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Northern District of Illinois
Eastern Division

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Case No. 16 B 1529
	)	
MARIE A. CAHILL,	)	Chapter 7
	)	
Debtor.	)	Judge David D. Cleary

ORDER SUSTAINING OBJECTION OF MARIE A. CAHILL TO CLAIM #1 OF ROSARIO A. PICONE, JR.

This matter comes before the court on the objection ("Objection") of Marie A. Cahill ("Debtor") to the proof of claim ("Claim") filed by Rosario A. Picone, Jr. ("Picone"). Picone filed a general unsecured claim in the amount of "$3,600 + Additional amounts are owed for child support and children's expenses which have not been determined by court." He responded to the Objection ("Response") and Debtor filed a reply ("Reply"). Since the Reply raised a new issue, the parties engaged in a second round of briefing. Having reviewed the papers filed and considered the arguments raised in open court, the court will sustain the Objection.

I. BACKGROUND

Debtor and Picone were in a relationship for approximately eleven years. In 2013, they became parties to a parentage action in the Circuit Court of Cook County. On June 17, 2016, the state court entered an agreed order ("June 2016 Agreed Order") that both parties signed.

Debtor filed for relief under chapter 7 of the Bankruptcy Code on January 19, 2016, a few months before the entry of the June 2016 Agreed Order. Picone filed the Claim on February 25, 2016. The basis for the Claim is "Money owed for dental bill plus child support and children's expenses." Picone attached no documents in support of the proof of claim.

Debtor's case trustee filed an initial report of assets on May 9, 2016, and the court set a bar date of August 10, 2016, for proofs of claims.

II. CONTENTIONS OF THE PARTIES

In December 2022, Debtor filed the Objection to Picone's Claim. The initial basis for the Objection was that the Claim did not include any attachments establishing a right to child support, children's expenses or reimbursement of a dental bill. To the Objection, Debtor attached the June 2016 Agreed Order.

In the Response, Picone asserted that he was, and is, entitled to reimbursement of expenses under 750 ILCS 46/802.[1] The June 2016 Agreed Order provided that both parties "forgive any medical bills and contribution for medical insurance premiums owed from March 2013 to the entry of this order." (June 2016 Agreed Order, ¶ 13.) Picone stated that his Claim is for expenses incurred *prior* to 2013 and attached receipts for some expenses from that time period. He also provided an affidavit regarding other pre-2013 expenses: the birth of their son in 2003; of their daughter in 2008; and orthodontic charges for an unspecific period.

In the Reply, Debtor agreed that pursuant to 750 ILCS 46/802, Picone *could* have sought reimbursement in the state court for medical expenses incurred prior to 2013. He did not do so. Instead, he signed the June 2016 Agreed Order, which provides in the introduction that the parties reached an agreement "on the remaining financial issues in the cause[.]" Therefore, Debtor contended that under the principles of res judicata, Picone is bound by the June 2016 Agreed Order. He is not entitled now to seek reimbursement of pre-2013 expenses.

At the next hearing before this court, Picone argued that Debtor's res judicata argument was new to the Reply and had not been raised in the Objection. The court therefore allowed him time to file a sur-reply, which he did ("Sur-Reply"). In the Sur-Reply, Picone asserted that he could not have taken any action in state court because Debtor filed for relief under the

[1] This statute states, in relevant part, that "[t]he court may order child support payments to be made for a period prior to the commencement of the action." 750 ILCS 46/802(e).

Bankruptcy Code in January 2016. Therefore, at the time the state court entered the June 2016 Agreed Order, the parentage action was stayed. Even if he could have sought reimbursement, the domestic relations court "would not have taken action in relation to same until *after* the Debtor's bankruptcy matter was disposed of[.]" (Sur-Reply, p. 4.) Therefore, Picone filed the Claim in the hope that the case trustee would liquidate the bankruptcy estate and distribute its assets. Picone also argued that the requirements for res judicata had not been met.

The court allowed Debtor to file a response to the sur-reply ("Response to Sur-Reply"). She did so and argued that the June 2016 Agreed Order is res judicata as to Picone's Claim. Debtor also asserted that Picone's argument that the stay precluded him from pursuing an order in domestic relations court regarding pre-2013 expenses was a straw man. First, 11 U.S.C. § 362(b)(2)(A) provides that the automatic stay in § 362(a) "does not operate as a stay … of the commencement or continuation of a civil action or proceeding – (i) for the establishment of paternity; [or] (ii) for the establishment or modification of an order for domestic support obligations[.]" Second, if Picone did not believe that the parentage action was excepted from the automatic stay, how could he explain the submission and entry of the June 2016 Agreed Order? Entry of the June 2016 Agreed Order occurred in state court five months after Debtor filed for relief under chapter 7, and four months after Picone filed the Claim.

III. DISCUSSION

A. Objections to Claims – General Standard and Grounds in this Case

11 U.S.C. § 501 states that creditors may file proofs of claim in bankruptcy cases. An "unsecured creditor … must file a proof of claim or interest for the claim or interest to be allowed[.]" Fed. R. Bankr. P. 3002(a).

Pursuant to Fed. R. Bankr. P. 3001(f), "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." *See In re Octagon Roofing*, 156 B.R. 214, 218 (Bankr. N.D. Ill. 1993); *Heritage Bank Tinley Park v. Steinberg* (*In re Grabill Corp.*), 121 B.R. 983, 992 (Bankr. N.D. Ill. 1990). Once a proof of claim is filed, it is deemed allowed until a party in interest objects. 11 U.S.C. § 502(a).

1. General standard for objections to claims

When a party objects to a claim, it has the burden of going forward with evidence supporting the objection to the amount and validity of the claim. 4 Collier on Bankruptcy ¶ 502.02[3][e] (16th 2023). *See Grabill*, 121 B.R. at 992; *In re Allegheny Internat'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992) ("It is often said that the objector must produce evidence equal in force to the *prima facie* case.").

If the objecting party produces evidence to overcome the rebuttable presumption given to the claim, the burden of going forward shifts back to the claimant. *See Octagon Roofing*, 156 B.R. at 218. The ultimate burden of persuasion is always on the claimant to prove the validity of the claim by a preponderance of the evidence. *See Allegheny*, 954 F.2d at 174; *Octagon Roofing*, 156 B.R. at 218.

Objections to the allowance of claims against the estate must be grounded in one of the nine exceptions described in 11 U.S.C. § 502(b).

2. Grounds for this objection to claim

Debtor's first argument is that the Claim should be disallowed because Picone did not include any attachments. This argument has been mooted by the exhibits filed during the briefing. In any event, it is not one of the nine exceptions the Code lists in § 502(b). Therefore,

failure to include attachments is not a basis to object to a claim. *See In re Guidry*, 321 B.R. 712, 714 (Bankr. N.D. Ill. 2005) ("Courts have accordingly held that a claim cannot be disallowed solely on the basis that its proof was not accompanied by a Rule 3001(c) attachment.").

Debtor's second argument, that the Objection should be sustained because of the effect of the June 2016 Agreed Order, falls under the first exception to the allowance of a claim. The Bankruptcy Code provides that the court shall not allow a claim against the estate to the extent that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured[.]" 11 U.S.C. § 502(b)(1).

The June 2016 Agreed Order provides no basis for a claim against Debtor for pre-2013 expenses. Therefore, Debtor has come forward with evidence that the Claim is unenforceable, which supports her objection to the amount and validity of the Claim. This evidence overcomes the rebuttable presumption given to the Claim. It is now Picone's burden to go forward with evidence in support of the Claim. It is always his burden of persuasion to demonstrate to the court, by a preponderance of the evidence, that the Claim is valid.

B. The June 2016 Agreed Order

1. The June 2016 Agreed Order is a settlement agreement that the parties intended to resolve all financial issues

There is no dispute that Debtor and Picone signed the June 2016 Agreed Order, and that it constitutes an agreement between them. "Issues regarding the formation, construction, and enforcement of settlement agreements are governed by state contract law." *Magallanes v. Illinois Bell Tel. Co.*, 535 F.3d 582, 584 (7th Cir. 2008). "Courts apply ordinary contract construction rules when interpreting settlement agreements." *Dillard v. Starcon Int'l, Inc.*, No. 03 C 9408, 2005 WL 8177361, at *4 (N.D. Ill. Dec. 2, 2005), *aff'd*, 483 F.3d 502 (7th Cir. 2007).

The June 2016 Agreed Order begins with the following phrase: "This cause coming to be heard on the remaining financial issues in the cause[.]" Despite this language, Picone argues that the June 2016 Agreed Order "did not provide final judgment nor disposition as to claims for reimbursement for children's expenses which were incurred for periods prior to March of 2013, or subsequent to June 17, 2016." (Sur-Reply, p. 5.)[2]

"A settlement agreement is enforceable if there was a meeting of the minds or mutual assent to all material terms." *Beverly v. Abbott Laboratories*, 817 F.3d 328, 333 (7th Cir. 2016). A meeting of the minds exists where the parties "truly assent to the same things in the same sense on all of its essential terms and conditions." *La Salle Nat. Bank v. Int'l Ltd.*, 263 N.E.2d 506, 513 (Ill. App. Ct. 1970). Picone's position is that the parties did not reach an agreement regarding the expenses that are the subject of the Claim he filed in this bankruptcy case, and therefore his Claim is enforceable under state law.

"Whether a 'meeting of the minds' occurred depends on the parties' objective conduct, not their subjective beliefs." *Dillard v. Starcon Int'l, Inc.*, 483 F.3d 502, 507 (7th Cir. 2007) (citation omitted). "[A] contracting party cannot be expected to peak [sic] into the other's mind and discover that it had a different view of the terms than stated in the contract. It is for that very reason that the law long ago rejected the notion that there must be a subjective meeting of the minds of contracting parties in place of an objective theory of intent." *Loop Paper Recycling, Inc. v. JC Horizon Ltd.*, No. 08 C 7364, 2010 WL 1655254, at *14 (N.D. Ill. Apr. 22, 2010) (quotations and citation omitted).

[2] The Sur-Reply is the first time that Picone argued that he could file a claim for expenses incurred *after* the entry of the June 2016 Agreed Order. In contrast, he stated in his Response "that the $3,600.00+ referenced in his proof of claim pertains solely to expenses for ROSARIO A. PICONE, JR.'s and MARIE A. CAHILL's children which were incurred *prior* to 2013." (Response, ¶ 6.) With certain limited exceptions, the claims filed in a chapter 7 case are based on a prepetition right to payment. There is no equivalent in chapter 7 to § 1305, which provides for the filing and allowance of postpetition claims in a chapter 13 case.

The question, therefore, is whether the Debtor and Picone intended to resolve all financial issues between them, or to leave open the issue of who is responsible for pre-2013 expenses. This question is answered by the opening phrase of the June 2016 Agreed Order, which states that it addresses "the remaining financial issues in the cause[.]" *See, e.g., In re Marriage of Conopeotis*, 2018 IL App (2d) 180381-U, ¶ 35 ("The judgment provides that that the 'parties have reached an agreement regarding child related issues in this case' and expressly states the parties' intention 'to resolve all issues of allocation of parental responsibilities, including allocation of parenting time.'…. The Allocation Judgment reflects a negotiated, enforceable agreement between the parties, and approved by the trial court, and therefore bars continued litigation of the same claims.") (unpublished opinion).

After the Debtor objected to the Claim, Picone filed a motion to vacate the June 2016 Agreed Order ("Motion to Vacate") in state court.[3] In the Motion to Vacate, he admits that "the agreement regarding the medical insurance and expenses previously incurred was reached due to the Respondent alleging to have no assets to contribute." (Motion to Vacate, ¶ 11.) In other words, Picone *knew* that he could have sought reimbursement of these pre-2013 expenses but *chose* not to do so because he decided it would be futile.[4] Believing that any victory would be pyrrhic is one of the reasons parties choose to settle rather than litigate. Parties are free to make that choice, but when they enter into agreements they are bound by the terms. Picone is bound

[3] Picone filed a copy in this court of his motion to vacate the June 2016 Agreed Order. That copy is date-stamped April 18, 2023, by the Circuit Clerk for Cook County. This court has no information as to whether the motion has been heard or disposed of by the state court.

[4] In fact, Picone is incorrect in stating that when Debtor received her discharge in 2017, her "estate was found to be a zero-asset estate." (Sur-Reply, p. 6.) Although Debtor indicated on her petition that she did not expect any funds to be available for distribution to unsecured creditors, her case trustee reached a different conclusion less than four months later. (EOD 23.) Notice of the time fixed for filing claims then went out to creditors, including Picone. (EOD 24.) By the time the court granted Debtor a discharge on January 13, 2017, the trustee had already received leave to conduct a Rule 2004 examination to investigate a claim against a third party that Debtor listed on an amended Schedule B. (EOD 49.)

by the June 2016 Agreed Order, which resolved the financial issues between himself and Debtor. There is no basis for him to claim reimbursement of pre-2013 expenses from Debtor's bankruptcy estate.

2. Under the doctrine of claim preclusion, the parties are precluded from relitigating the issues that were resolved or could have been resolved in the June 2016 Agreed Order

Because the June 2016 Agreed Order resolved all financial issues between the parties, Picone's claim for expenses not awarded to him under that order is unenforceable. The doctrine of claim preclusion (also known as res judicata) precludes the parties from relitigating the issues covered by the June 2016 Agreed Order.

The June 2016 Agreed Order is an order of the Illinois state court. The preclusive effect of a state order in federal court, therefore, depends on Illinois law. See 28 U.S.C. § 1738; *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 560 (7th Cir. 1999). According to the Illinois Supreme Court, "a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties … on the same cause of action." *Rein v. David A. Noyes & Co.*, 665 N.E. 2d 1199, 1204 (Ill. 1996). "For the doctrine of *res judicata* to apply, three requirements must be met: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of cause of action; and (3) there was an identity of parties or their privies." *Id.*

Each of those elements has been met here. First, the June 2016 Agreed Order is a final judgment on the merits. *See H.A.L. NY Holdings, LLC v. Guinan*, 958 F.3d 627, 634 (7th Cir. 2020) ("Our task is to apply the law of *Illinois*, not the law of a particular geographic district of the intermediate appellate court. H.A.L. offers no reason to believe that the Illinois Supreme Court would disavow the weight of Illinois authority, which we have read uniformly to allow claim preclusion by consent judgment[.]") (citation omitted).

The fact that Picone has filed a motion to vacate the June 2016 Agreed Order does not affect its finality. In fact, the statute under which Picone seeks relief in the state court, 735 ILCS 5/2-1401, applies *only* to "final orders and judgments[.]" As a panel of the Seventh Circuit wrote when considering whether a pending motion to vacate under Section 2-1401 defeated finality for purposes of applying the *Rooker-Feldman* doctrine:

> Section 2-1401 petitions are treated as collateral attacks on final judgments; they are not direct appeals. A petition under section 2-1401 must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. To the contrary, a section 2-1401 petition commences a new and separate cause of action. Because Hadzi-Tanovic's section 2-1401 petition is a collateral attack and not a direct appeal, it did not alter the finality of Judge Johnson's June 13, 2018 order for purposes of the *Rooker-Feldman* doctrine.

Hadzi-Tanovic v. Johnson, 62 F.4th 394, 401 (7th Cir. 2023) (citations and quotations omitted).

Second, there was an identity of cause of action. The parties agreed to resolve "the remaining financial issues in the cause[.]" In the Claim, Picone takes a position on a financial issue that he admits could have been addressed at the time the state court entered the parties' agreed order.

Picone argues that the June 2016 Agreed Order "specifically relates only to expenses incurred *from* March 2013 *to the entry* of that Agreed Order." (Sur-Reply, p. 4.) By stating that the parties waived any right to contribution for expenses from 2013 to the date of the entry of the order, the June 2016 Agreed Order "expressly omit[ed] final judgment as and for expenses incurred *prior* to March of 2013, and those incurred *subsequent* to June 17th, 2016." (*Id.*, p. 5.)

But Picone has not addressed the full scope of the doctrine of claim preclusion.

> The doctrine prohibits not only those matters which were actually litigated and resolved in the prior suit, but also *any matter which might have been raised* in that suit to defeat or sustain the claim or demand.

Rein, 665 N.E. 2d at 1205 (emphasis added). *See River Park, Inc. v. City of Highland Park*, 703 N.E. 2d 883, 889 (Ill. 1998) (Res judicata bars "what was actually decided in the first action, as

well as those matters that could have been decided in that suit."). Picone admits that he could have raised these issues but chose not to, because he believed that Debtor had no assets. Since the question of pre-2013 expenses could have been raised at the time, the June 2016 Agreed Order precludes its litigation now.

Finally, there is no dispute that the parties are the same. Picone "concedes that he and the Debtor are identical parties to those in their parentage action in Cook County, Illinois." (Sur-Reply, p. 5.)

Therefore, the elements of res judicata have been satisfied. Picone cannot litigate in this court the question of whether he is entitled to reimbursement of expenses incurred prior to commencement of the parentage action.

IV. CONCLUSION

For the reasons stated above, Debtor has met her burden of going forward with evidence supporting the Objection to the amount and validity of the Claim. The burden shifted back to Picone, who has not proved the validity of his Claim by a preponderance of the evidence. Since the Claim is unenforceable against the Debtor under the June 2016 Agreed Order, the court **SUSTAINS** the Objection. Picone's Claim is disallowed.

ENTERED:

Date: July 5, 2023

DAVID D. CLEARY
United States Bankruptcy Judge