UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

GARY MULDOON,

Plaintiff,

vs.

ROY E. ALLEN, II,

Defendant.

BK. NO. 94-21981

A.P. NO. 94-2122

DECISION & ORDER

BACKGROUND

On September 8, 1994, Roy E. Allen, II (the "Debtor") filed a petition initiating a Chapter 7 case. On December 7, 1994, Gary Muldoon, Esq. ("Attorney Muldoon") commenced an adversary proceeding requesting a determination that the obligation of the Debtor to pay him certain fees for acting as a law guardian to the Debtor's three minor children, pursuant to a January 15, 1993 Order of Justice Arthur Curran of the New York State Supreme Court, Monroe County (the "Award Order"), was nondischargeable under the provisions of Section 523(a)(5) of the Bankruptcy Code.

Attorney Muldoon and the Debtor agree that: (1) on September 20, 1991, the Debtor commenced an action in the New York State Supreme Court, Monroe County, to obtain custody of his three minor children, who then lived with his ex-wife; (2) the Debtor specifically requested that the New York Supreme Court appoint a law guardian to protect the interests of his minor children; (3) on September 27, 1991, in response to the Debtor's request, the New York Supreme Court appointed Attorney

Muldoon as law guardian; and (4) the Award Order indicates that the Debtor and his ex-wife had stipulated to each being responsible for one-half of the law guardian fees.

The Debtor contends that his obligation under the Award Order to pay one-half of the fees awarded to Attorney Muldoon is dischargeable because: (1) Section 523(a)(5)[1] requires that for a debt to be nondischargeable under that subsection, it must be to a spouse, former spouse, or child of the Debtor, and the award to Attorney Muldoon was made directly to him; and (2) the amount awarded to Attorney Muldoon was not for the support of his minor children within the meaning and intent of Section 523(a)(5).

DISCUSSION

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[1] Section 523(a)(5) provides:

> A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt——
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> (5) 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——
>
> (A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or
>
> (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.

From the pleadings and proceedings in this case, including an April 20, 1995 pretrial conference conducted by the Court, at which the Debtor who has appeared *pro se* in this adversary proceeding participated, it is clear that the Debtor continues to have serious concerns about the quality of the services rendered by Attorney Muldoon as a law guardian. However, the Debtor raised his concerns in the New York State Supreme Court proceeding, the Court made its award, and the Debtor failed to appeal the Award Order. Therefore, any issues regarding the nature, extent and quality of the services performed are final and cannot be collaterally attacked or revisited by this Court. It is only for this Court to determine whether the Debtor's obligation under the Award Order is nondischargeable under Section 523(a)(5).

With the exception of the fact that the Award Order in this case did not specifically categorize the law guardian fees as support or additional support, the issue of whether the obligation to pay law guardian fees ordered by a state court to be paid directly to the law guardian for representing minor children in a custody dispute is nondischargeable under Section 523(a)(5) has been decided by the United States Court of Appeals for the Second Circuit. See *In re Peters*, 124 B.R. 433 (Bankr. S.D.N.Y. 1991), *aff'd*, 133 B.R. 291 (S.D.N.Y. 1991), *aff'd*, 964 F.2d 166 (2d Cir. 1992).[2] In that case the obligation was

[2] In view of the fact that the Debtor has appeared *pro se* and may not have easy access to these decisions, copies are attached.

found to be nondischargeable.

As did each of the courts in *In re Peters*, and for the reasons set forth in those cases, this Court finds that the obligation owed by the Debtor under the Award Order is in the nature of support of the Debtor's minor children, whose interests the Debtor has clearly demonstrated are of utmost importance to him, and is nondischargeable within the meaning and intent of Section 523(a)(5). As District Judge Goettel stated, "The `nature of support' is a broadly construed term in bankruptcy law", and "[w]hat constitutes support is determined under the federal bankruptcy laws" after an examination of the actual nature of the obligation. *In re Peters*, 133 B.R. at 295. In addition, it is well settled in the Second Circuit that it makes no difference that the payment of fees in the nature of support is required to be made directly to an attorney rather than to a spouse or child. *In re Spong*, 661 F.2d 6 (2d Cir. 1981).

CONCLUSION

The obligation due from the Debtor to Attorney Muldoon under the New York Supreme Court Order of Justice Arthur Curran, dated January 15, 1993, is determined to be nondischargeable.

IT IS SO ORDERED.

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HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: _____