United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Ronald E. Rossi, Jr.

Bankruptcy No. 98 B 19055

Adversary Caption: Angela Rossi v. Ronald E. Rossi, Jr.

Adversary No. 98 A 01559

Date of Issuance: April 27, 1999

Judge: John H. Squires

Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
RONALD E. ROSSI, JR.,	)	
	)	Chapter 7
Debtor.	)	Bankruptcy No. 98 B 19055
	)	Judge John H. Squires
	)	
ANGELA ROSSI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 98 A 01559
	)	
RONALD E. ROSSI, JR.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

These matters come before the Court on the complaint filed by Angela Rossi ("Angela") against the Debtor, Ronald E. Rossi, Jr. ("Ronald" or the "Debtor"), to determine the dischargeability of certain debts under 11 U.S.C. §§ 523(a)(5) and (a)(15) and on the counter-motion for sanctions filed by Angela against Ronald and his attorneys. For the reasons set forth herein, the Court hereby finds the debts for retroactive child support, future child support and maintenance nondischargeable under § 523(a)(5). Also, the tax refund in the sum of $2,955.00 that Angela was awarded in the dissolution of marriage proceeding is nondischargeable pursuant to § 523(a)(15). Further, the Court enters judgment in favor of Angela in an amount equal to her share of the 401(k) plan and ESOP. Ronald is hereby ordered to turn over to Angela all future monies that he receives from Angela's portion of the ESOP and 401(k) plan. In addition, the Court grants sanctions against the Debtor and his

attorneys, the law firm of Scott L. Mitzner, Ltd., jointly and severally, pursuant to Federal Rule of Bankruptcy Procedure 9011 and 11 U.S.C. § 105(a) in the sum of $12,734.00.

I. JURISDICTION AND PROCEDURE

The Court has the power to entertain these matters pursuant to 28 U.S.C. § 1334 and Local General Rule 2.33(A) of the United States District Court for the Northern District of Illinois. These matters constitute core proceedings under 28 U.S.C. § 157(b)(2)(A), (I) and (O). The Court has additional authority concerning Angela's counter-motion for sanctions pursuant to 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9011(c). See also In re Volpert, 110 F.3d 494, 500 (7th Cir. 1997) (holding that the broad language of § 105(a) confers broad powers upon the bankruptcy court, which include the power to sanction); In re Memorial Estates, Inc., 132 B.R. 19, 21 (N.D. Ill. 1991); Morgan v. Kanak (In re Kanak), 85 B.R. 483, 489 (Bankr. N.D. Ill. 1988).

II. FACTS AND BACKGROUND

Angela and Ronald were married and subsequently involved in a dissolution proceeding in the Circuit Court of DuPage County, Illinois. On June 15, 1998, the state court entered a Judgment for Dissolution of their marriage. See Plaintiff's Stipulated Exhibit No. 1. Pursuant to the Judgment for Dissolution, Angela was awarded $12,070.00 for retroactive child support. Id. at ¶ E. In addition, Ronald was ordered to pay Angela future child support in the sum of $1,033.00 per month until the children reach the age of majority. Id. at ¶ D.

Pursuant to the Judgment for Dissolution, Angela was awarded maintenance in the amount of $300.00 per month for thirty six months. Id. at ¶ N. Further, the Judgment for Dissolution awarded Angela 123.6 preferred shares of Ronald's employee stock ownership plan ("ESOP"), which she was to receive by way of a qualified domestic relations order ("QDRO"). Id. at p. 7. Additionally, Angela was awarded $8,870.00, a portion of Ronald's 401(k) plan which she was to receive by way of a QDRO. Id. Also, Angela was awarded sixty percent of Ronald's United Airlines pension, which she was to receive by way of a QDRO. Id. Moreover, the Judgment for Dissolution awarded Angela $2,955.00 as her portion of her and Ronald's 1996 income tax refund. Id. at p. 6. It is unclear from the limited record whether the state court entered the QDRO to supplement the awards in the Judgment for Dissolution.

Angela currently works as a nail technician with a yearly income of $20,500.00. Her salary is based solely on commission. Angela does not receive any health insurance or retirement benefits through her current employer. Angela lives in an apartment with the parties' three children at a monthly rental of $850.00. In October 1998, Angela purchased a used automobile which she is paying off in monthly installments of $222.32 for five and a half years. Angela has not received any money from Ronald pursuant to the Judgement for Dissolution since October 1998. Under the Judgment for Dissolution, Angela incurred a $3,900.00 credit card debt and a $20,627.00 debt to her parents. Id. at ¶ K(a) and (b). The Judgment for Dissolution found that Ronald dissipated marital assets in the sum of $11,038.16 by his failure to pay the monthly mortgage payments and in the amount of

$743.00 due to his early withdrawals from the 401(k) plan. Id. at ¶ J.

On July 15, 1998, Ronald filed post-trial motions to reconsider and to abate child support and maintenance in the dissolution proceeding. See Plaintiff's Stipulated Exhibit Nos. 2 and 3. On December 7, 1998, the state court denied the post-trial motions. See Plaintiff's Stipulated Exhibit No. 4.

Ronald filed a Chapter 7 petition on June 19, 1998. Thereafter, on September 29, 1998, Angela filed the instant adversary proceeding to determine the dischargeability of the retroactive child support, the future child support, the maintenance, the ESOP shares and Angela's portion of Ronald's 401(k) plan, invoking §§ 523(a)(5) and (a)(15). Angela subsequently filed additional counts to the complaint: Count II, which seeks a declaratory judgment that Angela is the sole and separate owner of all proceeds from her portion of the 401(k) plan and the ESOP, and that Angela's portion of the 401(k) plan and the ESOP are not property of the Debtor's bankruptcy estate; Count III, which seeks the imposition of a constructive trust as to Angela's portion of the 401(k) plan and ESOP; and Count IV, which seeks to hold Angela's portion of the 1996 income tax refund in the sum of $2,955.00 nondischargeable under § 523(a)(15).

On November 4, 1998, Angela filed a motion for default judgment because Ronald failed to file an answer to the complaint. Subsequently, the Court extended the time to answer the complaint until December 18, 1998, and denied Angela's motion for default judgment. At this point, Ronald and his attorneys began to implement a tactical maneuver to delay resolution of Angela's complaint on the merits and exacerbate the costs and fees to

Angela through the following pleadings.

On November 6, 1998, Ronald, pro se, signed and filed his first motion for sanctions, which had been prepared by his attorneys, who had not filed an appearance of record at that point. See Plaintiff's Stipulated Exhibit No. 7. In that motion, Ronald alleged that he had not been served with a copy of the summons and complaint.

On December 15, 1998, Ronald filed an answer to the complaint setting forth an affirmative defense stating that there was an undetermined motion to vacate judgment and modify maintenance and support pending in the state court dissolution proceeding. See Plaintiff's Stipulated Exhibit No. 5. Ronald denied various ultimate material allegations in the complaint. On December 16, 1998, Ronald filed a motion to dismiss the complaint on the same basis and also asserted that the Court lacked jurisdiction and should abstain. See Plaintiff's Stipulated Exhibit No. 6. The motion was signed by one of Ronald's attorneys, Megan Kerr, an associate attorney at the law firm of Scott L. Mitzner, Ltd.

Thereafter, on January 8, 1999, Ronald, through his then retained counsel of record, filed a supplemental motion for sanctions. See Plaintiff's Stipulated Exhibit No. 11. This motion stated that counsel for Angela sent Ronald's attorneys a thirty-eight page fax which was sent to harass and disrupt their other work. This motion was also signed by Megan Kerr. The Court ultimately denied both motions for sanctions because neither was supported by any case or other persuasive legal authority and both were factually unsupported.

Ronald's supplemental motion apparently exhausted the patience of Angela and her attorneys and thus triggered the filing of the instant counter-motion for sanctions. Angela

seeks sanctions against Ronald and his attorneys pursuant to Federal Rule of Bankruptcy Procedure 9011.

On February 19, 1999, the Court entered a Final Pretrial Order setting the complaint and counter-motion for sanctions for trial on April 9, 1999. It required the parties to make certain pretrial submissions. Angela complied therewith, but Ronald did not. At the trial, the Court admitted all of Angela's exhibits and proposed stipulated facts and allowed one of her attorneys, Keevan Morgan of Morgan & Bley, to testify regarding the time expended by his law firm and the fees incurred in these matters. Ronald did not submit any documentary evidence. Over objection, the Court afforded one of Ronald's attorneys, Scott L. Mitzner of the law office of Scott L. Mitzner, Ltd., to testify regarding his purported defense to Angela's counter-motion for sanctions. Thereafter, the matters were taken under advisement.

III. DISCUSSION

A. The Standards for Dischargeability in the Seventh Circuit

The party seeking to establish an exception to the discharge of a debt bears the burden of proof. Selfreliance Fed. Credit Union v. Harasymiw (In re Harasymiw), 895 F.2d 1170, 1172 (7th Cir. 1990); Banner Oil Co. v. Bryson (In re Bryson), 187 B.R. 939, 961 (Bankr. N.D. Ill. 1995). The United States Supreme Court has held that the burden of proof required to establish an exception to discharge is a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991); In re McFarland, 84 F.3d 943, 946 (7th Cir.), cert. denied, 117 S.

Ct. 302 (1996); In re Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994). To further the policy of providing a debtor a fresh start in bankruptcy, "exceptions to discharge are to be construed strictly against a creditor and liberally in favor of a debtor." Goldberg Secs., Inc. v. Scarlata (In re Scarlata), 979 F.2d 521, 524 (7th Cir. 1992) (quoting In re Zarzynski, 771 F.2d 304, 306 (7th Cir. 1985)). Accord In re Reines, 142 F.3d 970, 972-73 (7th Cir. 1998), petition for cert. filed, (U.S. Aug. 24, 1998) (No. 98-666). "That policy of protecting and favoring the debtor is tempered, however, when the debt arises from a divorce or separation agreement." In re Crosswhite, 148 F.3d 879, 881 (7th Cir. 1998) (citation omitted). The § 523(a)(5) exception from discharge is construed more liberally than other § 523 exceptions. Id. at 882.

B. Counts I and IV of the Complaint

Section 523 of the Bankruptcy Code enumerates specific exceptions to the dischargeability of debts. Angela contends that the retroactive support payments, the future support payments and the maintenance payments are nondischargeable under § 523(a)(5). Section 523(a)(5) provides in relevant part:

> (a) A discharge under section 727. . .of this title does not discharge an individual debtor from any debt--
>
> > (5) to a spouse, former spouse. . . for alimony to, maintenance for, or support of such spouse . . .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. . . .

11 U.S.C. § 523(a)(5).

A debt owed to a former spouse or a debt to be paid to a third party in the nature of alimony, maintenance, or support pursuant to a divorce decree is nondischargeable in bankruptcy under § 523(a)(5). See In re Coil, 680 F.2d 1170, 1171 (7th Cir. 1982); Maitlen v. Maitlen (In re Maitlen), 658 F.2d 466, 468 (7th Cir. 1981); Bradaric v. Bradaric (In re Bradaric), 142 B.R. 267, 269 (Bankr. N.D. Ill. 1992). Obligations that arise as part of the division of marital property, however, are dischargeable. Coil, 680 F.2d at 1171. "An award of maintenance and support is meant to provide an ex-spouse with necessary goods or services which he or she would otherwise not be able to purchase." Calisoff v. Calisoff (In re Calisoff), 92 B.R. 346, 352 (Bankr. N.D. Ill. 1988) (citation omitted).

Section 523(a)(5) sets out three requirements that must be met in order for a debt to be nondischargeable: (1) the underlying debt must be in the nature of alimony, maintenance, or support; (2) the debt must be owed to a former spouse or child; and (3) the debt must be incurred in connection with a separation agreement, divorce, or property settlement agreement or other order of a court of record. Reines, 142 F.3d at 972 (citing Kinnally v. Fonnemann (In re Fonnemann), 128 B.R. 214, 217 (Bankr. N.D. Ill. 1991)); Wawak v. Smolenski (In re Smolenski), 210 B.R. 780, 782 (Bankr. N.D. Ill. 1997). The Court holds that the debts for retroactive support, future support and maintenance are clearly nondischargeable. The retroactive and future support payments are in the nature of nondischargeable support to the parties' children for purposes of § 523(a)(5). Furthermore, the maintenance payments constitute a debt in the nature of maintenance. These debts are owed to Angela, the Debtor's former spouse. Finally, the debts were incurred in connection

with the Judgment for Dissolution which was entered by the state court. Accordingly, all elements of § 523(a)(5) have been satisfied. Hence, the Court grants judgment in favor of Angela under Count I of the complaint.

Next, Angela contends that the 1996 income tax refund in the sum of $2,955.00 that was awarded to her in the Judgment for Dissolution is nondischargeable under § 523(a)(15). Section 523(a)(15) provides:

> (a) A discharge under section 727. . . of this title does not discharge an individual debtor from any debt--
>
> > (15) 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.

11 U.S.C. § 523(a)(15).

In order to except the debt from discharge under § 523(a)(15), Angela must establish that she holds a claim against Ronald, other than the kind described in § 523(a)(5), that was awarded by a court in the course of a divorce proceeding or separation. Crosswhite, 148 F.3d at 884. That has been done in this matter. The income tax refund is not in the nature of support, alimony or maintenance. It is listed as part of the martial property in the Judgment for Dissolution. See Plaintiff's Stipulated Exhibit No. 1 at ¶ 8(g).

Once Angela demonstrates this, the burden of coming forward shifts to Ronald to show either (1) that he lacks the ability to pay the debt from income or property not needed to support himself and any dependents, or (2) that the discharge of this debt would be more beneficial to Ronald than detrimental to Angela. Crosswhite, 148 F.3d at 884-85; Taylor v. Taylor (In re Taylor), 191 B.R. 760, 764 (Bankr. N.D. Ill.) (citations omitted), aff'd, 199 B.R. 37 (N.D. Ill. 1996); Jenkins v. Jenkins (In re Jenkins), 202 B.R. 102, 104 (Bankr. C.D. Ill. 1996). Ronald must meet the showing required on only one of the two prongs of § 523(a)(15) to prevent the debt from being excepted from discharge. Sterna v. Paneras (In re Paneras), 195 B.R. 395, 404 (Bankr. N.D. Ill. 1996).

The debt will remain dischargeable if paying the debt would reduce Ronald's income below that necessary for the support of Ronald and his dependents. Jenkins, 202 B.R. at 104; Hill v. Hill (In re Hill), 184 B.R. 750, 754 (Bankr. N.D. Ill. 1995). Because the language of § 523(a)(15) mirrors the disposable income test found in 11 U.S.C. § 1325(b)(2), courts have utilized an analysis similar to that used in determining disposable income in Chapter 13

cases. Hill, 184 B.R. at 755; Paneras, 195 B.R. at 404; Jenkins, 202 B.R. at 104.

Determining the dischargeability of a debt under § 523(a)(15) requires the evaluation of several factors: (1) the debtor's ability to pay the subject debt, (2) the non-debtor spouse's ability to pay the subject debt, and (3) the financial repercussions to the non-debtor spouse of discharging the debt. Id. at 104-05. If the debtor is found to lack the ability to repay the debt, the inquiry ends at § 523(a)(15)(A) and the debt is deemed dischargeable. Id. at 105. If, however, the debtor is found to have the ability to repay the debt, the inquiry proceeds to § 523(a)(15)(B) to consider the non-debtor spouse's ability to pay the debt. Id.

Turning to § 523(a)(15)(B), the legislative history reveals that if discharging the debtor would inflict little or no detriment on the non-debtor spouse the debt must be discharged. Specifically it provides:

> For example, if a nondebtor spouse would suffer little detriment for the debtor's nonpayment of an obligation required to be paid under a hold harmless agreement (perhaps because it could not be collected from the nondebtor spouse or because the nondebtor spouse could easily pay it) the obligation would be discharged. The benefits of the debtor's discharge should be sacrificed only if there would be substantial detriment to the nondebtor spouse that outweighs the debtor's need for a fresh start.

140 Cong. Rec. H10752-1 (daily ed. Oct. 4, 1994). Courts examining the issue have weighed several factors and applied a totality of the circumstances test. Those factors include: (1) the income and expenses of both parties; (2) the nature of the debt; (3) the former spouse's ability to pay; (4) the number of dependents; and (5) the reaffirmation of any debts. See Paneras, 195 B.R. at 404 (citations omitted); Hill, 184 B.R. at 756; Jenkins, 202 B.R. at 105. Some of those factors have been considered here. Several courts have found that equity

weighs against discharge where the debtor has the ability to pay a debt. Carroll v. Carroll (In re Carroll), 187 B.R. 197, 201 (Bankr. S.D. Ohio 1995) ("Discharging this obligation would simply provide Debtor with additional disposable income to 'use at his discretion.' This is not the type of benefit that § 523(a)(15)(B) sought to protect."); Florio v. Florio (In re Florio), 187 B.R. 656, 658 (Bankr. W.D. Mo. 1995) (quoting Carroll). In determining whether a debtor has the ability to pay a debt, the Court must consider not only whether the debtor could pay the debt in a lump sum, but also whether the debtor has the ability to pay the claim in installments over time from future income. Taylor, 191 B.R. at 767; Jenkins, 202 B.R. at 105.

Application of these principles to the matter at bar requires the Court to find in favor of Angela. Ronald has not offered any proof of his inability to pay the income tax refund to Angela. For that reason alone, the Court must rule in favor of Angela on the first prong of § 523(a)(15). However, looking at Ronald's Schedule B, it clearly demonstrates that at the time he filed his petition on June 19, 1998, he was able to pay Angela the $2,955.00 tax refund. Ronald listed the $4,900.00 tax escrow (from which the Judgment for Dissolution awarded Angela the $2,955.00), $8,000.00 from the sale of a home, $95,800.00 in the ESOP and $9,526.60 from his United Airlines 401(k) plan as his property. Because the tax escrow account was scheduled, it should be easy to pay Angela her share of same.

Furthermore, Ronald has not met the "detriment test" under § 523(a)(15)(B). Although he was apparently outside the courtroom at the time of trial, he did not testify or offer any evidence on this matter. From the stipulation of facts submitted by Angela, the

following facts are undisputed. Angela works as a nail technician and her income is based solely on commission. She earns approximately $20,500.00 per year. Angela has no health insurance and receives no employment benefits. Angela pays $850.00 per month for rent of an apartment she shares with the three children. In addition, she has incurred debt in the sum of $222.32 per month for five and a half years on a 1996 used vehicle. Pursuant to the Judgment for Dissolution, Angela undertook repayment of a $3,900.00 credit card debt and a $20,627.00 debt to her parents. Ronald has made no payments to Angela pursuant to the Judgment for Dissolution since October, 1998.

In contrast, Ronald dissipated marital assets in the amount of $11,038.16 by his failure to pay the monthly mortgage payments and another $743.00 due to his early withdrawals from the 401(k) plan. No further evidence was submitted on Ronald's behalf regarding his current financial condition. Although his attorneys claim he has disabling back problems and he did not appear to testify at trial, Ronald was able to take a Florida vacation shortly prior to the trial. This strongly suggests the "detriment test" weighs in favor of Angela.

Based upon these undisputed and unrebutted facts, the Court finds that Ronald has not demonstrated by a preponderance of the evidence that discharging the debt would result in a benefit to him which outweighs the detrimental consequences to Angela, who financially needs the ultimate repayment of this debt. After all, Ronald has been discharged of all his other dischargeable pre-petition debts. Consequently, the Court holds that the 1996 income tax refund owed to Angela in the sum of $2,955.00 is nondischargeable under § 523(a)(15).

Judgment is granted in favor of Angela on Count IV of the complaint.

C. Counts II and III of the Complaint

Pursuant to Count II of the complaint, Angela asks the Court to issue a declaratory judgment declaring that she is the sole and separate owner of all proceeds from her portion of the 401(k) plan and the ESOP and that Angela's portion of the 401(k) plan and ESOP are not property of the Debtor's bankruptcy estate. Under Count III of the complaint, Angela contends that Ronald is holding her share of the 401(k) plan and the ESOP in a constructive trust for her benefit. Angela requests that Ronald be ordered to turn over her share of the ESOP and 401(k) plan that he has wrongfully retained.

Under Section 541 of the Bankruptcy Code, the bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). However, § 541(d) provides:

> Property in which the debtor holds . . . only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

On his Schedule B, Ronald claimed the full amount of the 401(k) plan and the ESOP as his personal property. Pursuant to the Judgment for Dissolution, the state court allocated Angela's portion of the 401(k) plan and ESOP at sixty percent. In Bigelow v. Brown (In re Brown), 168 B.R. 331 (Bankr. N.D. Ill. 1994), Judge Ginsberg, who was faced with a similar issue, held:

> [A] former spouse's interest in a debtor's pension becomes the sole and separate property of the nondebtor spouse upon entry of a final judgment of divorce. . . . Even if the debtor spouse has actual possession of the pension plan or payments from the pension plan, the nondebtor's interest in the pension plan is still that nondebtor spouse's separate property and does not become property of the estate. Instead, the debtor spouse holds that property interest of the nondebtor spouse as a constructive trustee for the benefit of the nondebtor spouse.

Id. at 334-35 (citations omitted).

Based on the Brown holding, with which this Court concurs, the Court holds that Angela is the legal title holder of her share of the 401(k) plan and ESOP, and Ronald simply holds her portion thereof as a constructive trustee, whether or not a QDRO was entered. After all, this Court is required to give the state court's final Judgment for Dissolution, which made those awards to Angela, full faith and credit under 28 U.S.C. § 1738. Clearly, Ronald has, at best, a bare legal interest in Angela's portion of the 401(k) plan and ESOP. Upon the entry of the Judgment for Dissolution finally allocating rights in the 401(k) plan and ESOP, all rights to Angela's portion of the pension vested in her. Therefore, her interest in the 401(k) plan and ESOP never really became part of Ronald's bankruptcy estate under § 541. Consequently, judgment in an amount equal to Angela's share of the 401(k) plan and ESOP is entered against Ronald. Further, Ronald is hereby ordered to turn over to Angela all future monies that he receives from Angela's portion of the ESOP and 401(k) plan. The Court grants judgment under Counts II and III of the complaint in favor of Angela. Moreover, Angela should be allowed to exercise her state court remedies to collect these sums from Ronald.

D. <u>Angela's Counter-Motion for Sanctions</u>

The real dispute in this matter, about which the trial testimony was focused, is Angela's counter-motion for sanctions. Angela seeks sanctions against Ronald and his attorneys pursuant to Federal Rule of Bankruptcy Procedure 9011 on several grounds: (1) Ronald's affirmative defense and motion to dismiss were based upon the argument that the Court should abstain from hearing this adversary proceeding because there were motions to vacate the Judgment for Dissolution and to modify the maintenance and support pending in the state court dissolution proceeding which were undetermined, when in reality, these motions had already been denied by the state court; (2) Ronald and his attorneys have engaged in unprovoked and unjustified sanctionable conduct toward opposing counsel, consisting of the filing of two factually and legally unsupported motions for sanctions against Angela and her attorneys; (3) the conduct of Ronald and his attorneys has been aggravated because the nature of this adversary proceeding regards the dischargeability of certain debts owed to Angela by Ronald, and Ronald has not contested the dischargeability of the debts nor ownership of the 401(k) plan and ESOP; and (4) Ronald's attorneys have ignored the Court's Final Pretrial Order and failed to comply therewith, as well as failed to participate in the filing of stipulated facts as they agreed to do in open Court on March 12, 1999. The Court will address each ground in turn.

Angela's counter-motion for sanctions is brought pursuant to Federal Rule of Bankruptcy Procedure 9011. Bankruptcy Rule 9011 is modeled after Federal Rule of Civil

Procedure 11. Rule 11 was amended in 1993 to add certain notice requirements[1] and these same amendments were later made to Bankruptcy Rule 9011, effective in 1997. Thus, in applying the current version of Bankruptcy Rule 9011, courts frequently look to Rule 11 and the cases decided thereunder. See In re Famisaran, 224 B.R. 886, 894 (Bankr. N.D. Ill. 1998). Some Rule 11 cases decided prior to the procedural amendment are still applicable today in analyzing Bankruptcy Rule 9011 because the substantive provisions were not altered. See State Bank of India v. Kaliana (In re Kaliana), 207 B.R. 597, 601 (Bankr. N.D. Ill. 1997) (citations omitted).

The goal of the sanctions remedy provided under Bankruptcy Rule 9011 (and former Rule 11) is to deter unnecessary filings, prevent the assertion of frivolous pleadings, and to require good faith filings. Szabo Food Serv., Inc. v. Canteen Corp., 823 F.2d 1073, 1077-80 (7th Cir. 1987), cert. dismissed, 485 U.S. 901 (1988). The Rule is not intended to function as a fee shifting statute which would require the losing party to pay costs. Kaliana, 207 B.R. at 601 (citing Mars Steel Corp. v. Continental Bank N.A., 880 F.2d 928, 932 (7th Cir. 1989)). Thus, the Rule focuses on the conduct of the parties and not the results of the litigation. Bankruptcy Rule 9011 provides in relevant part:

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[1] Rule 11 was amended in 1993 to broaden the obligations of the parties to refrain from conduct which frustrates the judicial process while also placing greater constraints on the imposition of sanctions. Fed. R. Civ. P. 11, Advisory Committee Notes, 1993 Amendments. To this end, the provisions of (c)(1)(A) were included to provide parties with notice and an opportunity for "curing" offensive pleadings before a remedy could be sought in court. Bankruptcy Rule 9011 was amended in 1997 in order to bring it in conformance with Rule 11's earlier 1993 revision. Commonly known as the "safe-harbor provision," this notice requirement is not at issue in the instant matter.

(a) SIGNATURE. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. . . .
(b) REPRESENTATIONS TO THE COURT. *By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper*, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information and belief.

(c) SANCTIONS. *If,* after notice and a reasonable opportunity to respond, *the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.*

> (1) How Initiated
>
> > (A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall

> describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. . . .

. . .

(2) Nature of Sanction; Limitations. *A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.* Subject to the limitations in subparagraphs (A) and (B), *the sanction may consist of, or include,* directives of a nonmonetary nature, an order to pay a penalty into court, or if imposed on motion and warranted for effective deterrence, *an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.*

. . .

(3) Order. When imposing sanctions, the

> court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Fed. R. Bankr. P. 9011 (emphasis supplied).

The present version of Bankruptcy Rule 9011 provides that upon presenting in the manner of signing, filing, submitting or later advocating documents to the court, a party or their counsel represents that to the best of that person's knowledge, information and belief, formed after a reasonable inquiry under the circumstances, such document is not presented (1) for any improper purpose, (2) based upon frivolous legal arguments, (3) without adequate evidentiary support for its allegations, and (4) without a basis for denials of fact. These provisions essentially create two grounds for the impositions of sanctions: (1) the "frivolousness clause," which looks to whether a party or an attorney made a reasonable inquiry into both the facts and the law; and (2) the "improper purpose clause," which looks to whether a document was interposed for an illegitimate purpose such as delay, harassment, or increasing the costs of litigation. Kaliana, 207 B.R. at 601 (citations omitted).

With respect to the "frivolousness clause," the relevant inquiry has two prongs: (1) whether the attorney made a reasonable inquiry into the facts and (2) whether the attorney made a reasonable investigation of the law. Home Savs. Ass'n of Kansas City, F.A. v. Woodstock Assocs. I, Inc. (In re Woodstock Assocs. I, Inc.), 121 B.R. 238, 242 (Bankr. N.D. Ill. 1990) (citing Brown v. Federation of State Medical Bds. of the United States, 830 F.2d 1429, 1435 (7th Cir. 1987)). In making the determination of whether a reasonable inquiry was made with respect to the facts of a case, courts must consider five factors: (1)whether

the signer of the document had sufficient time for investigation; (2) the extent to which the attorney had to rely on his client for the factual foundation underlying the pleading; (3) whether the case was accepted from another attorney; (4) the complexity of the facts and the attorney's ability to perform a sufficient pre-filing investigation; and (5) whether discovery would have been beneficial to the development of the underlying facts. Id. In sum, the investigation of the facts must have been reasonable under the particular circumstances of the case. In re Excello Press, Inc., 967 F.2d 1109, 1112-13 (7th Cir. 1992).

A pleading is well-grounded in fact if it has some reasonable basis in fact. Woodstock, 121 B.R. at 242 (citations omitted). On the other hand, a pleading is not well-grounded in fact if it is contradicted by uncontroverted evidence that was or should have been known by the attorney signing the document. Id. (citation omitted). Nonetheless, the Rule does not require investigation to the point of absolute certainty. Kaliana, 207 B.R. at 601 (citation omitted). It is the thrust of Angela's counter-motion that Ronald and his attorneys have frivolously pleaded matters for improper purposes of delay, which have unnecessarily increased the costs of this litigation. The Court agrees in substantial part.

First, Angela seeks sanctions against Ronald and his attorneys on the ground that they had no reasonable basis on which to allege as an affirmative defense or as an allegation in Ronald's motion to dismiss that "[t]here is a Motion to Vacate Judgment and Modify Maintenance and Support pending in divorce court which is undetermined." See Plaintiff's Stipulated Exhibit No. 5 at ¶ 7 and Plaintiff's Stipulated Exhibit No. 6 at ¶ f. Angela contends that this statement was not reasonably based because at the time it was made, there

was no such motion to vacate pending in the state court. Rather, that motion had already been denied. Angela argues that Ronald and his attorneys failed to disclose the state court's decision denying those motions when they alleged otherwise in filed papers.

Pursuant to the documentary evidence admitted at trial, the Court finds that this statement made in both the motion to dismiss (Plaintiff's Stipulated Exhibit No. 6) and in Ronald's answer to the complaint (Plaintiff's Stipulated Exhibit No. 5) constitutes a violation of Bankruptcy Rule 9011(b). A review of the chronology of events demonstrates that a reasonable inquiry into the facts was not made prior to the making of the statement. On June 15, 1998, the state court entered the Judgment for Dissolution. See Plaintiff's Stipulated Exhibit No. 1. Thereafter, on July 15, 1998, Ronald filed his post-trial motion to reconsider. See Plaintiff's Stipulated Exhibit No. 2. On that same date, he filed a motion to abate child support and maintenance. See Plaintiff's Stipulated Exhibit No. 3. On December 7, 1998, the state court denied the motions to reconsider and abate the child support and maintenance. See Plaintiff's Stipulated Exhibit No. 4. Then, on December 15 and 16, 1998, Ronald and his attorneys filed his answer and motion to dismiss, respectively.

Based on the foregoing chronology, the Court holds that the factual contention upon which Ronald and his attorneys based the answer to the complaint and the motion to dismiss was false. The uncontroverted evidence demonstrates that there was no motion to reconsider pending before the state court in the dissolution proceeding on December 15 or 16, 1998. See Plaintiff's Stipulated Exhibit Nos. 15 (Angela's affidavit) and 16 (Kenneth Hubbard's affidavit). The issue then becomes whether this incorrect factual allegation was reasonably

based. Neither the Debtor nor his attorneys offered any persuasive evidence in this regard. The chronology of events shows that Ronald and his attorneys had sufficient time for investigations prior to making the statement in the filed pleadings. On December 7, 1998, the state court denied the motions. Ronald and his attorneys filed the documents on December 15 and 16, 1998, eight and nine days later. Surely, the entry of this state court order denying Ronald's motions could have been discovered in this time period.

The only evidence Scott Mitzner offered in defense on this point was his uncorroborated testimony that the state court order of December 7, 1998 (Plaintiff's Stipulated Exhibit No. 4) was still in the process of being docketed by the time his office filed the answer and motion alleging that the state court still had Ronald's motion to reconsider under advisement. However, Scott Mitzner did not submit any documentary evidence to show that the relevant state court order was not docketed until after December 15 or 16, 1998, when Ronald's answer and motion to dismiss were filed.

Scott Mitzner's testimony failed to establish that either he or one of his associates checked the state court file just prior to filing the pleadings with this Court or otherwise took other steps to attempt to verify that the motion for reconsideration was still under advisement. Rather, Scott Mitzner testified he examined the state court file about one week prior to filing the offending pleadings with the Court. That is insufficient to justify the false pleadings especially because the testimony at trial from Scott Mitzner indicated that Ronald was somehow aware that the state court had ruled against him on the motion to reconsider. To date, no effort has been made by Ronald or his attorneys to amend the pleadings or

withdraw the factually incorrect allegations.

Hence, the Court finds this statement violative of Bankruptcy Rule 9011(b) as it was not based upon a reasonable inquiry into the facts. Thus, the Court hereby sanctions Ronald and his attorneys, the law firm of Scott L. Mitzner, Ltd., because Megan Kerr was the signatory on both the answer and the motion to dismiss.

Next, Angela seeks sanctions against Ronald and his attorneys on the basis that they have engaged in sanctionable conduct by the filing of two factually and legally unsupported motions for sanctions against Angela and her attorneys, which the Court ultimately denied. On November 6, 1998, Ronald, pro se, filed his first motion for sanctions. See Plaintiff's Stipulated Exhibit No. 7. The motion alleged that Ronald had not received a copy of the complaint and summons in this adversary proceeding. He further alleged that he incurred legal fees in order to respond to the motion for default judgment filed by Angela. Ronald also filed his response to the motion for default judgment pro se. See Plaintiff's Stipulated Exhibit No. 9.

Scott Mitzner testified at trial that he in fact prepared and dictated the allegations in both the motion for sanctions and the response to the motion for default judgment. In both pleadings, Ronald denied that he had been served with the summons or complaint. Angela alleges that when he filed these papers, Ronald had twice refused to respond to notice of the delivery of the summons and complaint from the post office. See Plaintiff's Stipulated

Exhibit No. 8. The attempted service by mail was made pursuant to Federal Rule of Bankruptcy Procedure 7004(b).

Based on the uncontroverted evidence, the Court finds that Ronald violated Bankruptcy Rule 9011(b) when he made the allegation in the response to the motion for default judgment and the motion for sanctions that he had never been served with the summons and complaint because he failed to disclose the attempts of the post office to deliver the summons and complaint to him and his refusal to accept the service by mail. Plaintiff's Stipulated Exhibit No. 8, the return envelope containing the complaint and summons, demonstrates that Ronald twice failed to retrieve his mail from the post office.

Pro se litigants who sign pleadings or other papers are held to the same standards as any attorney for purposes of Bankruptcy Rule 9011. See Kaufhold v. Cauthen (In re Cauthen), 152 B.R. 149, 154 (Bankr. S.D. Tex. 1993) (citation omitted). Consequently, the Court sanctions Ronald under Bankruptcy Rule 9011(b) for filing these pleadings which contain such a false factual contention.

The Court further notes that Ronald's blatantly obvious attempts to dodge service of process were augmented and aided by Scott Mitzner who admitted he drafted the first of the offending pleadings. Scott Mitzner did not sign the pleading because he apparently had not been paid a retainer at that point. Such a clever ploy may let Scott Mitzner off the direct hook of Bankruptcy Rule 9011 because neither Scott Mitzner nor his associate signed the first of these pleadings. But, that subterfuge does not mean that his law firm is absolved from its part in the preparation of the pleadings through its expedient of merely not signing

what they drafted. Based on Scott Mitzner's testimony that he helped Ronald draft both pleadings, the Court sanctions his law firm pursuant to 11 U.S.C. § 105(a) and the Court's inherent authority. Section 105(a) of the Bankruptcy Code provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

The Seventh Circuit has stated that "[s]ection 105(a) grants broad powers to bankruptcy courts to implement the provisions of Title 11 and to prevent an abuse of the bankruptcy process. The broad power to 'issue any order . . . appropriate to carry out the provisions' of Title 11 and 'to prevent an abuse of process' certainly encompasses the power to issue an order to sanction an attorney who . . . 'multiplies the proceedings . . . unreasonably and vexatiously.'" Volpert, 110 F.3d at 500. Accord In re Bryson, 131 F.3d 601, 603 (7th Cir. 1997). See also Chambers v. NASCO, Inc., 501 U.S. 32, 43-45 (1991). This has been interpreted to include causing unnecessary delay under Bankruptcy Rule 9011. See Strange v. Columbia Nat. Bank, 1998 WL 736698 at *7 (N.D. Ill. Oct. 13, 1998).

Additionally, the Court finds that Ronald's supplemental motion for sanctions violated Bankruptcy Rule 9011. In this motion, Ronald alleged that a thirty-eight page fax was sent from Angela's attorneys to his attorneys for the purpose of harassment and to

disrupt the office of Ronald's attorneys.[2] The Court finds that this pleading also violated Bankruptcy Rule 9011(b) because these allegations lacked support either factually or legally. No case law or other persuasive authorities were cited in the motion. A party's failure to cite any supporting case citation or authority results in the forfeiture of the point. See LINC Finance Corp. v. Onwuteaka, 129 F.3d 917, 921 (7th Cir. 1997); Pelfresne v. Village of Williams Bay, 917 F.2d 1017, 1023 (7th Cir. 1990). The Court does not have a duty to research and construct legal arguments available to a party. Head Start Family Educ. Program, Inc. v. Cooperative Educ. Serv. Agency 11, 46 F.3d 629, 635 (7th Cir. 1995).

The Court finds that the filing of both motions for sanctions by Ronald and his attorneys was done for improper purposes, namely to delay the resolution on the merits of the dischargeability claims raised in the adversary proceeding, to harass Angela and her attorneys, and to inevitably increase the costs of this litigation. For these reasons, the Court holds that Ronald and his attorneys have violated Bankruptcy Rule 9011(b). Thus, the Court hereby sanctions Ronald and the law firm of Scott L. Mitzner, Ltd. for this violation of the Rule.

Next, Angela seeks sanctions against Ronald and his attorneys on the basis that their conduct has been aggravated because Ronald has not contested the dischargeability of the

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[2] The testimony at trial from Keevan Morgan, lead counsel for Angela, was that he directed the lengthy fax to be transmitted in an effort to settle the matter by citing the various authorities in support of Angela's position as to the nondischargeability of her claims against Ronald, not to harass Ronald's attorneys. Although the fax was long and perhaps prolix, there was no credible evidence of any attempted wrongful or sanctionable conduct by Angela or her attorneys.

debts nor has he contested the divided ownership of the 401(k) plan and ESOP. A close reading of the answers to the original and amended complaints shows Ronald denied some of the material allegations. Unfortunately, while most of the pleadings and much of the legal work in this adversary proceeding have arisen as a result of the satellite litigation over the sanctions motions filed in this matter, as opposed to the principal relief sought--the dischargeability of the subject debts-- the Court finds no violation on the part of Ronald or his attorneys under Bankruptcy Rule 9011 on this basis. Ronald has virtually conceded, through a lack of proof at trial, the nondischargeability of the support debts and the property settlement obligations for purposes of §§ 523(a)(5) and (a)(15). To sanction Ronald or his attorneys on this ground would effectively utilize Bankruptcy Rule 9011 as a fee shifting devise, which it is not. A failure to contest at trial by testimony or documentary evidence certain of a plaintiff's allegations or theories does not, ispo facto, produce a mandatory sanction under Bankruptcy Rule 9011.

Finally, Angela seeks sanctions against Ronald's attorneys for their failure to comply with the Court's Final Pretrial Order as well as their failure to participate in the filing of stipulated facts as was agreed in open court on March 12, 1999. At the March 12, 1999 hearing, Keevan Morgan stated in pertinent part, "We propose, your Honor, that we give you a set of stipulated facts." Scott Mitzner later in the colloquy replied, "I think that's the most practical thing." Rather than comply with the stipulation, Scott Mitzner testified that he went on vacation.

The Court is unable to sanction Ronald and his attorneys under Bankruptcy Rule

9011(b) for their failure to participate in the filing of stipulated facts. Pursuant to the Rule, a petition, pleading, written motion, or other paper whether signed, filed, submitted or later advocated, must be presented to the Court in order to trigger the applicability of the Rule. See Fed. R. Bankr. P. 9011(a). That Ronald's attorneys failed to cooperate in the filing of stipulated facts after agreeing to do so does not constitute a violation of Bankruptcy Rule 9011(b). While it certainly flies in the face of spirited cooperation promoted by the Federal Rules of Civil Procedure and Bankruptcy Procedure and the Seventh Circuit's Civility Code, it does not rise to the level of sanctionable conduct under Bankruptcy Rule 9011. It is the affirmative act of doing something proscribed by Bankruptcy Rule 9011(b) that triggers relief under subsection (c). The failure to follow through with submitting papers is not such an affirmative act.

On February 19, 1999, the Court entered its Final Pretrial Order setting the adversary proceeding for trial on April 9, 1999. Pursuant to that Order, the Court has the authority to sanction a party under Federal Rules of Bankruptcy Procedure 7016 and 7037, incorporating Federal Rules of Civil Procedure 16(f) and 37(b)(2)(B) and (C), for failing to comply with the terms thereof. Several possible sanctions include barring exhibits and witnesses. That, in part, is what the Court did at trial.[3] The Seventh Circuit has upheld these sanctions. See In re Maurice, 21 F.3d 767, 773 (7th Cir. 1994). With respect to stipulations, the Order

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[3] Ronald did not seek to testify nor admit any exhibits at the trial. Over objection of Angela's attorney, the Court allowed only Scott Mitzner to testify in his own defense so that the Court would have an evidentiary record of the purported defense to Angela's counter-motion for sanctions sought against Scott Mitzner and his law firm.

provided that "[t]o the extent reasonably possible, the parties will stipulate to facts and documents, and their said stipulations are admitted into evidence." The Order does not provide for sanctions for a party's failure to stipulate to facts at trial. Hence, the Court will not further sanction Ronald or his attorneys based on Bankruptcy Rules 7016 or 7037, the Final Pretrial Order itself or Bankruptcy Rule 9011(b) for their failure to cooperate in filing stipulated facts. See, e.g., Stafford v. Mesnik, 63 F.3d 1445 (7th Cir. 1995) (a party may not be defaulted for failing to cooperate with opposing counsel in drafting a pretrial order).

Pursuant to Bankruptcy Rule 9011(c), the Court must now determine the appropriate sanctions to impose for the above violations. The Court must also allocate sanctions between an attorney and client according to their relative responsibility for the Rule violation. Borowski v. DePuy, Inc., 850 F.2d 297, 305 (7th Cir. 1988) (citations omitted). It appears on this record that both the attorneys and their client are equally culpable. The Rule affords the Court the authority to award Angela "some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation." Fed. R. Bankr. P. 9011(c). The Seventh Circuit has referred to the "universal solvent of money" regarding sanctions. See Smith v. Chicago School Reform Bd. of Trustees, 165 F.3d 1142, 1148 (7th Cir. 1999).

Angela's attorneys have submitted a detailed summary of the time they expended in specific categories. See Plaintiff's Stipulated Exhibit Nos. 14 and 14A. Angela seeks $18,107.50 in reasonable attorney's fees. One of Angela's attorneys, Keevan Morgan, testified that the time expended was billed at the firm's regular hourly rates for the work performed, was necessary to advocate Angela's claims and was divided into six categories:

(1) responding to the initial motion for sanctions ($1,258.00); (2) responding to matters which Ronald had no defense, but insisted upon litigating ($2,068.50); (3) responding to motions through the counter-motion for sanctions ($9,499.00); (4) responding to the motion to dismiss ($1,977.00); (5) responding to the motion to quash a deposition ($281.00); and (6) preparing the stipulated facts for the trial ($3,024.00).

The Court finds that not all of the fees incurred and services rendered were a result of the violations of Bankruptcy Rule 9011. The present text of the Rule mandates that only appropriate sanctions should be levied and assessed commensurate with the degree of violation of the Rule. Thus, services rendered responding to the motion to quash a deposition were not incurred as a result of a violation of Bankruptcy Rule 9011. The motion was granted for failure to comply with Local Bankruptcy Rule 402K, not for a violation of Bankruptcy Rule 9011. In addition, the fees incurred responding to matters which the Debtor pleaded no proven defense, but insisted upon Angela litigating and proving her burdens of proof were not incurred as a result of any violation of Bankruptcy Rule 9011. Finally, the time expended preparing the stipulated facts for the trial was not incurred as a result of any violation of Bankruptcy Rule 9011. That work would have to have been done in any event. The Court is of the view that a substantial portion of the services rendered by Angela's attorneys would have been necessarily incurred to plead and prove the nondischargeability of the claimed debts and to establish that her interests in the retirement plans were not part

of the bankruptcy estate.[4] Thus, the Court will award Angela reasonable attorney's fees only for services incurred as a direct result of the violations of the Rule.

The Court finds that $1,258.00 for services expended by Angela's attorneys responding to Ronald's initial baseless motion for sanctions was incurred as a result of his violation of the Rule. Moreover, the services rendered in the sum of $1,977.00 responding to the unfounded motion to dismiss were also incurred as a result of the violations of Bankruptcy Rule 9011 and thus hereby awarded to Angela. Finally, fees in the amount of $9,499.00 incurred to respond to Ronald's baseless supplemental motion for sanctions and for the preparation of Angela's counter-motion for sanctions were expended as a result of the above discussed violations of the Rule. Accordingly, the Court hereby awards Angela her attorney's fees in the reduced sum of $12,734.00. The Court grants sanctions against the Debtor and his attorneys, the law firm of Scott L. Mitzner Ltd., jointly and severally, pursuant to Bankruptcy Rule 9011 and 11 U.S.C. § 105(a) in the sum of $12,734.00.

IV. CONCLUSION

For the foregoing reasons, the Court finds the debts for retroactive child support, future child support and maintenance nondischargeable under § 523(a)(5). Also, the tax refund portion in the sum of $2,955.00 that Angela was awarded in the dissolution of

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[4] Even though some of the fees were not incurred as a direct result of a violation of Bankruptcy Rule 9011, they may nevertheless be held nondischargeable under § 523(a)(5). See In re Rios, 901 F.2d 71, 72 (7th Cir. 1990) (awards of attorneys' fees for services in obtaining support orders have been held nondischargeable).

marriage proceeding is nondischargeable pursuant to § 523(a)(15). Further, the Court enters judgment in favor of Angela in an amount equal to her share of the 401(k) plan and ESOP. Ronald is hereby ordered to turn over to Angela all future monies that he receives from Angela's portion of the ESOP and 401(k) plan. In addition, the Court grants sanctions against the Debtor and his attorneys, the law firm of Scott L. Mitzner, Ltd., jointly and severally, pursuant to Federal Rule of Bankruptcy Procedure 9011 and 11 U.S.C. § 105(a) in the sum of $12,734.00.

This Opinion serves as findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

ENTERED:

Date: ________________

____
JOHN H. SQUIRES
United States Bankruptcy Judge

cc: See attached Service List