SO ORDERED.

SIGNED this 31 day of January, 2018.

Austin E. Carter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In re:	)	
	)	Case No. 17-51113-AEC
Charles L. Jones,	)	
	)	Chapter 13
Debtor.	)	
	)	
Charles L. Jones,	)	
	)	
Movant,	)	
	)	
v.	)	Contested Matter
	)	
LaTesha M. Jones,	)	
	)	
Respondent.	)	

ORDER OVERRULING OBJECTION TO CLAIM NO. 6

Before the Court is the Objection to Confirmation filed by LaTesha M. Jones (Dkt. 20), the *Debtor's Objection to Claim No. 6 of LaTesha Jones* (Dkt. 22), and the response thereto of LaTesha Jones (Dkt. 26). A hearing was held on this matter on November 15, 2017, at which hearing counsel appeared on behalf of the Debtor and the Chapter 13 Trustee while LaTesha Jones ("Ms. Jones") appeared pro se. The Court has considered the parties' pleadings, the evidence presented, the arguments made by the parties, and the remainder of the record.

FACTUAL BACKGROUND

The facts in this case are largely undisputed. The Debtor and Ms. Jones were married for less than two years prior to their March 2017 divorce. At the time of the divorce, their income was significantly disparate, with Ms. Jones making approximately one-sixth annually of what the Debtor made as a truck owner-operator. Ms. Jones contends that she took out two loans during the course of the relationship, totaling $24,000, in order for the couple to make ends meet as the Debtor was out of work for some time due to health concerns. The Debtor generally does not dispute this testimony, although he was more confident about the existence of the first loan as opposed to the second. Ms. Jones testified that, at the time of the divorce, she relied on the Debtor's higher income to meet her ordinary living expenses while making payments on the loans. The Debtor did not dispute this testimony.

Prior to their divorce and as a result of mediation, Ms. Jones and the Debtor entered into a Settlement Agreement (attached to Ms. Jones' proof of claim 6-1) governing the division of their martial property. In part, the Settlement Agreement reads:

> As equitable division of property/debt, the Plaintiff [the Debtor] shall pay to the Defendant [Ms. Jones] the sum of $11,500.00. This sum shall be paid in monthly installments of $500.00 per month, beginning January 2017, and continuing for twenty-three (23) consecutive months. The payments shall be made via direct deposit into the Defendant's bank account, and shall be credited in her account no later than the 15th of each month. These payments shall not be considered as alimony, and shall not constitute income to the Defendant, and shall not be tax deductible to the payer/Plaintiff[.]

The Settlement Agreement was incorporated into the Final Judgment and Decree of Divorce ("Divorce Decree") (also attached to Ms. Jones' proof of claim 6-1) signed March 22, 2017. As to alimony, the Divorce Decree added that "there shall be no

alimony paid by either party." Prior to filing bankruptcy, the Debtor made only one payment of $1000 to Ms. Jones. Because the Debtor paid $1,000 of the $11,500 before filing bankruptcy, Ms. Jones filed a proof of claim asserting $10,500 as a priority claim (a domestic support obligation under 11 U.S.C. § 507(a)(1)).

Against this background, Ms. Jones contends that the monthly obligation agreed to by the Debtor as part of the divorce was designed to allow her to maintain her regular lifestyle while repaying the loan obligations that she incurred for the joint benefit of both she and the Debtor. In essence, Ms. Jones contends that the monthly obligation was intended to be a domestic support obligation, rather than a division of marital property, despite the language to the contrary in the Settlement Agreement and Divorce Decree.

The Debtor argues that the language in the Settlement Agreement is the best reflection of the parties' intent regarding whether the payment obligation is a property settlement obligation or a domestic support obligation. Further, he contends other relevant factors such as the couple's lack of children, the short length of the marriage, the short repayment term, and the specified amount of repayment evidence that the $11,500 obligation was not intended to be a domestic support obligation.

If Ms. Jones' claim is determined to be a domestic support obligation then, as a priority claim, it must be paid in full in the Debtor's plan. *See* 11 U.S.C. § 1322(a)(2). The Chapter 13 Trustee asserts that paying this claim in full would render the Debtor's plan unconfirmable, because it would require more than 60 months of payments to pay out. *See* 11 U.S.C. § 1322(d)(1).

LEGAL ANALYSIS

Ms. Jones' proof of claim enjoys prima facie validity under Federal Rule of Bankruptcy Procedure 3001(f); this creates a presumption in favor of allowance of the claim. "The objecting party [the Debtor] bears the burden of rebutting the

presumption through 'facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim.'" *In re Crutchfield*, 492 B.R. 60, 69 (Bankr. M.D. Ga. 2013) (quoting *In re LJL Truck Ctr., Inc.*, 299 B.R. 663, 666 (Bankr. M.D. Ga. 2003)). "If the objecting party overcomes the prima facie case, then the burden of proof falls to the party that would bear the burden outside of bankruptcy." *Walston v. PYOD, LLC (In re Walston),* 606 F. App'x 543, 546 (11th Cir. 2015)(citing *Raleigh v. Ill. Dep't of Revenue,* 530 U.S. 15, 20, 120 S. Ct. 1951, 147 L. Ed. 13 (2000); 9 *Collier on Bankruptcy* ¶ 3001.09[2] (16th ed. 2015)). *See In re Dunbar*, No. 03-BK-03506-PMG, 2005 WL 852585, at *2 (Bankr. M.D. Fla. Mar. 30, 2005) (stating claimant has ultimate burden as to validity and amount of claim after objection).

The burden of proof on plan confirmation generally rests with the Debtor. *In re Hubbard,* 569 B.R. 188, 191 (Bankr. M.D. Ala. 2017); *In re Pearson,* 398 B.R. 97, 102 (Bankr. M.D. Ga. 2008).

The Debtor's objection to Ms. Jones' proof of claim is that it should not be treated as a priority claim pursuant to 11 U.S.C. §507(a)(1)(A) because the obligation giving rise to the claim is a property settlement obligation rather than a domestic support obligation. The "touchstone" for determining the difference between domestic support and property settlement obligations is the intent of the parties. *Cummings v. Cummings*, 244 F.3d 1263, 1266 (11th Cir. 2001). "In determining whether a particular obligation is in the nature of support, '[a]ll evidence, direct or circumstantial, which tends to illuminate the parties subjective intent is relevant.'" *Id.* (citations omitted). In assessing the intent of the parties, courts should look beyond the label the parties or the divorce court have given to a particular debt and determine whether the subject obligation is actually in the nature of alimony or support. *Id.* at 1265. Thus, an obligation is a domestic support

obligation if the parties intended it to function as support or alimony, regardless of whether a different label is given to it. *Id.*[1]

This Court, under Judge Walker, has previously cited a list of non-exclusive factors which should be considered in assessing intent in this context, which were subsequently approved by the Eleventh Circuit. These factors include:

> (1) the agreement's language;
> (2) the parties' financial positions when the agreement was made;
> (3) the amount of the division;
> (4) whether the obligation ends upon death or remarriage of the beneficiary;
> (5) the frequency and number of payments;
> (6) whether the agreement waives other support rights;
> (7) whether the obligation can be modified or enforced in state court; and
> (8) how the obligation is treated for tax purposes.

Benson v. Benson (In re Benson), 441 F. App'x 650, 651 (11th Cir. 2011) (citing *In re McCollum,* 415 B.R. 625, 631 (Bankr. M.D. Ga. 2009)).

Other courts have characterized relevant factors in a slightly different fashion:

> (1) Whether the obligation under consideration is subject to contingencies, such as death or remarriage;
> (2) Whether the payment was fashioned in order to balance disparate incomes of the parties;
> (3) Whether the obligation is payable in installments or a lump sum;
> (4) Whether there are minor children involved in a marriage requiring support;
> (5) The respective physical health of the spouse and the level of education;

[1] In deciding whether an obligation is a domestic support obligation in the plan confirmation context, the court may look to guidance from cases concerning dischargeability under 11 U.S.C. § 523(a)(5). *Wade v. Cunningham (In re Wade)*, No. 13-67411-BEM, 2014 WL 3672137, at *3 & n.2. (Bankr. N.D. Ga. April 30, 2014). *See also Brunson v. Austin (In re Austin)*, 271 B.R. 97, 104 (Bankr. E.D. Va. 2001) ("Although the priority status accorded to a claim determined to be in the nature of support is based upon § 507, courts have used the case law interpreting § 523(a)(5) to determine whether the subject debt is actually in the nature of alimony, maintenance or support because the language of § 507(a)(7) mirrors that of § 523(a)(5).").

> (6) Whether, in fact, there was a need for spousal support at the time of the circumstances of the particular case.

Norton v. Norton (In re Norton), No. 16-10323-WHD, 2017 WL 933023, at *3 (Bankr. N.D. Ga. Mar. 8, 2017)(citing *Robinson v. Robinson (In re Robinson)*, 193 B.R. 367, 372 (Bankr. N.D. Ga. 1996)).

"The end result of an exercise of this sort is usually a mixed bag with factors pointing in both directions." *Kolodziej v. Reines (In re Reines)*, 142 F.3d 970, 973 (7th Cir. 1998). However, *Collier on Bankruptcy* suggests that the relative financial situation of the parties is "[p]erhaps the most important factor considered by the bankruptcy courts in evaluating the intentions of the parties." 4 *Collier on Bankruptcy* ¶ 523.11[6][b] (16th ed. 2015). "Courts are more likely to consider an obligation a [domestic support obligation] if (1) there is considerable income disparity between the parties, and (2) without Debtor paying the obligation, the party with lower income is unable to support him or herself and any minor children." *Clark v. Clark (In re Clark)*, 574 B.R. 598, 605-06 (Bankr. S.D. W. Va. 2017). In considering relative income disparity, the Court may also consider relevant variables such as each party's prior work experience and abilities, physical health, potential earning power, employment prospects, and probable future needs. *Brunson v. Austin (In re Austin)*, 271 B.R. 97, 107-08 (Bankr. E.D. Va. 2001).

Many courts have found division of debt obligations to be in the nature of support based on disparity of income between the parties and on the effect to the spouse of a determination that the obligation is not intended as support. *See, e.g.*, *In re Austin*, 271 B.R. at 109 & n.10 (and cases cited therein); *Krein v. Hanagan (In re Krein)*, 230 B.R. 379, 385 (Bankr. N.D. Iowa 1999). *See also Smith v. Smith (In re Smith)*, 218 B.R. 254, 260-61 (Bankr. S.D. Ga. 1997) ("Although it was described as an equitable division, the effect of the award was to provide additional support to the wife."); *Borzillo v. Borzillo (In re Borzillo)*, 130 B.R. 438, 446 (Bankr. E.D. 1991).

Based on the foregoing, and after balancing the relevant factors, in the Court's view the agreement for the Debtor to pay Ms. Jones the $11,500 – a portion of the loans Ms. Jones took out – was intended to be in the nature of support. Though the Settlement Agreement and Divorce Decree state that the obligation is a property settlement obligation, and not alimony, that language is not controlling and does not reflect the intent of the parties in this case. Despite the undisputed testimony that Ms. Jones relied on the Debtor's higher income to maintain her day-to-day lifestyle during the marriage, the Settlement Agreement contained no award of support to Ms. Jones, other than this obligation designed to address repayment of the loans taken out for the mutual benefit of the parties.

Considering most significantly the large disparity in income during the marriage, the agreement by the Debtor to pay the $11,500 appears to be an attempt at balancing the income disparity, by allowing Ms. Jones to meet her daily needs while repaying the loan balances.[2] Without this income from the Debtor, Ms. Jones testified that she could not afford to pay her ordinary living expenses and service the debt. Thus, the Court finds that the $11,500 obligation is a domestic support obligation. Ms. Jones' claim should be treated as a priority claim pursuant to 11 U.S.C. § 507(a)(1).

Accordingly, the Court hereby ORDERS that:

(1) the Debtor's Objection to Ms. Jones' Claim 6-1 is OVERRULED;

(2) Because the parties agreed at the hearing that a finding in favor of Ms. Jones on the claim objection would render the Debtor's Plan not ripe for

[2] The evidence offered concerning the respective income levels of the Debtor and Ms. Jones in the period after the Divorce Decree was entered is not relevant to the inquiry of whether Ms. Jones' claim is a priority claim. *Strickland v. Shannon (In re Strickland)*, 90 F.3d 444, 447 (11th Cir. 1996) (bankruptcy court should refrain from an assessment of ongoing financial circumstances of parties).

consideration, the Court will abstain at this time from ruling on Ms. Jones' objection to confirmation;[3] and

(3) the Chapter 13 Trustee should re-notice the Debtor's plan for a confirmation hearing, along with Ms. Jones' objection thereto, and the Trustee's Motion to Dismiss (Dkt. 27).

[END OF DOCUMENT]

[3] Ms. Jones objects to confirmation on the grounds that the Debtor's schedules are incomplete and that he has not disclosed (and therefore is not contributing) all of his disposable income. In the plan confirmation context, these issues are components of an analysis of the Debtor's good faith under 11 U.S.C. §§ 1325(a)(3) and (a)(7). Because the Court is not considering confirmation at this time, there is no need to rule on this issue. However, the Court notes that, based on the record before it, the Court is not persuaded that the Debtor has any hidden sources of income that would affect confirmation of a proposed plan.