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

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

1 In re:) BAP No. CC-13-1476-PaKiLa
2)
3 MARIA G. RIVERA,) Bk. No. SA 11-22793-TA
4)
5 Debtor.)
6 _____)
7)
8)
9 MARIA G. RIVERA,)
10)
11 Appellant,)
12)
13 v.) **O P I N I O N**
14)
15)
16 ORANGE COUNTY PROBATION)
17 DEPARTMENT,)
18)
19 Appellee.)
20 _____)

Argued and Submitted on May 15, 2014,
at Pasadena, California

Filed - June 4, 2014

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

Hon. Theodor C. Albert, U.S. Bankruptcy Judge, Presiding

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23 Appearances: Leigh E. Ferrin, Esq. of Public Law Center for
24 appellant Maria G. Rivera; Adam C. Clanton, Esq. of
25 Orange County Counsel for appellee Orange County
26 Probation Department.
27 _____

Before: PAPPAS, KIRSCHER, and LATHAM,¹ Bankruptcy Judges.

¹ Hon. Christopher B. Latham, U.S. Bankruptcy Judge for the Southern District of California, sitting by designation.

1 PAPPAS, Bankruptcy Judge:

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3 Appellant, chapter 7² debtor Maria Rivera ("Debtor") appeals
4 the order of the bankruptcy court determining that Appellee,
5 Orange County Probation Department ("Orange County"), did not
6 violate the discharge injunction in Debtor's case when it
7 attempted to collect from her after bankruptcy because the debt
8 she owed to Orange County was excepted from discharge under
9 § 523(a)(5) as a "domestic support obligation." The issue
10 presented in this appeal is a novel one in this Circuit, and we
11 AFFIRM.

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FACTS

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Prebankruptcy Events

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Debtor's minor son was incarcerated in Orange County from
2008 to 2010, for a total of 593 days. California law provides
that "[t]he father [or] mother . . . of a minor . . . shall be
liable for the reasonable costs of support of the minor while the
minor is . . . detained in . . . any institution or other place
. . . pursuant to an order of the juvenile court." CAL. WELF. &
INST. CODE § 903(a). The law endeavors, however, "to ensure that
liability is imposed only on persons with the ability to pay."
CAL. WELF. & INST. CODE § 903(c). Moreover, the "costs of support" a
parent is required to pay are not the total costs of confinement,
but "only [the] actual costs incurred by the county for food and
food preparation, clothing, personal supplies, and medical
expenses, not to exceed . . . a maximum of thirty dollars (\$30)
per day" Id. In addition to costs of support, California

² Unless otherwise indicated, all chapter and section 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 law provides that "[t]he father [or] mother . . . of a minor . . .
2 shall be liable for the costs to the county or the court . . . of
3 legal services rendered to the minor by an attorney pursuant to an
4 order of the juvenile court." CAL. WELF. & INST. CODE § 903.1(a).³

5 According to Orange County, the total cost to incarcerate
6 Debtor's son amounted to approximately \$420 a day. However, in
7 obedience to the limitation in the statute, it sought to collect
8 only \$23.90 a day from Debtor, which represented the expense for
9 her son's "food and food preparation, clothing, personal supplies,
10 and medical expenses" while he was incarcerated. In addition to
11 these expenses, Orange County sought \$2,199 from Debtor for her
12 son's legal representation while in custody.

13 As was its practice, Orange County provided several
14 statements to Debtor itemizing the expenses of her son's
15 incarceration, along with the amount of the legal fees incurred
16 for his representation; it also sent Debtor a copy of court orders
17 requiring her to meet with a financial officer to determine her
18 ability to pay these costs pursuant to Cal. Welf. & Inst. Code
19 §§ 903(c), 903.1, and 903.45. Debtor did not respond to any of
20 these communications.⁴

21 On May 10, 2010, \$9,508.60 was paid to Orange County on
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23
24 ³ The additional safeguards found in Cal. Welf. & Inst. Code
25 § 903(c) that require a parent to have the ability to pay, and
26 that place a cap on the amount to be paid, are not present in
27 § 903.1 requiring that the parent pay for the minor's legal
28 expenses. However, under Cal. Welf. & Inst. Code § 903.45, a
"county financial evaluation officer" must determine whether the
responsible person has the ability to pay all or part of the costs
under both § 903 and § 903.1. The officer then reports his or her
findings as to the parent's ability to pay to the state court.

⁴ While Debtor did not act on these statements or orders of
the court, the son's father met with Orange County upon his
receipt of this information, and the parties agreed to a payment
plan he could afford, which was filed with the juvenile court.

1 Debtor's account,⁵ although this payment did not satisfy the full
2 outstanding balance of the costs. After Orange County sent
3 several more notices to Debtor about the remaining amount due, a
4 final notice was sent requiring her to appear for a court hearing
5 to determine her ability to pay. When Debtor failed to appear at
6 the hearing, on July 20, 2011, a judgment was entered by the
7 juvenile court requiring Debtor to pay to Orange County the
8 remaining support costs and legal expenses incurred while her son
9 was in custody, which amounted to \$9,905.40.⁶

10 Bankruptcy Proceedings

11 Debtor filed a chapter 7 petition on September 12, 2011.
12 Debtor listed Orange County as a priority, unsecured creditor in
13 her schedules, and Orange County received notice of the bankruptcy
14 filing. The chapter 7 trustee appointed in the case determined
15 there were no assets to administer, Debtor received a discharge on
16 January 4, 2012, and the bankruptcy case was closed January 10,
17 2012.

18 After the case closed, assuming that the debt was excepted
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21 ⁵ While it does not impact the issue on appeal, the record
22 is unclear as to the circumstances surrounding this payment. In
23 her declaration filed in the bankruptcy court, Debtor indicated
24 she paid this amount from the proceeds of the sale of her house.
25 However, the collections manager for Orange County stated in her
26 declaration that, on April 28, 2010, an escrow company requested
27 balance information from Orange County concerning the amount due
28 on its claim, and on May 10, 2010, the escrow company made the
\$9,508.60 payment to Orange County. This suggests, contrary to
Debtor's contention that she voluntarily paid this sum, that the
escrow company submitted the payment to Orange County to satisfy a
lien or similar charge on Debtor's home.

27 ⁶ Debtor has not argued that she is not indebted to Orange
28 County, nor has she challenged the amount of the debt alleged by
Orange County, in this appeal.

1 from discharge as a domestic support obligation under § 523(a)(5),
2 Orange County resumed its efforts to collect the debt from Debtor
3 by continuing to send her statements of the amount due, and a
4 representative of the creditor telephoned Debtor to persuade her
5 to pay the debt.

6 Debtor sought counsel concerning Orange County's collection
7 activities, who corresponded with the Orange County's attorney,
8 expressing the view that the debt had been discharged. When
9 Orange County would not relent, on April 18, 2013, Debtor filed a
10 motion to reopen the bankruptcy case, along with a motion for an
11 order directing Orange County to show cause ("OSC") why it should
12 not be held in contempt for violation of the discharge injunction.
13 The bankruptcy court reopened the case, entered the OSC, scheduled
14 a hearing, and requested briefing from the parties, in particular
15 asking them to address the changes to §§ 523(a)(5) and 101(14A)
16 made in 2005 by the Bankruptcy Abuse Prevention and Consumer
17 Protection Act (BAPCPA).

18 After considering the parties' briefing, and shortly before
19 the scheduled hearing, the bankruptcy court issued a lengthy,
20 thoughtful tentative ruling (the "First Tentative"). In it, the
21 court concluded that Orange County had violated the discharge
22 injunction because the debt it sought to collect from Debtor after
23 entry of the discharge order was not excepted from discharge under
24 § 523(a)(5). The First Tentative noted the paucity of case law
25 and legislative history concerning the scope of § 523(a)(5) in
26 relation to debts such as those held by Orange County after
27 BAPCPA. However, the court agreed with the conclusion reached by
28 the bankruptcy court in In re Rosen, 11-07651-BHL-7, 2012 WL

1 1565617, at *2 (Bankr. S.D. Ind. May 2, 2012), a case with facts
2 similar to those in this case, that "an involuntary detention in a
3 juvenile facility hardly seems to fit within the purpose and
4 spirit [of §§ 523(a)(5) and 101(14A)]." The bankruptcy court also
5 discussed pre-BAPCPA cases that came to the same conclusion.

6 In addition, in the First Tentative, the bankruptcy court
7 cited In re Jerald C., 678 P.2d 917 (Cal. 1984), a California
8 Supreme Court decision, for the proposition that the types of
9 expenses specified in Cal. Welf. & Inst. Code § 903 were costs
10 "incurred primarily in protecting society from miscreant
11 minors" Based upon this conclusion, and noting it must
12 construe exceptions to discharge narrowly, the bankruptcy court
13 concluded that the costs were not in the nature of support for
14 purposes of § 523(a)(5).

15 At the OSC hearing on June 25, 2013, Orange County argued
16 that the First Tentative should not be adopted as the bankruptcy
17 court's final ruling because, among other reasons, In re Rosen had
18 been incorrectly decided, and the California Supreme Court, in
19 Cnty. of San Mateo v. Dell J., 762 P.2d 1202 (Cal. 1988), had
20 significantly modified In re Jerald C. After listening to the
21 parties' arguments, the bankruptcy court determined it would
22 benefit from further briefing on the issues, and it ordered the
23 parties to address the impact of Cnty. of San Mateo on whether a
24 minor's expenses, as limited in Cal. Welf. & Inst. Code § 903,
25 constitute support obligations of the minor's parents. In
26 addition, the court noted it needed further evidence of the amount
27 of Debtor's damages if it were to finally decide that Orange
28 County had violated the discharge injunction. The court continued

1 the OSC hearing.

2 Before the continued hearing, the bankruptcy court issued
3 another tentative ruling (the "Second Tentative") in which it
4 reversed course and decided that the debt owed to Orange County
5 was excepted from discharge in Debtor's bankruptcy case under
6 § 523(a)(5) and, therefore, Orange County had not violated the
7 discharge injunction. In the Second Tentative, the bankruptcy
8 court again noted that In re Rosen was the only decisional law it
9 could locate discussing this issue post-BAPCPA; however, upon
10 further review of that opinion, the court agreed with Orange
11 County that In re Rosen had been incorrectly decided because that
12 bankruptcy court had primarily relied on a pre-BAPCPA case law,
13 and the court had not adequately analyzed the significant changes
14 to §§ 523(a)(5) and 101(14A) made by Congress in BAPCPA. Instead,
15 the bankruptcy court concluded that the plain language of the Code
16 provisions, as amended by BAPCPA, compelled the conclusion that
17 the debt was excepted from discharge as a domestic support
18 obligation owed to a governmental unit. The bankruptcy court also
19 reasoned that, in Cnty. of San Mateo, the California Supreme Court
20 had reviewed the amended Cal. Welf. & Inst. Code § 903 and
21 determined that the expenses provided in the statute are in the
22 nature of support. For these reasons, the bankruptcy court's
23 conclusion in the Second Tentative was to deny Debtor's motion to
24 hold Orange County in contempt.

25 At the continued hearing on August 27, 2013, after again
26 considering the parties' arguments, the bankruptcy court announced
27 that it would deny Debtor's motion because the debt at issue was
28 excepted from discharge pursuant to § 523(a)(5). In its comments,

1 the court largely restated the substance of the Second Tentative;
2 however, it did not expressly adopt the Second Tentative in making
3 its oral ruling.

4 The bankruptcy court requested that counsel for Orange County
5 prepare an order for entry by the court consistent with the oral
6 ruling. Orange County's counsel thereafter lodged a proposed
7 order, but Debtor objected to its form and submitted an
8 alternative proposed order. Debtor's objection took issue with
9 the language included in the title and content of the proposed
10 order, and in particular, pointed out that the court had not
11 expressly adopted the Second Tentative in making its oral ruling
12 at the continued hearing.

13 Without mentioning Debtor's objection, on September 16, 2013,
14 the bankruptcy court entered the order proposed by Orange County.
15 That order purported to adopt the Second Tentative, provided that
16 Debtor's debt to Orange County was excepted from discharge as a
17 domestic support obligation, and declined to find that Orange
18 County was in contempt.

19 Debtor filed a timely notice of appeal.

20 JURISDICTION

21 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
22 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

23 ISSUES

24 Whether the bankruptcy court erred in requesting additional
25 briefing by the parties after the initial hearing on the OSC.

26 Whether the bankruptcy court erred in entering the order
27 proposed by Orange County without expressly ruling on Debtor's
28 objection to the form of that order.

1 The bankruptcy court's interpretation of § 523(a)(5) is a
2 question of law we review de novo. Bendetti v. Gunness (In re
3 Gunness), 505 B.R. 1, 4 (9th Cir. BAP 2014); Cnty. of El Dorado v.
4 Crouch (In re Crouch), 199 B.R. 690, 691 (9th Cir. BAP 1996).

5 DISCUSSION

6 I.

7 **The bankruptcy court did not err in considering**
8 **additional authority at the OSC hearing, in requesting**
9 **further briefing, or in entering the order proposed by**
10 **Orange County.**

11 Although Debtor's brief on appeal primarily focuses on
12 whether the Orange County debt is excepted from discharge per
13 § 523(a)(5), she also argues that the bankruptcy court committed
14 two procedural errors. First, Debtor contends that the court
15 erred in allowing Orange County to raise and discuss, at the first
16 OSC hearing, a case not cited in its briefing before the hearing.
17 Second, citing Local Rule 9021-1(b), Debtor contends that the
18 bankruptcy court erred by not ruling on her objection to the form
19 of Orange County's proposed order before entering it. We can
20 easily dispense with these contentions.

21 First, Debtor claims the bankruptcy court erred in allowing
22 Orange County to discuss a more recent California Supreme Court
23 decision at the initial OSC hearing in response to the First
24 Tentative that it had not cited in its prior briefing. To support
25 this claim of error, Debtor cites appellate authority holding a
26 litigant waives an argument on appeal if it is not addressed in
27 its opening brief.

28 While it is certainly correct that an issue not addressed by
a party in its opening brief on appeal may be waived, see Francis

1 v. Wallace (In re Francis), 505 B.R. 914, 920 (9th Cir. BAP 2014)
2 (citing United States v. Carlson, 900 F.2d 1346, 1349 (9th Cir.
3 1990)), the same is not true at the trial court level. See El
4 Pollo Loco, Inc. v. Hashim, 316 F.3d 1032, 1040-41 (9th Cir. 2003)
5 (holding the trial court did not abuse its discretion in
6 considering a new argument raised in a reply brief so long as the
7 adverse party is given an opportunity to respond). Here, at the
8 initial OSC hearing, Orange County cited Cnty. of San Mateo to
9 inform the court of a more recent, and what it urged was a more
10 complete, analysis of Cal. Welf. & Inst. Code § 903 by the
11 California Supreme Court. In doing so, we understand that Orange
12 County was responding to the First Tentative issued shortly before
13 the hearing, in which the bankruptcy court relied on an older
14 California Supreme Court case discussing the California statute,
15 In re Jerald C. After being advised of the more recent, and
16 arguably more relevant authority, the bankruptcy court ordered
17 both parties to brief its impact on the resolution of the issues
18 pending before the court in order to make an informed decision,
19 and continued the hearing.

20 Debtor did not, at the time, object to the bankruptcy court's
21 decision to require further briefing and to continue the OSC
22 hearing, and we decline to entertain Debtor's objection on appeal.
23 Moreover, in our view, Debtor was not prejudiced by the court's
24 approach; indeed, to us, this seems to be an altogether reasonable
25 and pragmatic decision by the bankruptcy court in managing this
26 case. Put simply, it was not an abuse of discretion.

27 Next, Debtor argues that the bankruptcy court abused its
28 discretion by entering the order lodged by Orange County without

1 expressly ruling on her objection to the form of the proposed
2 order. Debtor invokes Local Rule 9021-1(b)(3), which outlines the
3 process by which proposed orders are to be submitted to the
4 bankruptcy court for entry by the court and supplies a procedure
5 if there is an objection to the proposed order. See Local Rule
6 9021-1(b)(3)(A), (B). In that event,

7
8 Unless the court otherwise directs, a proposed
9 order will not be signed by the judge unless
10 (i) opposing counsel has endorsed thereon an
11 approval as to form; (ii) opposing counsel has
12 stipulated thereto on the record at the
13 hearing[;] or (iii) the time for objection to
14 a form of order . . . has expired If
15 it finds the ends of justice so requires, the
16 court may conduct a hearing on the proper form
17 of the order or decide any objection thereto
18 without a hearing.

19 Local Rule 9021-1(b)(3)(C).

20 Here, the bankruptcy court entered the order lodged by Orange
21 County after Debtor filed her objection and alternative proposed
22 order. By entering the order prepared by Orange County, despite
23 Debtor's objection, the bankruptcy court effectively resolved the
24 objection without a hearing, as is allowed by the Local Rule.
25 While perhaps the bankruptcy court should have specifically
26 acknowledged Debtor's objection before entering the Orange County
27 proposed order, not doing so does not amount to an abuse of
28 discretion under a Local Rule that prescribes a procedure
"unless the court otherwise directs." Again, even if the
bankruptcy court should have addressed Debtor's objection to the
order proposed by Orange County, we perceive no prejudice to
Debtor from the bankruptcy court's decision to promptly enter that
order.

1 Finally, that the order proposed by Orange County and entered
2 by the court adopts the Second Tentative, even though the
3 bankruptcy court did not expressly so instruct at the hearing, is
4 also not an abuse of discretion. In deciding to incorporate the
5 reasoning of the Second Tentative, we presume the court was
6 exercising its discretion to modify its oral ruling in the final
7 order. See Rule 7052(b); Meyer v. Lenox (In re Lenox), 902 F.2d
8 737, 740 (9th Cir. 1990) (holding that bankruptcy courts "have the
9 power to reconsider, modify[,] or vacate their previous orders so
10 long as no intervening rights have become vested") (citing
11 Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443
12 (9th Cir. 1986); see also Cashco Fin. Servs., Inc. v. McGee (In re
13 McGee), 359 B.R. 764, 774 n.9 (9th Cir. BAP 2006) (noting that a
14 court's written order controls over an inconsistent oral ruling).
15 As noted above, the bankruptcy court's oral ruling at the hearing
16 closely tracked, and referred to, the analysis of the issues it
17 made in the Second Tentative. The court did not abuse its
18 discretion when it took the additional step of expressly adopting
19 the Second Tentative in the order since, at bottom, the proposed
20 order conformed to the court's oral ruling.

21 **II.**

22 **The debt owed to Orange County is a domestic support**
23 **obligation that is excepted from discharge.**

24 Debtor argues that the plain language of §§ 523(a)(5) and
25 101(14A), the legislative history of the BAPCPA amendments to
26 those statutes, and federal and state case law, all compel the
27 conclusion that the debt owed to Orange County was discharged in
28 Debtor's bankruptcy case. Orange County counters, arguing that,

1 applying the BAPCPA amendments to the Code, those provisions
2 plainly except its debt from discharge, despite the reasoning of
3 pre-BAPCPA cases, and one post-BAPCPA case, to the contrary.

4 A. Pre-BAPCPA

5 Prior to 2005, § 523(a)(5) provided:

6 (a) A discharge under section 727 . . . of
7 this title does not discharge an individual
debtor from any debt—

8 (5) to a spouse, former spouse, or child of
9 the debtor, for alimony to, maintenance for,
10 or support of such a spouse or child, in
11 connection with a separation agreement,
12 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—

13 (A) such debt is assigned to another entity,
14 voluntarily, by operation of law, or otherwise
. . . ; or

15 (B) such debt includes a liability designated
16 as alimony, maintenance, or support, unless
17 such liability is actually in the nature of
alimony, maintenance, or support[.]

18 In interpreting and applying this statute, the Panel had
19 held, “[u]nder a literal application of § 523(a)(5), to be
20 nondischargeable a debt must be owed specifically to the ‘spouse,
21 former spouse, or child.’” Eisen v. Linn (In re Linn), 38 B.R.
22 762, 763 (9th Cir. BAP 1984). The Panel continued the “literal
23 application” of the language of § 523(a)(5) in a case factually
24 similar to the case at bar in Cnty. of El Dorado v. Crouch (In re
25 Crouch), 199 B.R. 690 (9th Cir. BAP 1996). In In re Crouch, El
26 Dorado County, California, sought to except from discharge a debt
27 for costs incurred in housing a debtor’s minor son in a juvenile
28 detention facility pursuant to Cal. Welf. & Inst. Code § 602. Id.

1 at 691. The Panel held that the debtor's obligation to the county
2 was discharged because, although in the nature of support, the
3 debt was payable to the county, not to the "former spouse, spouse,
4 or child of the debtor." Id. at 693; see also In re Spencer, 182
5 B.R. 263, 267-68 (Bankr. E.D. Cal. 1995) (holding that a debt
6 under the old version of Cal. Welf. & Inst. Code § 903 was
7 discharged because the debt "pursuant to Cal. Welf. & Inst. Code
8 § 903 was owed and payable directly to the [county], not directly
9 to the [d]ebtor's minor children . . . [t]herefore, although it
10 arises from the support of [d]ebtor's minor children, the
11 obligation does not fall within the exception to discharge under
12 11 U.S.C. § 523(a)(5).").

13 B. BAPCPA

14 BAPCPA significantly changed the structure, language, and
15 scope of § 523(a)(5). Post-2005, § 523(a)(5) simply provides that
16 "[a] discharge under section 727 . . . does not discharge an
17 individual debtor from any debt— . . . for a domestic support
18 obligation[.]" To give this discharge exception meaning, BAPCPA
19 added a new definitional section, § 101(14A), to the Code:

20 The term "domestic support obligation" means a
21 debt that accrues before, on, or after the
22 date of the order for relief in a case under
23 this title, including interest that accrues on
that debt as provided under applicable
nonbankruptcy law notwithstanding any other
provision of this title, that is—

24 (A) owed to or recoverable by— (i) a spouse,
25 former spouse, or child of the debtor or such
26 child's parent, legal guardian, or responsible
relative; or (ii) a governmental unit;

27 (B) in the nature of alimony, maintenance, or
28 support (including assistance provided by a
governmental unit) of such spouse, former
spouse, or child of the debtor or such child's

1 parent, without regard to whether such debt is
2 expressly so designated;

3 (c) established or subject to establishment
4 before, on, or after the date of the order for
5 relief in a case under this title, by reason
6 of applicable provisions of- (i) a separation
7 agreement, divorce decree, or property
8 settlement agreement; (ii) an order of a court
9 of record; or (iii) a determination made in
10 accordance with applicable nonbankruptcy law
11 by a governmental unit; and

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

18 The term "governmental unit," as used in § 101(14A), is also
19 defined in § 101(27), and that definition includes a State and its
20 agencies and departments.⁷

21 As can be seen, compared to the pre-2005 Code, Congress
22 modified § 523(a)(5) in BAPCPA by "moving and refining the detail
23 of what constitutes a domestic support obligation into a new
24 definitional provision [of] § 101(14A)." In re Gunness, 505 B.R.
25 at 4. These amendments "enabled Congress to utilize a uniform
26 detailed definition of the term 'domestic support obligation' in
27

28 ⁷ Section 101(27) provides:

The term "governmental unit" means United
States; State; Commonwealth; District;
Territory; municipality; foreign state;
department, agency, or instrumentality of the
United States . . . , a State, a Commonwealth,
a District, a Territory, a municipality, or a
foreign state; or other foreign or domestic
government.

29 The parties do not dispute that Orange County is a governmental
30 unit.

1 several different sections of the [B]ankruptcy [C]ode."⁸ Id. at 5
2 (citing 2 COLLIER ON BANKRUPTCY ¶ 101.14A (Alan N. Resnick & Henry J.
3 Sommer eds., 16th ed.); Deemer v. Deemer (In re Deemer), 360 B.R.
4 278, 280-81 (Bankr. N.D. Iowa 2007)).

5 In addition to this restructuring, BAPCPA also enhanced the
6 definition of a support obligation in two ways as compared to the
7 prior statute, which are significant in this appeal. First, to
8 constitute a nondischargeable support obligation, no longer must a
9 debt be owed only "to a spouse, former spouse, or child of the
10 debtor." As the result of the 2005 amendments, debts that are
11 "owed to or recoverable by" a "governmental unit" may also
12 constitute domestic support obligations. § 101(14A)(A)(ii); see
13 also In re Gunness, 505 B.R. at 4 (comparing the former statutes
14 with the BAPCPA revisions).⁹ And second, BAPCPA expanded the
15 "nature" of the debt that is excepted from discharge as a domestic

16
17 ⁸ The term "domestic support obligation" ("DSO") appears in
18 several other Code provisions, including, for example:
19 § 362(b)(2)(A)(ii) and (B) (the automatic stay does not prohibit
20 the establishment or modification of a DSO, or the collection of a
21 DSO from property that is not property of the estate); § 507(a)(1)
22 (DSO granted a first priority in distributions to creditors);
23 § 707(c)(3) (bankruptcy court may not dismiss a bankruptcy case if
24 debtor proves it is necessary to satisfy a claim for a DSO);
25 § 1307(c)(11) (bankruptcy court may dismiss a case for failure of
26 debtor to pay a DSO); § 1325(a)(8) (bankruptcy court shall confirm
27 debtors plan if, among other things, debtor is current on all
28 post-petition DSO payments); § 1325(b)(2) (post-petition DSO
subtracted from calculation of "disposable income"); and § 1328
(debtor not entitled to a discharge unless all DSO payments are
made).

25 ⁹ To the extent that Cnty. of El Dorado v. Crouch (In re
26 Crouch), 199 B.R. 690, 692 (9th Cir. BAP 1996), Eisen v. Linn (In
27 re Linn), 38 B.R. 762, 763 (9th Cir. BAP 1984), and In re Spencer,
182 B.R. 263, 267-68 (Bankr. E.D. Cal. 1995) decided that, to be
28 excepted from discharge under § 523(a)(5) a debt must be owed
directly to, and only to, a debtor's spouse, former spouse, or
child, those holdings have been abrogated by the BAPCPA
amendments.

1 support obligation. Under the revised Code, the inquiry now is
2 whether a debt is "alimony, maintenance, or support (including
3 assistance provided by a governmental unit) of such spouse, former
4 spouse, or child of the debtor" § 101(14A)(B) (emphasis
5 added).¹⁰

6 C. The Orange County Debt

7 Given the changes made by BAPCPA, was the Orange County debt
8 excepted from discharge in Debtor's bankruptcy case?

9 The answer depends upon an interpretation of § 101(14A) and
10 amended § 523(a)(5), and any interpretation of the Bankruptcy Code
11 begins, and sometimes ends, with its text. Ransom v. FIA Card
12 Servs., N.A., 131 S. Ct. 716, 723-24 (2011); Danielson v. Flores
13 (In re Flores), 735 F.3d 855, 859 (9th Cir. 2013) (en banc)
14 (citing Miranda v. Anchondo, 684 F.3d 844, 849 (9th Cir. 2011),
15 cert. denied, 133 S. Ct. 256 (2012)). "Furthermore, 'the words of
16 a statute must be read in their context and with a view to their
17 place in the overall statutory scheme.'" In re Flores, 735 F.3d
18 at 859 (quoting Gale v. First Franklin Loan Servs., 701 F.3d 1240,
19 1244 (9th Cir. 2012)). "If the statutory language is unambiguous
20 and the statutory scheme is coherent and consistent, judicial
21 inquiry must cease." Fireman's Fund Ins. Co. v. Plant Insulation
22 Co. (In re Plant Insulation Co.), 734 F.3d 900, 910 (9th Cir.
23 2013) (citations and internal quotation marks omitted). Of

24
25 ¹⁰ While we conclude the language of the applicable Code
26 provisions is plain, requiring no further inquiry concerning the
27 intent of Congress in enacting the relevant BAPCPA amendments, we
28 note that the legislative history of these amendments, for the
most part, merely restates the provisions of the new statutes
without providing any commentary about, among other changes, the
addition of a governmental unit as a creditor. See H.R. REP. No.
109-31, 109th Cong., 1st Sess. 59 (2005).

1 course, to be true to the policies of the Code, courts must limit
2 the exceptions to discharge provisions to those plainly expressed
3 in § 523(a). Bullock v. BankChampaign, N.A., 133 S. Ct. 1754,
4 1760 (2013); Sachan v. Huh (In re Huh), 506 B.R. 257, 267 (9th
5 Cir. BAP 2014) (en banc).

6 Applying the plain language of the Code provisions to the
7 facts of this case, we conclude that the debt owed by Debtor to
8 Orange County qualifies as a nondischargeable domestic support
9 obligation because, without factual dispute, that debt:

10 (1) accrued before the order of relief; (2) is owed to a
11 governmental unit; (3) was incurred for the support of Debtor's
12 child as "assistance provided by a governmental unit;" (4) was
13 established before Debtor's bankruptcy by an order of the state
14 court; and (5) has not been assigned to a nongovernmental entity
15 for collection.

16 As to the satisfaction of these elements, Debtor takes issue with
17 only one of them, (3) above, arguing that the bankruptcy court's

18 focus on the phrase "in the nature of support" in
19 [§] 101(14A) while ignoring the term "domestic" in
20 [§] 523(a)(5) was clear error. The plain language
21 of the two sections must be read together. When
22 read together, it is apparent that the purpose of
23 [§§] 101(14A) and 523(a)(5) is to prevent the
debtor from discharging obligations that arise from
being a parent or a spouse. It is not to reimburse
government agencies for money spent in housing
children brought into our delinquency system for
the protection of society.

24 Appellant's Op. B. at 12. Instead, Debtor argues, we should adopt
25 the reasoning of In re Rosen, which found a debt similar to the
26 one at issue here was not excepted from discharge. 2012 WL
27 1565617, at *1.

28 While the determination of whether the nature of the debt is

1 "alimony, maintenance, or support" is a question of federal law,
2 "[one] relevant factor for the bankruptcy court to consider in
3 making this determination is how the particular state law
4 characterizes the debt." In re Chang, 163 F.3d at 1140 (citing
5 Marks v. Catlow (In re Catlow), 663 F.2d 960, 962 (9th Cir.
6 1981)). In our view, California law would characterize the Orange
7 County debt as support.

8 Acting under authority of the California statutes, Orange
9 County seeks to recover from Debtor the daily expense it incurred
10 in providing her son "food and food preparation, clothing,
11 personal supplies, and medical expenses" while he was
12 incarcerated. CAL. WELF. & INST. CODE § 903(c). These sorts of
13 costs are quintessentially support expenses, whether they are
14 incurred by a child's parents or by a governmental unit. See,
15 e.g., Leppaluoto v. Combs (In re Combs), 101 B.R. 609, 615-16 (9th
16 Cir. BAP 1989) (explaining that support obligations are those that
17 provide a "necessity of life"); Lightner v. Lightner (In re
18 Lightner), 77 B.R. 274, 277 (Bankr. D. Mont. 1987) (stating that
19 support allows an individual to "maintain daily necessities")
20 (citing Yeates v. Yeates (In re Yeates), 807 F.2d 874, 879 (10th
21 Cir. 1986) and Long v. Calhoun (In re Calhoun), 715 F.2d 1103,
22 1109 (6th Cir. 1983)); see also Leibowitz v. County of Orange (In
23 re Leibowitz), 217 F.3d 799, 803 (9th Cir. 2000) (holding that
24 child support payments due to a county were excepted from
25 discharge under former § 523(a)(18) because the expenses the
26 county sought to collect from the debtor benefitted the child);
27 Gianakas v. Gianakas (In re Gianakas), 917 F.2d 759, 763 (3d Cir.
28 1990) (holding "[a]n obligation that serves to maintain daily

1 necessities such as food, housing[,] and transportation is
2 indicative of a debt intended to be in the nature of support.”).

3 While Debtor argues that Orange County is effectively seeking
4 to tax her for the cost of protecting society through the
5 incarceration of her son, the California statutes belie that
6 suggestion. In burdening the parent of an incarcerated minor for
7 expenses incurred by a county, California law carefully limits the
8 types of charges that may be assessed to traditional support
9 obligations. As noted above, Cal. Welf. & Inst. Code § 903(c)
10 provides that the “costs of support” that can be levied against
11 the parent in this context include “only [the] actual costs
12 incurred by the county for food and food preparation, clothing,
13 personal supplies, and medical expenses, not to exceed . . . a
14 maximum of thirty dollars (\$30) per day”

15 The limitation on the kinds of expenses that can be recovered
16 from the parent of an incarcerated minor in the California
17 statutes represents a change from its prior law. In In re Jerald
18 C., the California Supreme Court had held, in resolving a
19 constitutional challenge to the prior version of Cal. Welf. &
20 Inst. Code § 903, that expenses incurred by the government in
21 confining juvenile offenders were “not for the purpose of
22 providing support and maintenance for the committed person but for
23 the purpose of protecting society.” 678 P.2d 917, 921 (Cal.
24 1984). However, the court’s decision left open the possibility
25 that the California legislature might amend the statute to
26 “require responsible parents to pay a part of the costs of
27 maintaining a minor in a county institution.” Id. at 925 (Kaus,
28 J., concurring). In a clear response to In re Jerald C., the

1 California legislature amended Cal. Welf. & Inst. Code § 903 to
2 its present form to delineate the specific costs of support that
3 could be recovered by a county, and to place a cap on the total
4 amount that was recoverable. Addressing a challenge to the
5 amended statute in Cnty. of San Mateo v. Dell J., 762 P.2d 1202
6 (Cal. 1988), the supreme court held the statute was
7 constitutional, and characterized the newly listed kinds of
8 recoverable expenses in Cal. Welf. & Inst. Code § 903(c) as those
9 "for the reasonable costs expended for support and maintenance of
10 the minor while placed outside the family home." Id. at 1211.

11 As can be seen, Debtor's argument that the costs sought to be
12 recovered from Debtor by Orange County encompass more than support
13 debts is inconsistent with state statutory and case law.

14 Debtor's other arguments also lack merit. For example, in
15 construing § 101(14A), she urges that, instead of relying on the
16 meaning of "support obligation," we should focus on the word
17 "domestic." To Debtor, inclusion of "domestic" in the defined
18 term requires that only those support obligations that arise out
19 of a familial relationship are covered.

20 While Debtor's contention may have prevailed prior to 2005,¹¹

21

22

23 ¹¹ For example, in 1998, the Ninth Circuit observed that:

24 The § 523(a)(5) exception to discharge strikes
25 a balance between competing policies. On the
26 one hand, the goal of providing a "fresh
27 start" to the bankrupt debtor requires that
28 exceptions to discharge be confined to those
plainly expressed. In re Klapp, 706 F.2d 998,
999 (9th Cir.1983). On the other hand, this
court has recognized "an overriding public
policy favoring the enforcement of familial
obligations." Shaver v. Shaver, 736 F.2d
1314, 1316 (9th Cir.1984).

In re Chang, 163 F.3d at 1140.

1 since BAPCPA, this argument is foreclosed. By adopting the
2 definition of domestic support obligation in § 101(14A) which
3 includes "assistance given by a governmental unit," provided to
4 the "child of the debtor," Congress expanded the scope of that
5 term beyond strictly family incurred debts. In other words, while
6 the Code now requires that there be a family tie between the
7 recipient of the support and the debtor, the BAPCPA definition
8 crafted by Congress provides that debts owed to a governmental
9 unit can qualify as a domestic support obligation.¹²

10 Debtor also urges us to adopt the reasoning of In re Rosen,
11 noting the lack of binding, or even other persuasive precedent on
12 this issue. But, like the bankruptcy court, we disagree with the
13 reasoning of In re Rosen, and thus we respectfully decline to
14 follow it, particularly in the light of the California statutes
15 and the case law interpreting those laws.

16 In In re Rosen, Montgomery County, Indiana argued that its
17 debt for a portion of the expenses it incurred in housing the
18 debtor's minor son in a juvenile detention facility was excepted
19 from discharge under § 523(a)(5). The bankruptcy court decided
20 that even though the county had provided support for the debtor's
21 son while he was detained, "an involuntary detention in a juvenile
22 facility hardly seems to fit within the purpose and spirit of the
23 statute," and therefore concluded that the debt was not excepted
24 from discharge under § 523(a)(5). In re Rosen, 2012 WL 1565617,
25 at *2.

26 In making its decision, the bankruptcy court relied on a pre-

27 _____
28 ¹² While, in this context, the creditor is not a family
member of the debtor, the debt in question represents the cost of
providing support to debtor's relative, her son. In this sense,
then, the "obligation" is a domestic one in the traditional sense.

1 BAPCPA case, DeKalb Cnty. Div. of Family and Children Servs. v.
2 Platter (In re Platter), 140 F.3d 676 (7th Cir. 1998). In that
3 case, DeKalb County, Indiana sought to recover expenses it
4 incurred in housing a debtor's minor son in a juvenile detention
5 facility. The bankruptcy court concluded, and the district court
6 agreed, that the debt was dischargeable. On appeal, the Seventh
7 Circuit reviewed the applicable Indiana statute, and concluded
8 "[t]he plain meaning of § 523(a)(5) does not cover the present
9 situation, where the debtor owes a governmental agency directly
10 for the support of the debtor's child." Id. at 681. Notably, the
11 Seventh Circuit suggested a pragmatic solution to the county's
12 predicament:

13 If government entities . . . do not wish to be
14 left providing room and board to juvenile
15 delinquents without a means of collecting
16 against bankrupt parents, then they may lobby
17 Congress for another amendment to § 523(a)(5)
18 If we accept [the county's]
19 invitation to disregard § 523(a)(5) as it
20 currently exists we would be usurping the
21 authority of these elected bodies through an
22 act of judicial legislation as well as
23 ignoring the plain meaning of the statute.
24 This we cannot do.

20 Id. at 683.

21 We decline to follow In re Rosen because we do not believe
22 the bankruptcy court in that case properly accounted for the
23 considerable changes to §§ 523(a)(5) and 101(14A) occasioned by
24 BAPCPA, and because it relied on the Seventh Circuit's pre-BAPCPA
25 analysis of § 523(a)(5). Rather, we agree with the bankruptcy
26 court's statement in this case that: "[t]he court is left to
27 conclude that the change in [§§ 523(a)(5) and 101(14A) as
28 implemented by BAPCPA] was probably in deliberate response to

1 cases like . . . [In re] Platter and several others which have
2 found obligations in the nature of support still dischargeable,
3 but only because of the narrow language of old § 523(a)(5)."
4 Simply put, Congress broadened the categories of creditors that
5 could take advantage of the § 523(a)(5) exception to discharge in
6 BAPCPA, and Orange County, as a governmental unit, now qualifies
7 for an exception to discharge in this case.

8 **CONCLUSION**

9 Because of the intervention of BAPCPA, we are not bound to
10 apply our pre-2005 case law deciding that a debt owed to a county
11 for the expenses of incarcerating the debtor's child is discharged
12 in bankruptcy. See Ball v. Payco-General Am. Credits, Inc. (In re
13 Ball), 185 B.R. 595, 597 (9th Cir. BAP 1995) ("We will not
14 overrule our prior rulings unless a Ninth Circuit Court of Appeals
15 decision, Supreme Court decision or subsequent legislation has
16 undermined those rulings."). Instead, by applying the plain
17 language of amended § 523(a)(5) and new § 101(14A), we conclude
18 that the debt Debtor owes to Orange County is excepted from
19 discharge as a domestic support obligation.¹³ We therefore AFFIRM
20 the order of the bankruptcy court denying Debtor's motion to hold
21 Orange County in contempt for violating the discharge injunction.

22
23 ¹³ Debtor did not separately challenge Orange County's
24 inclusion of the legal expenses it incurred in providing
25 representation for Debtor's son in the debt it claimed to be
26 excepted from discharge. In other contexts, the Ninth Circuit has
27 held that fees incurred for the minor's benefit are in the nature
28 of support. In re Lebowitz, 217 F.3d at 803 (holding that costs
that benefitted the child were in the nature of support and
nondischargeable); In re Chang, 163 F.3d at 1141 (holding court
costs incurred for the benefit of a debtor's child were support
under § 523(a)(5)). However, because Debtor has not argued that,
even if the living expense components of the debt are not
discharged, the same should not be true of the legal costs, we do
not address that point in this appeal.