

OCT 25 2002

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

JEAN ELIZABETH ROLFS, CLERK
By: _____
DEP. CLERK

IN RE: CLARENCE AND FRANCES BURNETT,
Debtors.

Case No. 1:01-bk-90019M
Chapter 13

ORDER

On December 13, 2001, Clarence and Frances Burnett ("Debtors") filed a voluntary petition for relief under the provisions of chapter 13. The Debtors' proposed plan calls for payments of \$1100.00 per month to the Trustee. The plan admitted that Nancy Jo Burnett is listed as a creditor for a child support arrearage but asserts in the plan that the Debtors do not owe any child support.

On March 19, 2002, the West Virginia Department of Health and Human Resources Bureau for Child Support Enforcement filed a letter objection to confirmation of the plan, stating that Clarence Burnett ("Debtor") owed \$57,402.70 in child support arrearage by virtue of a decree of the Circuit Court of Boone County, West Virginia, and that the plan does not provide for payment in full of this obligation as required by section 1322(a)(2) of the United States Bankruptcy Code. Trial was held on the objection in El Dorado, Arkansas, on June 17, 2002, and the Court took the matter under advisement.

The proceeding before the Court is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A) & (L) (2000), and the Court has jurisdiction to enter a final judgment in the case.

The procedural history preceding this bankruptcy case is complicated and spans two decades. Only those facts important to the bankruptcy case will be summarized here. In the summary of the facts, this Court has relied heavily on an opinion of the Supreme Court of Appeals of West Virginia which involved issues of child support owed by the Debtor. That opinion was made a part of the record as Creditor's 1-C and has been published as Burnett v. Burnett, 542 S.E.2d 911 (W. Va. 2000).

The Debtor married Nancy Jo Burnett ("Nancy Jo") on June 8, 1969. Nancy Jo was a resident of West Virginia, and the Debtor was a resident of Arkansas serving in the military. The parties had one child who was born in 1971.

Marital difficulties arose and the parties separated. Nancy Jo and the parties' minor child repaired to Boone County, West Virginia, on July 9, 1981.

In 1982, Nancy Jo filed a petition for separate maintenance in West Virginia and thereafter the parties entered into a separation agreement in 1983. The Agreement provided, among other provisions, for the Debtor to pay "\$750.00 per month for child support and alimony until the child reaches the age of eighteen." (Creditor's ex. 1-C at 3, quoting Separation Agreement of November 12, 1983, Circuit Court of Boone County, West Virginia.)

On December 19, 1983, the Circuit Court of Boone County, West Virginia, granted separate maintenance to Nancy Jo and incorporated the separate maintenance agreement into the decree of separate maintenance. In 1984, Nancy Jo filed for divorce in West Virginia

against the Debtor, and the Debtor filed for divorce against Nancy Jo in Ashley County, Arkansas.

On January 18, 1985, the West Virginia Court granted Nancy Jo a divorce and attached a copy of the separate maintenance agreement and the 1983 order of separate maintenance. On January 21, 1985, the Arkansas court entered an order granting a divorce but not awarding alimony or support.

Contemporaneous with Nancy Jo's filing for divorce in 1984, Nancy Jo initiated a petition for support under the Uniform Reciprocal Enforcement of Support Act ("URESAs")¹ and pursuant to the URESAs petition, a hearing was held in the Chancery Court of Ashley County, Arkansas in 1986. The Arkansas Court reduced the Debtor's child support obligation to \$75.00 per month in addition to the sum of \$150.00 per month the Debtor was paying under a pre-existing garnishment of his military retirement. The order reducing the child support obligation entered on June 23, 1986, did not expressly nullify the existing order of support issued by the West Virginia Court pursuant to the separation agreement.

Thereafter, Nancy Jo made additional attempts to collect support in West Virginia, culminating in the December 8, 2000 opinion of the Supreme Court of Appeals of West Virginia. That opinion upheld the jurisdiction of the Boone County West Virginia Court awarding \$750.00 per month for alimony and support to Nancy Jo in the West Virginia order for separate maintenance.

¹In Arkansas, the companion to this act was entitled "RURESAs" (Revised Uniform Reciprocal Enforcement of Support Act). The Uniform Interstate Family Support Act (UIFSA) superceded RURESAs in 1993 in Arkansas.

Thereafter, the Debtor filed his petition for relief in this Court under the provisions of chapter 13 in December 2001.

The Debtor argues that he is in compliance with the June 23, 1986 order of the Chancery Court of Ashley County which reduced his child support obligation originally ordered by the West Virginia Court to \$75.00 a month plus the \$150.00 per month that was being garnished. The Arkansas court made the reduction of child support in a collection action brought by Nancy Jo pursuant to URESA.

The Arkansas Court of Appeals has held that before a sister state's award of support may be superceded, the Arkansas Court's order must specifically provide for nullification of the existing support order. Child Support Enforcem't v. Neely, 73 Ark. App. 198, 202, 41 S.W.2d 423, 427 (2001) (Bird, J.). See also Jefferson County Child Support Enforcem't Unit v. Hollands, 327 Ark. 456, 462-63 939 S.W. 2d 302, 305 (1997); Child Support Enforcem't v. Troxel, 326 Ark. 524, 528, 931 S.W.2d 784, 786 (1996); Tanbal v. Hall, 317 Ark. 506, 507, 878 S.W.2d 724, 726 (1994); Button v. Floyd, 293 Ark. 397, 401, 738 S.W.2d 408, 409-10 (1981).

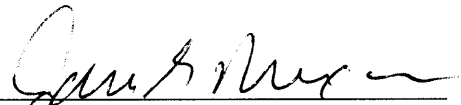
Justice Bird explained the effect of an Arkansas court's omitting to expressly nullify the sister state's existing order. "Although an Arkansas Court is free to require a lesser payment from the obligor spouse, the obligor spouse remains obliged for the difference between the original award and the modified award. . . . The obligor, of course, is entitled to credit for any payments he or she makes under the orders of the Arkansas Court reducing the

child support obligation.” Neely, 73 Ark. App. at 204, 41 S.W.2d at 428 (quoting Hollands, 327 Ark. at 462-63, 939 S.W. 2d at 429).

Therefore, the Debtor is not entitled to rely on the Order of the Ashley County Chancery Court to determine the amount of unpaid support obligation. However, whether all or part of the claim asserted by the state of West Virginia is allowable will have to be considered in the context of an objection to claim pursuant to Federal Rules of Bankruptcy Procedure 3001(b), 3002, and 3007. Questions remaining unresolved by the record presented in this proceeding include whether interest should be allowed as part of the claim, if credits for all payments made by the Debtor or garnished from his retirement benefits have been applied, and whether the Debtors can mount equitable defenses mentioned by Justice Roaf in her concurring opinion in Neely. See Neely, 73 Ark. App. at 208, 415 S.W.2d at 431 (Roaf, J., concurring).

The Debtors are obligated under the provisions of 11 U.S.C. § 1322(a)(2) to provide full payment for all allowed claims entitled to priority under section 507, unless the creditors agree otherwise. Such priority claims include debts “for alimony to, maintenance for, or support of . . . spouse or child, in connection with a separation agreement” 11 U.S.C. § 507(7) (2000). Therefore, the objection to confirmation is sustained. The Debtor has 20 days to file a modified plan which proposes payment in full for an allowed claim of the state of West Virginia.

IT IS SO ORDERED.



HON. JAMES G. MIXON
U. S. BANKRUPTCY JUDGE

DATED: 10/24/02

cc: Billy Hubbell, Esq.
Paul D. Selby, Esq.
Jo-Ann Goldman, Esq., Chapter 13 Trustee
Debtors