

1 **IN THE UNITED STATES BANKRUPTCY COURT FOR**
2 **THE DISTRICT OF PUERTO RICO**

3 IN RE:

CASE NO. 18-05191-BKT

4 Chapter 13

5 PEDRO JAVIR NEVAREZ BRUNO

6

7 Debtor(s)

FILED & ENTERED ON 07/27/2020

8 **OPINION AND ORDER**

9 Before this Court is Domestic Support Recipient Dr. Jorannie Cruz Nieves' (hereafter
10 "DSO Recipient") *Motion Requesting Dismissal for Failure to Make Post-Petition DSO*
11 *Payments* [Dkt. No. 222], Debtor's *Opposition to Movant's Motion to Dismiss* [Dkt. No. 225],
12 and DSO Recipient's *Reply to Debtor's Opposition Filed at Docket No. 225* [Dkt. No. 226]. For
13 the reasons set forth below, DSO Recipient's *Motion Requesting Dismissal for Failure to Make*
14 *Post-Petition DSO Payments* is GRANTED.
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16 **I. Procedural Background**

17 On December 27, 2016, DSO Recipient¹ filed an action in State Court seeking the custody
18 of her child and imposition of domestic support obligation payments ("DSO")² [Dkt No. 222].
19 On September 7, 2018, Debtor filed a voluntary petition seeking relief under Chapter 13 of the
20 Bankruptcy Code [Dkt. No. 1]. On February 3, 2020, the Court of First Instance, Bayamon Part,
21 entered a judgment imposing a \$500.00 monthly payment plan for retroactive DSO payments to
22 DSO Recipient and \$4,550.00 in attorney fees which was ordered to be paid within sixty (60)
23 days [Docket No. 222]. The prescribed sixty (60) day term expired on April 3, 2020 and Debtor
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1 Debtor and Movant had a "consensual relationship" for a period of at least ten years and are the parents of a young child (G.J.N.C.). [See. Dkt. No. 222].

2 Civil Case DCU2016-0610.

1 failed to comply with the State Court's order [Dkt. No. 222]. On May 12, 2020, DSO Recipient
2 filed a motion to dismiss with prejudice the instant case and the imposition of a one-year bar to
3 refile. [Dkt. No. 222]. Said motion was grounded on (1) Debtor's failure make pre-petition and
4 post-petition DSO payments, (2) committed perjury, (3) unclean hands and (4) bad faith in
5 bankruptcy filing [Dkt. No. 222].
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7 On June 11, 2020, Debtor filed an Opposition to DSO Recipient's Motion to Dismiss [Dkt.
8 No. 225]. In his opposition to said motion, Debtor argued that all allegations aside from DSO
9 claims were unrelated to the motion and that DSO Recipient lacked standing to seek dismissal of
10 the case because her claim was disallowed by this court [Dkts. No. 129, 130 & 225]. In fact, this
11 Court found that Recipient had no standing in the instant bankruptcy proceeding to pursue any
12 legal remedies because her proof of claim had been disallowed [Dkt. No. 130]. Consequently,
13 Debtor argues that all allegations unrelated to DSO should be stricken from the record based on
14 lack of standing and lack of admissible evidentiary support [Dkt. No. 225]. He also argues that
15 DSO Recipient's exhibits must be stricken as faulty or that she must be compelled to submit a
16 certified translation of documents and exhibits in support of her motion pursuant to Federal Local
17 Rule 5(g) and Local Bankruptcy Rule 9070-1(c) which require a full English translation by a
18 certified translator [Dkt. No. 225]. Ultimately, Debtor concludes in his opposition that he is
19 current with DSO payments, that attorney fees are not DSO pursuant to Section 101(14A) of the
20 Bankruptcy Code and that the Motion to Dismiss the bankruptcy proceeding should be denied
21 outright [Dkt. No. 225].
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On June 12, 2020, DSO Recipient filed her Reply to Opposition to the Motion to Dismiss
[Dkt. No. 226]. In her reply, DSO Recipient argues that she does have standing to appear before
this Court as she does have a DSO claim against Debtor [Dkt. No. 226]. Attached to her Reply,

1 is a certificate issued by ASUME on June 11, 2020, which reflected \$914.57 in DSO arrears on
2 the part of the debtor [Dkt. No. 226]. Said arrears do not include the \$4,550.00 in attorney fees
3 owed to DSO Recipient [Dkt. No. 226]. Furthermore, she argues that since Debtor admitted to
4 owing the \$4,550.00 in attorney fees, there is no need to supply a certified translation of the
5 judgment entered by the State Court pertaining to DSO [Dkt. No. 226]. Ultimately, DSO
6 Recipient avers that, there being no dispute as to the fact that Debtor owes \$4,550.00 in attorney
7 fees and considering that he had accrued an additional \$914.57 in post-petition DSO payments,
8 the instant case must be dismissed [Dkt. No. 226].
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11 **II. Legal Analysis and Discussion**

12 Section 507(a)(1)(A) of the Bankruptcy Code elevates to first priority any “[a]llowed
13 unsecured claims for domestic support obligations that, as of the date of the filing of the petition
14 in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the
15 debtor, or such child’s parent, legal guardian, or responsible relative...” The Term “domestic
16 support obligation” is defined in §101(14A) of the Bankruptcy Code as:
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18 [A] debt that accrues before, on or after the date of the order for
19 relief in a case under this title, including interest that accrues on that
20 debt as provided under applicable non bankruptcy law
21 notwithstanding any other provision of this title that is –
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23 (A) owed to or recoverable by –

24 (i) a spouse, former spouse, or child of the debtor or such
25 child’s parent, legal guardian, or responsible relative; or

(B) in the nature of alimony, maintenance, or **support** (our emphasis
provided) ... of such spouse, former spouse, or child of the debtor

1 or such child's parent, without regard to whether such debt is
2 expressly so designated;

3 (C) established or subject to establishment before, on, or after the
4 date of the order for relief in a case under this title, by reason of
5 applicable provisions of –

6
7 (i) a separation agreement, divorce decree, or property
8 settlement agreement;

9 (ii) an order of a court of record;...

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11 On the other hand, the term “support” according to the Puerto Rico Civil Code is
12 “understood to be all that is indispensable for maintenance...according to the social position of the
13 family...of the person supported when he is a minor.” 31 L.P.R.A. § 561. This Court has found
14 that, through interpretation of Article 1325 of the Puerto Rico Civil Code, 31 L.P.R.A. § 3700, “a
15 former spouse through death or divorce is entitled to receive from her husband a payment for food
16 and court costs as determined by the final judgment set forth in her participation in the asset
17 liquidation suit with her ex-spouse. In re Efron, 495 B.R. 166 (2013). Article 22 (1) of Act. 5 of
18 December 30, 1986, 8 L.P.R.A. § 521 states that “[i]n any proceeding under this law for the
19 fixation, modification or to make effective domestic support obligation, the court, or the
20 Administrative Judge must impose on the feeder the payment of attorney fees in favor of the
21 recipient when he/she has prevailed”. (our translation provided). The Supreme Court of Puerto
22 Rico has long established that support covers a minor's attorney's fees in child support claims.
23 Torres Rodríguez v. Carrasquillo Nieves, 177 D.P.R. 728 (2009); Chévere v. Levis, 152 D.P.R.
24 492 (2000); Viera v. Morell, 115 D.P.R. 4, 14 (1983); Conesa v. District Court, 72 D.P.R. 65
25 (1951); Valdés v. District Court, 67 D.P.R. 288 (1947). A similar determination was made by the

1 Bankruptcy Court of Massachusetts in In re Johnson, 445 B.R. 50 (2011) where the court found
2 that the attorney fees incurred by debtor's former spouse in protecting her child support award
3 were non-dischargeable as a DSO.
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5 The reasoning behind the awarding of attorney fees following a DSO claim rests on the
6 very real possibility that the recipient or their guardian may be deprived of the economic resources
7 required to vindicate their right and, in some cases, this vindication may compromise the very
8 funds awarded to them in terms of support in order to attend the payment of attorney's services.
9 Torres Rodríguez v. Carrasquillo Nieves, supra; Rodríguez Avilés v. Rodríguez Beruff, 117 D.P.R.
10 616, 621 (1986); Milán Rodríguez v. Muñoz, 110 D.P.R. 610, 612-614 (1981). Canon 24 of Puerto
11 Rico's Code of Professional Ethics, 4 L.P.R.A. states that "[t]he attorney fees awarded by a court
12 are in the benefit of the client and the attorney must not claim said fees in their favor or renounce
13 them without the express authorization of their client." The client has the right to claim and receive
14 a reasonable award of attorney fees, especially if said fees are meant to satisfy the costs they
15 incurred in terms of legal representation and if these fees are in the concept of a DSO, they must
16 be paid immediately. Torres Rodríguez v. Carrasquillo Nieves, supra.
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19 The Bankruptcy Code provides that the court shall confirm a plan if "the debtor has paid
20 all amounts that are required to be paid under a domestic support obligation and that first becomes
21 payable after the date of the filing of the petition if the debtor is required by a judicial or
22 administrative order, or by statute, to pay such domestic support obligation." 11 U.S.C.
23 §1325(a)(8). Furthermore, the court may convert a chapter 13 case to a chapter 7 case or dismiss
24 a chapter 13 case for cause when there has been "failure of the debtor to pay any domestic support
25 obligation that first becomes payable after the date of the filing of the petition." 11 U.S.C.
1307(c)(11).

1 In the instant case, there is no controversy as to the fact that Debtor owes DSO Recipient
2 \$4,550.00 in attorney fees imposed by the State Court. In fact, Debtor has expressly accepted that
3 these fees have not been paid. Upon careful examination of the aforementioned jurisprudence and
4 legislation, both in Bankruptcy and at the State Court level, we agree with DSO Recipient's
5 argument that these attorney fees are included in the DSO claim. In addition to said attorney fees,
6 Debtor has further accrued arrears in concept of the monthly payment plan imposed onto him,
7 totaling \$914.57. In light of Debtor's failure to pay these domestic support obligations, we find
8 cause to dismiss the instant bankruptcy proceeding.³
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11 WHEREFORE, DSO Recipient's *Motion Requesting Dismissal for Failure to Make Post-*
12 *Petition DSO Payments* shall be and is hereby, GRANTED.

13 SO ORDERED

14 In San Juan, Puerto Rico this 27th day of July 2020.
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19 Brian K. Tester
20 United States Bankruptcy Judge
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³ Because this Court finds dismissal appropriate based upon the failure to pay DSO obligations, it is unnecessary to discuss the other three grounds argued by the DSO Recipient in her motion.