Dated: February 27, 2012
The following is SO ORDERED:

David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

STEVEN LEE HASENMUELLER, Case No. 10-33546

Debtor. Chapter 7

MARTHA FLOWERS (Hasenmueller);
STEVAN L. BLACK, Esquire;
SHARI MYERS, Esquire; and
ST. MARY'S EPISCOPAL SCHOOL,

Plaintiffs,

vs. Adv. Proc. No. 11-00098

STEVEN LEE HASENMUELLER,

Defendant, the above-named
Chapter 7 Debtor

MEMORANDUM AND ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT COMBINED WITH RELATED ORDER AND NOTICE OF ENTRY THEREOF

In this adversary proceeding, the plaintiffs, Martha Flowers, Stevan L. Black, Esquire, St. Mary's Episcopal School, and Shari Myers, Esquire, have filed a motion for summary judgment pursuant to Fed. R. Bankr. P. 7056 against the defendant, the above-named chapter 7 debtor, Steven Lee Hasenmueller. Plaintiffs seek a judicial determination that their separate debts arising out of post-divorce litigation in the Circuit Court of Shelby County, Tennessee, are non-dischargeable under 11 U.S.C. § 523(a)(5), (a)(15) and/or (a)(6).

The ultimate issue for judicial determination here is whether various debts determined by a Parenting Arbitration Recommendation and later confirmed and adopted by the State Court are in the nature of child support such that the debts are excepted from discharge under 11 U.S.C. § 523(a)(5) and/or (a)(15) and/or are excepted from discharge under 11 U.S.C. § 523(a)(6) for willful and malicious injury. By virtue of 28 U.S.C. § 157(b)(2)(I), these combined dischargeability actions are core proceedings. The court has subject matter jurisdiction under 28 U.S.C. §§ 1334(a)-(b) and 157(a)-(b) and Miscellaneous Order No. 84-30 of the United States District Court for the Western District of Tennessee.

Based on statements of counsel for the parties, the briefs submitted by counsel, review of the Parenting Arbitration Recommendation, the State Court order confirming and adopting the recommendation, and the entire case record as a whole, the following shall constitute the court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

BACKGROUND FACTS

Plaintiff, Martha Flowers ("Ms. Flowers"), and defendant, Steven Lee Hasenmueller ("Mr. Hasenmueller"), divorced in 2003 and entered into a marital dissolution agreement and parenting plan that provided for various types of support. Shortly thereafter, extensive post-divorce litigation ensued in the Circuit Court of Shelby County, Tennessee, primarily related to child support obligations ranging from private school tuition to medical bills to other related extracurricular expenses. The State Court referred all child-related issues to Parenting Arbitration, which was primarily conducted by plaintiff,

Special Master, and Parenting Arbitrator Stevan L. Black, Esquire ("Parenting Arbitrator"). The State Court also appointed by a consent order the plaintiff, Shari Myers, Esquire, as guardian ad litem ("Guardian ad Litem") for the minor children of Ms. Flowers and Mr. Hasenmueller. The consent order appointing the guardian ad litem specifically deemed and denominated the related fees as child support and non-dischargeable in bankruptcy. The Parenting Arbitrator entered an order awarding the guardian ad litem fees totaling $4,610.58.

Over the course of a lengthy arbitration proceeding, Mr. Hasenmueller and counsel submitted discovery requests to the minor daughter's private school, plaintiff, St. Mary's Episcopal School ("St. Mary's"), seeking to acquire information regarding financial aid given to all students at the school so to eliminate his obligation to pay his daughter's private school tuition. Ms. Flowers attempted to quash the discovery; however, the Parenting Arbitrator ruled that Ms. Flowers did not have standing to file such motion to quash on St. Mary's behalf. St. Mary's then obtained counsel and brought a motion to quash and for a protective order against Mr. Hasenmueller. The Parenting Arbitrator ruled in favor of St. Mary's and awarded attorney fees totaling $18,800.50 payable by Mr. Hasenmueller to St. Mary's.

On August 20, 2010, and in a thorough 51 page "Findings of Fact, Conclusions of Law and Recommendations of Special Master and Parenting Arbitrator, Stevan L. Black," the Parenting Arbitrator found, concluded, and recommended awarding the following: 1) reimbursements for extracurricular activities totaling $2,044.50 payable by Mr. Hasenmueller to Ms. Flowers under the Parenting Plan; 2) reimbursements for extraordinary educational expenses totaling $3,499.00 and payable by Mr. Hasenmueller to Ms. Flowers; 3) the minor children's medical and dental expenses totaling $1,478.79 and payable by Mr. Hasenmueller to Ms. Flowers; 4) private school tuition of the minor son totaling $10,540.36 payable by Mr. Hasenmueller to Memphis University School; and 5) attorney fees totaling

$33,115.67[1] payable by Mr. Hasenmueller to Ms. Flowers for the enforcement of his child support obligations. Subsequently, the State Court entered an order on September 16, 2010, confirming the Parenting Arbitrator's findings of facts, conclusions of law, and recommendations and, thus, awarded money judgments for the amounts detailed in the Parenting Arbitrator's recommendations. The State Court made a specific finding that the obligations for the extraordinary educational expenses, the children's medical and dental expenses, and the private school tuition were in the nature of child support, but did not make a finding on the extracurricular activities expenses. In addition, the State Court awarded the Parenting Arbitrator expenses and fees of $26,216.34 payable jointly and severally by Mr. Hasenmueller and Ms. Flowers.

On December 13, 2010, Mr. Hasenmueller filed a petition under chapter 7 of the Bankruptcy Code; his Schedule E listed the private school tuition to Memphis University School as "child support", but the rest of the Schedules, though listing the award amounts, did not specify the nature of the claims except to say that the award of extracurricular expenses was "not child support." Subsequently on March 3, 2011, Ms. Flowers initiated this adversary proceeding by filing this dischargeability complaint, which was later amended (without opposition) to collectively include all the above-named plaintiffs in one combined adversary proceeding. The amended complaint and supporting brief seek to have all the following awards declared non-dischargeable under 11 U.S.C. §523(a)(5), (a)(6), and/or (a)(15):

a) Ongoing Basic Child Support Obligation currently $1,404.00 per month, a variable amount per month for private school tuition – currently $775.47, and periodic extracurricular and extraordinary expenses;

b) A judgment for $10,540.36 for past private school tuition at Memphis University School;

[1] The awarded amount originally was $31,115.67 but was later changed to $33,115.67 in the State Court's "Order Confirming Findings of Fact and Conclusions of Law and Recommendations of Special Master and Parenting Arbitrator, Stevan L. Black," which noted the change was due to a "typographical, mathematical error."

c) Reimbursement for extracurricular activities in the amount of $2,044.50;

d) Reimbursement for extraordinary educational expenses in the amount of $3,449.00;

e) Reimbursement for children's medical and dental expenses in the amount of $1,489.00;

f) Attorney fees and litigation expenses on behalf of Ms. Flowers in the amount of $33,115.67;

g) Parenting Arbitrator fees in the amount of $26,216.34; and

h) Guardian ad litem fees owed by Ms. Flowers and Mr. Hasenmueller in the amount of $4,910.58; and

i) Attorney fees on behalf of St. Mary's in the amount of $18,800.50.

On September 6, 2011, Mr. Hasenmueller received a chapter 7 discharge; however, the outcome of this pending adversary proceeding was expressly reserved. On December 22, 2011, plaintiffs filed the instant motion for summary judgment with accompanying briefs and exhibits. Mr. Hasenmueller soon thereafter filed a response to the motion for summary judgment and an answer to the complaint. This court heard oral arguments of counsel on January 24, 2012, on the plaintiffs' motion for summary judgment. Mr. Hasenmueller concedes the Ongoing Basic Child Support Obligation, the private school tuition, the extraordinary educational expenses, the children's medical and dental expenses, and guardian ad litem fees are non-dischargeable, but argued the extracurricular activities, the attorney fees to Ms. Flowers, the Parenting Arbitrator fees, and the attorney fees to St. Mary's are dischargeable either in whole or in part.

Summary Judgment

Rule 7056 of the Federal Rules of Bankruptcy Procedure provides that Rule 56 of the Federal Rules of Civil Procedure applies in adversary proceedings. A motion for summary judgment requires the

court to find that no genuine issues of material fact exist to be tried. Such motions should be granted with caution. Resolving all inferences in favor of the non-moving party, the court traditionally must find that no reasonable grounds for dispute exists on any genuine issue before granting a motion for summary judgment. See, for example, *In re Autostyle Plastics, Inc.*, 269 F.3d 726 (6th Cir. 2001); see also *Matsushita Elec. Ind. Co. v. Zenith Radio Corp*., 475 U.S. 574 (1986) and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

As noted earlier in the instant case, plaintiffs have collectively moved for summary judgment seeking to have all their debts outlined in the amended complaint and brief determined to be non-dischargeable under 11 U.S.C. § 523(a)(5). In addition or alternatively, plaintiffs seek to have these particular debts determined to be non-dischargeable under 11 U.S.C. § 523(a)(15). Finally, St. Mary's seeks to have its debt additionally or alternatively declared non-dischargeable under 11 U.S.C. § 523(a)(6).

11 U.S.C. § 523(a)(5)

Section 523(a)(5) of the Bankruptcy Code provides, in relevant part, as follows: "A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . for a domestic support obligation." A domestic support obligation is a debt "in the nature of alimony, maintenance, or support . . . of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated." 11 U.S.C. § 101(14A)(B). "The bankruptcy court must determine that (1) there was an intent to create a support obligation; (2) the obligation has the effect of providing the support necessary to satisfy the daily needs of the former spouse and any children of the marriage; and (3) the amount of support represented by the obligation at issue is not so excessive that it is manifestly unreasonable under traditional concepts of support." *In re Perlin*, 30 F.3d 39 (6th Cir. 1994)(citing *In re Calhoun*, 715 F.2d 1103, 1109-1110 (6th Cir. 1983)). The bankruptcy court is not bound by state law characterizations of support, but it may look to state law as

an aid for determining the purpose of a particular award. See, for example, *In re Paulson*, 27 B.R. 330 (Bankr. W.D. Tenn. 1983); see also *In re Fitzgerald*, 9 F.3d 517 (6th Cir. 1993). The parties seeking to have debts deemed non-dischargeable have the burden of proof. *In re Sorah*, 163 F.3d 397, 401 (6th Cir. 1998). However, "a state court's award of [a domestic support obligation] is entitled to deference when labeled and structured as such." *Id.* (referencing *In re Fitzgerald*). "[I]f something looks like a duck, walks like a duck, and quacks like a duck, then it is probably a duck. . . [and] the bankruptcy court should first consider whether [an award of support] 'quacks' like support." *Id*.

Courts have broadly characterized support obligations to include not only direct support obligations but also ancillary support obligations such as attorney fees, psychologist fees, accounting fees, guardian ad litem fees, and other obligations arising in the determination of child support obligations. See *In re Kline*, 65 F.3d 749 (8th Cir. 1995)(holding attorney fees are non-dischargeable support obligations even if payable directly to the attorney); *Macy v. Macy*, 114 F.3d 1 (1st Cir. 1997)(holding attorney fees and disbursements incurred in connection with plaintiff's efforts to collect alimony, maintenance, or child support are not dischargeable); *In re Spong*, 661 F.2d 6 (2nd Cir. 1981)(holding counsel fees awarded under a husband's support obligations to be non-dischargeable regardless of whether paid directly to attorney); *In re Jones*, 9 F.3d 878 (10th Cir. 1993)(holding attorney fees arising from post-divorce custody actions are in the nature of support as being incurred on behalf of the child); *Matter of Dvorak*, 986 F.2d 940(5th Cir. 1993)(holding attorney fees and guardian ad litem fees non-dischargeable); In re Chang, 163 F.3d 1138 (9th Cir. 1998)(affirming that guardian ad litem fees are non-dischargeable); *In re Miller*, 55 F.3d 1487 (10th Cir. 1995)(holding guardian ad litem and psychologist fees related to a child custody proceeding and paid directly to the third parties are non-dischargeable); *In re Brasslett*, 233 B.R. 177 (Bankr.D.Me. 1999)(holding accounting fees ordered to be paid were non-dischargeable); *In re Paulson*, 27 B.R. 330 (Bankr.W.D.Tenn. 1983)(holding attorney fees are in the nature of child support).

Here, this court is presented with the issue of whether a wide variety of debts arising from many years of post-divorce child support proceedings are in the nature of child support and, therefore, non-dischargeable. These debts include ongoing child support obligations, a child's private school tuition, children's extracurricular activities expenses, children's extraordinary educational expenses, children's medical and dental expenses, attorney fees awarded to the mother, attorney fees awarded to a child's school, awarded arbitration fees, and guardian ad litem fees. All parties owed direct payment from these debts are parties to this complaint; therefore, standing is not an issue. The court will address each debt separately.

First, four of the debts listed in the original and amended complaint were identified in the State Court order as being "in the nature of child support." These debts include the ongoing support obligation owed by Mr. Hasenmueller to Ms. Flowers, the private school tuition awarded to Memphis University School, the reimbursements for extraordinary educational expenses owed by Mr. Hasenmueller to Ms. Flowers, and the reimbursement for the children's medical and dental expenses owed by Mr. Hasenmueller to Ms. Flowers. The non-dischargeability of these debts was not challenged by Mr. Hasenmueller. This court finds the State Court's order, deeming these debts as child support, to be convincing and reasonable and, as no genuine issue of material fact exists, further finds that these four debts are non-dischargeable child support under 11 U.S.C. §§ 523(a)(5) and 101(14A).

Second, this court considers the reimbursements for extracurricular activities owed by Mr. Hasenmueller to Ms. Flowers. The recommendation by the Parenting Arbitrator identifies these activities as camps attended by the children, sports played by the children, theatre class for the children, and other expenses incurred to allow the children to participate in extracurricular activities. These types of fees were ordered to be paid by Mr. Hasenmueller in the original Parenting Plan. He contested his obligation to pay these expenses in the parenting arbitration, and the Parenting Arbitrator determined he was obligated to support his children's extracurricular activities. The State Court order originally

listed this expense as “in the nature of child support;” however, the state judge later amended the order to exclude this language. None of these facts are at issue. The court finds the Parenting Arbitrator’s recommendation convincing and reasonable and further finds that the inclusion of extracurricular activities in the Parenting Plan strongly favors deeming this debt as child support, regardless of the State Court’s amendment deleting such language from its order. In fact, the State of Tennessee has adopted “Child Support Guidelines” to be used in child support proceedings that require child support determinations at a minimum must include such extracurricular activities. Tenn.Code Ann. § 36–5–101(e)(1)(A); Tenn. Comp. R. & Regs. 1240–2–4–.01(1)(d)(i). As is such and as no genuine issue of material fact exists, the reimbursements for the extracurricular activities are non-dischargeable child support under 11 U.S.C. 523(a)(5).

Third, this court considers the attorney fees incurred on behalf of Ms. Flowers in the post-divorce child support proceedings and arbitration hearings. Post-divorce litigation between Mr. Hasenmueller and Ms. Flowers began in 2003 and continued until 2010. Over this extended period, Ms. Flowers incurred attorney fees and expenses related to her defense of the Parenting Plan challenged by Mr. Hasenmueller. These attorney fees and expenses included the parenting arbitration and related State Court case. All attorney fees appeared “reasonable, necessary and reliable” to the Parenting Arbitrator and an award was entered in favor of Ms. Flowers in State Court. This court finds the Parenting Arbitrator’s recommendation and State Court order convincing and reasonable as to their amount and relation to the child support arbitration and proceedings. The Parenting Arbitrator noted in his recommendation that unrelated fees and expenses were not included in the award and that the attorney fees included in the award resulted from enforcement of the Parenting Plan, enforcement of child support, and modification of the Parenting Plan. The record clearly indicates the nature of the attorney fees instantly before the court to be in the nature of child support. In addition, this court relies on the majority of court decisions that have held a broad interpretation of child support to include

attorney fees arising out of child support proceedings. See, as an example, *In re Kline*, 65 F.3d 749 (8th Cir. 1995); *Macy v. Macy*, 114 F.3d 1 (1st Cir. 1997); *In re Spong*, 661 F.2d 6 (2nd Cir. 1981); *In re Jones*, 9 F.3d 878 (10th Cir. 1993); *Matter of Dvorak*, 986 F.2d 940(5th Cir. 1993). As is such and as no genuine issue of material fact exists, the attorney fees awarded Ms. Flowers are non-dischargeable child support under 11 U.S.C. §523(a)(5).

Fourth, this court considers the guardian ad litem fees. The "Consent Order to Appoint Guardian Ad Litem" entered in State Court specifically defines the role of the guardian ad Litem as: "protect the best interest of said children . . . during the pendency of these proceedings." In addition, the consent order deemed these fees to be "child support," and the parties agreed they would be "non-dischargeable in bankruptcy." Mr. Hasenmueller by counsel has admitted that these fees are non-dischargeable. Relying on the language of the consent order and the overwhelming majority of court decisions regarding guardian ad litem fees (See *In re Chang*, 163 F.3d 1138 (9th Cir. 1998); *In re Miller*, 55 F.3d 1487 (10th Cir. 1995); *Matter of Dvorak*, 986 F.2d 940(5th Cir. 1993); *In re Peters*, 964 F.2d 166 (2nd Cir. 1992); *In re Levin*, 306 B.R. 158 (Bkrtcy D.Md. 2004); *In re Lever*, 174 B.R. 936 (Bkrtcy.N.D. Ohio 1991)), the guardian ad litem fees are non-dischargeable child support under 11 U.S.C. § 523(a)(5).

Fifth, this court considers the Parenting Arbitrator fees. Similar to the attorney fees and guardian ad litem fees, the fees awarded to the Parenting Arbitrator arise directly from the State Court's resolution of the child support issue. The State Court appointed the Parenting Arbitrator to arbitrate and make recommendations on Mr. Hasenmueller's child support obligations. The award of fees to the Parenting Arbitrator are payable directly to him, and both, Mr. Hasenmueller and Ms. Flowers, are jointly and severally liable to him, although specific amounts were allocated to each. The court is aware that a discharge of the debtor's parenting arbitration debt would, in essence, make Ms. Flowers liable for the entire amount and directly impact her ability to support the minor children. The State Court order appears to have allocated these fees to each party in association with the overall goal of

protecting the best interests of the minor children. Therefore, to now allow for the discharge of costs directly arising from the child support proceedings would destroy the balance created by the State Court, acting to allocate costs for the very purpose of assuring that the children are adequately supported by their father. See *In re Kline*, 65 F.3d 749 (8th Cir. 1995)(when the state court's consideration includes the "financial resources of both parties" in awarding fees, the bankruptcy court did not err in deeming these fees non-dischargeable under 11 U.S.C. § 523(a)(5)). This court is not prepared to disturb this balance and to adversely impact the minor children. This debt directly arises from the child support proceedings; this debt directly resolved the child support dispute; and this debt is inextricably associated with the support of the minor children. The court is not aware of any authority that has specifically ruled on the issue of whether arbitrator fees are non-dischargeable under 11 U.S.C. § 523(a)(5); however, the court finds authority ruling other professional fees non-dischargeable under 11 U.S.C. § 523(a)(5) analogous and persuasive.

An arbitrator that has actively played a role in the child support proceedings to ensure that the minor children are adequately supported should be treated as consistently as any other professional acting in the support of the minor children, such as a guardian ad litem or an attorney. See *In re Miller* 55 F.3d 1487 (10th Cir. 1995)("Indeed, debts to a guardian ad litem, who is specifically charged with representing the child's best interests, and a psychologist hired to evaluate the family in child custody proceedings, can be said to relate just as directly to the support of the child as attorney's fees incurred by the parents in a custody proceeding"). As this obligation is inextricably intertwined with the award of child support and the treatment of these arbitrator fees is analogous to the treatment of similarly situated professionals, this court holds that the award of Parenting Arbitrator fees is in the nature of child support and is a domestic support obligation of Mr. Hasenmueller. As is such, the parenting arbitration fees are non-dischargeable child support under 11 U.S.C. § 523(a)(5).

Of further note, Mr. Hasenmueller alleges that a portion of the arbitration fees were unrelated to child support and instead resolved disputes over property division and other matters stemming from the original divorce. Though the court is not convinced by this argument, the record does not clearly reflect that the total award for arbitration was for child support, and a genuine dispute may exist.[2] Regardless of the allocation of the fees for arbitration at issue, the court is convinced that the fees are non-dischargeable in whole. If the fees are for child support, they are non-dischargeable under 11 U.S.C. §523(a)(5); however, if instead the fees relate to actions stemming from the divorce, they are non-dischargeable under 11 U.S.C. §523(a)(15). "In individual cases under [chapter 7], the distinction between a domestic support obligation and other types of obligations arising out of a marital relationship is of no practical consequence in determining the dischargeability of the debt" under section 523(a). 4 Collier on Bankruptcy ¶ 523.23 (16th ed. 2011)(citing how the 2005 Bankruptcy Code amendments render the distinction between §§ 523(a)(5) and (a)(15) moot). As is such, the fact disputed by Mr. Hasenmueller has no bearing on the ultimate determination of dischargeability under the Bankruptcy Code, and as a matter of law, the arbitration fees awarded to Mr. Black are non-dischargeable under § 523(a).

Sixth and finally, this court considers the attorney fees incurred on behalf of St. Mary's. These fees perhaps pose the most challenging judicial determination amongst the various debts here, as the fees were not incurred on behalf of the mother, father, or minor children but did in fact arise directly as a result of the underlying child support proceedings. In attempting to modify his obligations to pay private school tuition on behalf of his minor daughter to St. Mary's, Mr. Hasenmueller submitted various discovery requests to St. Mary's. Ms. Flowers sought to prevent such discovery with a motion to quash;

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[2] Mr. Black in his sworn affidavit filed with this court states: "In my role as Special Master, I heard minor issues dealing with prior appellate attorney fees and property division. These charges were more than subsumed and paid for by the $4,700.00+ already paid to me by the parties (primarily by Ms. Flowers). However, I seek only the amount set forth above ($26,216.33) be declared as in the nature of child support and non-dischargeable by Mr. Hasenmueller. . . . It is further my opinion that my fees are in the nature of child support . . . ."

however, the State Court determined she did not have standing. This left St. Mary's to pursue a motion to quash and a protective order against Mr. Hasenmueller on its own behalf and to defend against Mr. Hasenmueller's attempt to impose sanctions against St. Mary's for its failure to comply with his requests. St. Mary's prevailed in both, and two orders were entered awarding St. Mary's attorney fees. The nature of the dispute appears to be over private records St. Mary's kept regarding its students and extended well beyond requests for information concerning Mr. Hasenmueller's minor daughter to concern information about unrelated students. St. Mary's appears to have acted on its own behalf to protect private and proprietary records from being disclosed to Mr. Hasenmueller. Though arising from child support proceedings, St. Mary's appears to have acted in its own interests and not necessarily the interests of the minor daughter, even though, here, the interests of the minor daughter and St. Mary's are aligned. Had counsel on behalf of the minor children sought the same documents from St. Mary's, the court believes St. Mary's would have still sought a similar motion to quash and incurred similar attorney fees to protect the private and proprietary nature of the records sought. This court is prepared to draw a line between professional fees incurred in child support proceedings to protect the best interests of the children and professional fees incurred in child support proceedings arising for reasons other than child support and the protection of the best interests of the children. Debts resulting from child support proceedings are not presumptively domestic support obligations; rather, the party seeking to have the debts declared non-dischargeable must demonstrate the debts were intended to be in the nature of support and were necessary to provide support. See *In re Perlin*, 30 F.3d 39 (6th Cir. 1994).

Here, St. Mary's does not appear to be representing the minor children, and its motion to quash and its protective order appear necessary for its own best interests and not necessary for providing support to the minor children. Guardian ad litem fees, arbitrator fees, attorney fees related to enforcing support obligations, and other professional fees arising for the protection of children are distinguishable from attorney or other professional fees that merely arise in a child support proceeding but have no

bearing on the support of the children. Although not totally free from doubt, the attorney fees awarded to St. Mary's do not appear to be excepted from discharge under 11 U.S.C. § 523(a)(5); however, a genuine issue of material fact remains regarding whether St. Mary's was acting to support the minor daughter or merely protecting its own interests. Such genuine issue of material fact should be decided after a full trial on the merits. The court will hereafter consider the alternative provisions that St. Mary's has asserted.

11 U.S.C § 523(a)(15)

Section 523(a)(15) of the Bankruptcy Code provides, in relevant part, as follows: "A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . to a spouse, former spouse, or child of the debtor and not of the kind described in [section 523(a)(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, or a determination made in accordance with State or territorial law by a governmental unit." This provision has typically applied in cases involving the dischargeability of debts related to hold-harmless agreements and property settlements incurred in connection with separation agreements and divorce decrees; however, payments to third parties, when in connection with the separation agreement and divorce decrees, also can be declared non-dischargeable under this provision. See *in re Gibson*, 219 B.R. 195 (6th Cir. B.A.P. 1998).

As the statutory language specifically prohibits any debt declared non-dischargeable under 11 U.S.C. § 523(a)(5) from also being declared non-dischargeable under this section, all of the debts in the instant case except the debt to St. Mary's are clearly and statutorily not the kind that are eligible to be exempted from discharge under 11 U.S.C. § 523(a)(15). However, noting that the distinction between §§ 523(a)(5) and (a)(15) is moot subsequent to the 2005 Bankruptcy Code amendments because both domestic support obligations and other obligations arising out of a marital dispute are non-dischargeable, were any of these debts later determined to be not in the nature of child support, the

court is convinced they all would be deemed non-dischargeable under § 523(a)(15) because they are in "connection with a separation agreement, divorce decree or other order of a court of record." See 4 Collier on Bankruptcy ¶ 523.23 (16th ed. 2011). As this court has found all the debts except St. Mary's non-dischargeable under § 523(a)(5), this court will only apply § 523(a)(15) to the debt awarded to St. Mary's.

In doing so, the court is not convinced § 523(a)(15) is relevant to the type of debt awarded to St. Mary's. The debt ordinarily must be "to a spouse, former spouse, or child of the debtor." As previously noted, Mr. Hasenmueller's former spouse, Ms. Flowers, did not have standing to bring a motion to quash. In addition, the motion to quash and protective order were not brought by counsel or the guardian ad litem for the minor children, but rather St. Mary's was the only party with standing to bring the motion to quash and for a protective order. Therefore, the link from the debtor, Mr. Hasenmueller, to his former spouse or his children appears to be lacking because neither of these parties has standing to impose such obligation on the debtor.

This instant matter is distinguishable from *In re Gibson* in that the third party obligation in *Gibson* was a joint debt with the former spouse that was being allocated to the debtor in a property settlement. The court ordered the husband to pay a joint obligation that had been incurred prior to the separation agreement. Hence, the husband was paying a third-party on behalf of his former spouse's debt, creating the link between debtor and the former spouse that section 523(a)(15) requires. Here, the debt appears to be imposed exclusively on Mr. Hasenmueller for actions relating only to Mr. Hasenmueller and arising post-divorce. The debt appears unrelated to his former spouse and children, as Ms. Flowers or her children under no circumstances would be obligated to pay. Again, the St. Mary's debt does not appear to be linked from Mr. Hasenmueller to Ms. Flowers or his minor children. Therefore, where a spouse, former spouse, or child of the debtor does not have standing to assert the claim giving rise to the actual debt nor is the obligation payable or has been payable on behalf of a

spouse, former spouse, or child of the debtor, the court is prepared to hold that such debt is not excepted from discharge under the statutory language of 11 U.S.C. § 523(a)(15). However, as the court is not totally free from doubt, a genuine issue of material fact still exists, and the court will make a final determination on this issue after a trial on the merits. The court will next consider the dischargeability of the St. Mary's obligation under 11 U.S.C. §523(a)(6).

11 U.S.C. § 523(a)(6)

Section 523(a)(6) of the Bankruptcy Code provides: "A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity." "From the plain language of the statute, the judgment must be for an injury that is both willful and malicious. The absence of one creates a dischargeable debt." *In re Markowitz*, 190 F.3d 455, 463 (6th Cir. 1999). The statute in essence applies "tort" language when it requires an actor to intend the consequences of his act or believe that the consequences are substantially certain to result. *Id*. at 464 (citing Restatement (Second) of Torts § 8A, at 15 (1964)). Willful and malicious requires a showing beyond mere recklessly or negligently inflicted injuries. *Kawaauhau v. Geiger* (*In re Geiger*), 523 U.S. 57, 61 (1998). "'Malicious' means in conscious disregard of one's duties or without just cause or excuse; it does not require ill-will or specific intent." *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir.1986).

In the instant case, St. Mary's seeks to have its debts owed by Mr. Hasenmueller declared non-dischargeable because the debts are the result of a willful and malicious injury by Mr. Hasenmueller. Mr. Hasenmueller made various requests by subpoena to St. Mary's seeking for St. Mary's to turnover various private and proprietary documents to him. The State Court quashed these requests and issued a protective order against Mr. Hasenmueller, preventing him from making further requests to St. Mary's. St. Mary's alleges that the requests were an effort by Mr. Hasenmueller to harass the school in an effort to avoid payment of private school tuition. Mr. Hasenmueller disputes that assertion. Based on the

record as a whole, the court believes a genuine issue of material fact exists, and that genuine issue is whether the State Court discovery actions conducted by Mr. Hasenmueller and any subsequent litigation resulting from it gave rise to a willful and malicious injury. For an issue to be ripe for summary judgment, the trier of fact must not be able to find for the non-moving party. See, among others, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Here, a genuine dispute exists to the nature of Mr. Hasenmueller's acts directed at St. Mary's, and, accordingly, a genuine issue of material fact should be decided by the trier of fact after a full trial on the merits.

Conclusion

Based on the entire record as a whole and consistent with the foregoing, this court grants in part and denies in part the plaintiffs' motion for summary judgment. First, this court holds no genuine issue of material fact exists as to the dischargeability of all the debts except the St. Mary's debt under 11 U.S.C. §§ 523(a)(5) and/or (a)(15), and plaintiffs' motion for summary judgment on these issues is granted. In applying the courts' broad characterization of support, this court finds all debts except the St. Mary's debt are non-dischargeable under 11 U.S.C. § 523(a)(5). Second, this courts holds a genuine issue of material facts exists as to the dischargeability of the St. Mary's debt under 11 U.S.C. § 523(a)(5),(6), and/or (15), and plaintiffs' motion for summary judgment on this issue is denied.

NOTICE OF STATUS CONFERENCE RE ST. MARY'S DEBT

NOTICE IS HEREBY GIVEN that a status conference shall be held on the St. Mary's matter for Tuesday, March 20, 2012, at 10:15 a.m. in the United States Bankruptcy Court, Courtroom No. 945, 200 Jefferson Avenue, Memphis, Tennessee. The Bankruptcy Court Clerk shall cause copies of this Memorandum, Order, and Notice to be sent to the following:

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Chapter 7 Trustee
80 Monroe Ave., #625
Memphis, TN 38103

ORDER

Based on the foregoing, IT IS SO ORDERED AND NOTICE IS HEREBY GIVEN.