The bankruptcy court had jurisdiction under 28 U.S.C.
14 §§ 1334, 157(b)(1), and 157(b)(2)(B).

15 Ehrgott argues in her opening brief that we lack
16 jurisdiction to hear this appeal based on mootness. She contends
17 that the appeal is moot due to two motions filed in the
18 bankruptcy court in February 2013 for dismissal of Ashworth's
19 bankruptcy case.¹² Notably, Ehrgott does not contend that the
20 case has been dismissed, and, in fact, the bankruptcy case
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23
24 ¹¹ Also during the interlude between the filing of the Claim
25 Objection and trial, Ehrgott filed a motion for relief from stay
26 seeking authority to allow her to seek determination of the
nature of the \$306,000 Obligation from the state court in
Tennessee handling the family law matter. The bankruptcy court
denied Ehrgott's relief from stay motion.

27 ¹² Ashworth filed an ex parte request for voluntary
28 dismissal, then Ehrgott filed a motion for dismissal with
prejudice to re-filing.

1 remains pending.¹³

2 We lack jurisdiction to hear a moot appeal. IRS v. Pattullo
3 (In re Pattullo), 271 F.3d 898, 901 (9th Cir. 2001). Our
4 mootness inquiry necessarily focuses on whether we can still
5 grant effective relief between the parties. Id. Here, Ehrgott
6 fails to argue or allege facts from which we might conclude that
7 no relief is available.

8 Based on the current posture of the case, we conclude that
9 Ehrgott's mootness contention is factually not well taken. As
10 long as the bankruptcy case remains pending, the claims allowance
11 process and decisions related thereto directly impact Ashworth's
12 ability to confirm or perform under a chapter 13 plan, and relief
13 from this Panel is available. Therefore, the appeal is not moot,
14 and we have jurisdiction under 28 U.S.C. § 158(a)(1).

15 **ISSUE**

16 Whether the bankruptcy court erred when it determined that
17 the Claim was in the nature of support and therefore a "domestic
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19 ¹³ We have exercised our discretion to consult the
20 bankruptcy court's docket in Debtor's bankruptcy case to assist
21 us in ascertaining the relevant facts and procedural background.
22 O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d
23 955, 959 (9th Cir. 1989). We note that Ashworth withdrew his
24 request for dismissal and filed a motion seeking to modify or
25 suspend his unconfirmed chapter 13 plan. Ashworth's motion seeks
26 suspension of up to 34 pre-confirmation plan payments, pending
27 the outcome of this appeal. The chapter 13 trustee filed an
28 opposition. To date, the bankruptcy court has not ruled on
Ehrgott's motion to dismiss or on Ashworth's motion to suspend
payments, but rather continued the scheduled hearings on the
pending matters multiple times. The bankruptcy court most
recently continued the hearings on both pending motions to
January 2014. Also continued for hearing in January 2014 is
Ehrgott's motion seeking recovery of attorney's fees against
Ashworth under Tennessee law for enforcement of support
obligations and under bankruptcy law for opposing Ashworth's
alleged bad faith bankruptcy filing.

1 support obligation" under § 101(14A) entitled to priority under
2 § 507(a)(1)(A).

3 STANDARD OF REVIEW

4 We review the bankruptcy court's legal conclusions de novo
5 and its findings of fact for clear error. See Allen v. US Bank,
6 NA (In re Allen), 472 B.R. 559, 564 (9th Cir. BAP 2012) ("An
7 order overruling a claim objection can raise legal issues (such
8 as the proper construction of statutes and rules) which we review
9 de novo, as well as factual issues (such as whether the facts
10 establish compliance with particular statutes or rules), which we
11 review for clear error.'")(internal citation omitted). In the
12 context of this appeal, "[w]e review the bankruptcy court's
13 factual determination that a debt was for alimony, maintenance,
14 or support for clear error." See Seixas v. Booth (In re Seixas),
15 239 B.R. 398, 401 (9th Cir. BAP 1999). Review under the clearly
16 erroneous standard is significantly deferential and requires us
17 to accept the bankruptcy court's findings unless we have a
18 definite and firm conviction that a mistake has been made.
19 United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). We
20 will affirm unless the bankruptcy court's findings were
21 illogical, implausible, or without support in the record. United
22 States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009). The
23 bankruptcy court's choice among multiple plausible views of the
24 evidence cannot be clear error. United States v. Elliott,
25 322 F.3d 710, 714 (9th Cir. 2003).

26 DISCUSSION

27 Ashworth based the Claim Objection on his contention that
28 the \$306,000 Obligation was not in the nature of support, but

1 instead was intended as settlement of the Civil Action, and
2 therefore not entitled to priority. The bankruptcy court
3 considered the testimony and other evidence at trial and found
4 the obligation, instead, to be in the nature of support. We find
5 no clear error in the bankruptcy court's decision.

6 **A. Legal standards.**

7 The Bankruptcy Code, in relevant part, grants first priority
8 status for unsecured claims for domestic support obligations that
9 are owed to or recoverable by a former spouse. See
10 § 507(a)(1)(A). The term "domestic support obligation" is
11 defined in § 101(14A).¹⁴ Section 507(a)(1) was amended and
12

13 ¹⁴ Section 101(14A) provides, in relevant part, as follows:

14 The term "domestic support obligation" means a debt
15 that accrues before, on, or after the date of the order
16 for relief in a case under this title, including
17 interest that accrues on that debt as provided under
18 applicable nonbankruptcy law notwithstanding any
19 provision under this title, that is,

(A) owed to or recoverable by-

(i) a spouse, former spouse, or
child of the debtor . . .

(B) in the nature of alimony, maintenance, or
support . . . of such spouse, former spouse,
or child of the debtor . . . 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 separate agreement, divorce
decree, or property settlement
agreement;

(ii) an order of a court of record
. . .

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

1 § 101(14A) was added as part of the Bankruptcy Abuse Prevention
2 and Consumer Protection Act of 2005 ("BAPCPA").

3 Of the four elements set forth in § 101(14A), the parties
4 here dispute only one - whether the \$306,000 Obligation is in the
5 nature of alimony or support. Courts addressing the issue of
6 whether a debt is actually in the nature of alimony or support
7 rely on pre-BAPCPA case law construing the phrase as contained in
8 § 523(a)(5).¹⁵ See Beckx v. Beckx (In re Beckx), 2009 Bankr.
9 LEXIS 4584 at *16 (9th Cir. BAP 2009) (citing Wis. Dep't of
10 Workforce Dev. v. Ratliff, 390 B.R. 607, 612 (E.D. Wis. 2008)).
11 And such a determination is a "factual determination made by the
12 bankruptcy court as a matter of federal bankruptcy law."
13 Beaupied v. Chang (In re Chang), 163 F.3d 1138, 1140 (9th Cir.
14 1998). Where the obligation arises as a result of a settlement
15 agreement, "the intent of the parties at the time the settlement
16 agreement is executed is dispositive." Sternberg, 85 F.3d at
17 1405 (citations omitted). This factual finding of intent is
18 reviewed for clear error. Id.

19 In order to make the factual finding of intent, Sternberg
20 instructs that:

21 A trial court should consider several factors in
22 determining how the parties intended to characterize
23 the obligation. Foremost, the trial court should
24 consider whether the recipient spouse actually needed
25 spousal support at the time of the divorce. In
26 determining whether spousal support was necessary, the
27 trial court should examine if there was an "imbalance
28 in the relative income of the parties" at the time of
the divorce decree. The trial court should also
consider whether the obligation terminates upon the
death or remarriage of the recipient spouse and whether

¹⁵ Section 523(a)(5) excepts from discharge any debt "for a domestic support obligation."

1 the payments are "made directly to the recipient spouse
2 and are paid in installments over a substantial period
3 of time." Finally, the labels given to the payments by
the parties may be looked at as evidence of the
parties' intent.

4 Id. (internal citations omitted).

5 **B. The bankruptcy court's determination that the \$306,000**
6 **Obligation is in the nature of support is not clearly**
erroneous.

7 The undisputed evidence established that at the time of the
8 parties' settlement in 2006, Ehr Gott needed support and Ashworth
9 had the ability to pay it. When Ehr Gott filed for divorce in
10 2005 she was an unemployed stay-at-home mother of a two-year-old
11 and pregnant with her second child. Ashworth, on the other hand,
12 was an employed banker with a salary of \$150,000. Ashworth
13 offered no evidence to rebut the evidence of the large imbalance
14 between the parties' incomes.

15 Other factors also support the bankruptcy court's conclusion
16 that the claim was on account of a support obligation. The
17 parties labeled the \$306,000 Obligation as support in a
18 settlement where both were represented by counsel. The Final
19 Judgment allowed Ashworth to claim the payments as alimony on his
20 tax returns and required Ehr Gott to report the payments as
21 taxable income. As the bankruptcy court reasoned, inconsistent
22 positions Ashworth took - his deduction of payments as alimony on
23 tax returns and argument in Indiana that such payments should
24 reduce his child support, versus his argument postbankruptcy that
25 the payments are not alimony or support - are also probative of
26 their characterization as spousal support.

27 The bankruptcy court noted that some factors arguably were
28 inconsistent with a characterization of the \$306,000 Obligation

1 as support. The fact that the \$306,000 Obligation terminates
2 upon Ehr Gott's death, but not on her remarriage may be equivocal
3 and could mean the parties intended the \$306,000 Obligation not
4 to be support. The bankruptcy court also noted that Ehr Gott's
5 concern that the disease she acquired from Ashworth could
6 preclude her from attracting desirable partners, thereby
7 contributing to her desire for monetary protection, provided some
8 evidence that her intent, in part, was to seek monetary
9 compensation for the personal injury as opposed to support.
10 Finally, the bankruptcy court considered and recognized
11 Ashworth's arguments that he intended the \$306,000 Obligation
12 solely as settlement of the Civil Action and would not have
13 entered into the settlement but for dismissal of the Civil
14 Action.¹⁶

15 Ultimately, the bankruptcy court found that on balance
16 Ehr Gott met her burden by a preponderance of the evidence in
17 showing that:

18 [S]he actually needed spousal support at the time of
19 the divorce, that the obligation terminated on her
20 death, that the payments of the obligation were to be
21 made directly to her and are paid in installments over
22 a substantial period of time and that the parties in
their settlement agreement reflected in the Final
Judgment gave the obligation the label of alimony, or
support. . . .

23 Memorandum Decision, Dkt. #125 at 25:25-28, 26:1. It recognized

24 _____
25 ¹⁶ The bankruptcy court also acknowledged the undisputed
26 facts that Ehr Gott remarried less than one year after entry of
27 the Final Judgment, and remains married; returned to school and
28 obtained a graduate degree in social work in 2006-07; and gained
employment in the field of social work in 2009. The bankruptcy
court gave no weight to these facts, however, as it appropriately
recognized the relevant inquiry to be Ehr Gott's need for support
at the time of the divorce.

1 that the monthly payments of \$1500 on the \$306,000 Obligation are
2 consistent with support obligations, although typically support
3 obligations are modifiable based on changed circumstances.¹⁷ The
4 bankruptcy court found that the amount was not "disproportionate
5 if considered in the light of providing support for a single
6 parent with two dependent minor children and without employment"
7 (id. at 21:23-25) and that termination of the payments in 2023,
8 when the parties' second child turns 18, was consistent with the
9 need for support in child-rearing years. The bankruptcy court
10 concluded that "[t]here is simply no way to look past the
11 evidence that [Ehrgott] was in a state of need at the time of the
12 divorce." Id. at 26:4-5. And, even though other factors in the
13 Sternberg test "point in different directions, . . . on balance,
14 [the factors] indicate that the obligation was in the nature of
15 support." Id. at 26:22-23.

16 On appeal, Ashworth states that he takes no issue with the
17 bankruptcy court's factual findings. He implicitly argues
18 however, that the bankruptcy court's ultimate factual finding is
19 error in light of the unique facts here. Without citation to the
20 record or allegation of specific error by the bankruptcy court,
21 he makes a new argument on appeal that, in the context of a
22 global settlement of multiple claims, the bankruptcy court should
23 consider whether the obligation in question continues to meet a
24 former spouse's reasonable need for support. Ashworth argues
25 that not to do so can result in an unjust windfall at the expense

26
27 ¹⁷ The bankruptcy court reviewed the Tennessee statutory
28 provisions governing lump sum alimony awards and found them not
inconsistent with the policy behind the definition under the
Bankruptcy Code.

1 of other general unsecured creditors.¹⁸ Ashworth, however,
2 presented neither argument nor evidence of need-based support
3 versus non-need-based support - he only argued to the bankruptcy
4 court that none of the settlement was intended to serve as
5 support. As Ashworth did not present this argument to the
6 bankruptcy court, it is not properly raised for the first time on
7 appeal.

8 We also decline to consider Ashworth's newly raised argument
9 that perhaps some part of the \$306,000 Obligation was not in the
10 nature of support. Ashworth argued "all or nothing" to the
11 bankruptcy court and may not properly raise this issue for the
12 first time on appeal.

13 We conclude, based on our review of the record before us and
14 consideration of the properly presented issues, that the
15 bankruptcy court's determination that the \$306,000 Obligation is
16 in the nature of support, and thus entitled to priority, is
17 neither illogical nor implausible and is well supported by the
18 record. We, therefore, find no reversible error.

21 ¹⁸ In support of this contention, Ashworth argued, both in
22 his brief and by counsel at oral argument in this appeal, that
23 classification of the \$306,000 Obligation as a priority claim in
24 his chapter 13 case requires that the entire claim amount be paid
25 in full during the chapter 13 case. This question was not
26 presented to nor addressed by the bankruptcy court, nor do we
27 consider it here. We note, however, that Ashworth cites no legal
28 authority for the proposition that a judgment debtor's bankruptcy
filing requires that all future (i.e. postpetition) payments
payable under a contractually based judgment for a fixed
term/fixed amount domestic support obligation must be accelerated
despite the judgment's requirement that payments be made monthly
over a fixed term. Nor have we located any such authority. See
In re Hutchens, 480 B.R. 374, 383-84 (Bankr. M.D. Fla. 2012)
(analyzing pre- and postpetition domestic support obligations
separately).

1 **C. We decline to award attorney's fees requested by Ehrgott.**

2 In her opening brief, Ehrgott urges this Panel to award her
3 attorney's fees on appeal as allowed by Tennessee law. Ehrgott
4 bases her request on the fact that Ashworth previously litigated
5 support in other courts, and on various allegations of improper
6 motives and speculation about what Ashworth plans to do in the
7 future. We decline to exercise our discretion to award to
8 Ehrgott any attorney's fees on this record. This denial is
9 without prejudice to Ehrgott seeking recovery in the bankruptcy
10 court or in state court.

11 **CONCLUSION**

12 Based on the foregoing, we AFFIRM.