Dated: June 22, 2021
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
KELLY COLVARD PARSONS,
Debtor.

Case No. 20-25790-L
Chapter 13

ORDER DENYING OBJECTION TO CONFIRMATION OF PLAN
BY RICHARD J. PARSONS

THE OBJECTION TO CONFIRMATION and *Motion to Alter or Amend* filed by Richard J. Parsons, former spouse of the Debtor, Kelly Colvard Parsons, came on for hearing on June 17, 2021. ECF Nos. 24 and 37. Mr. Parsons, represented by attorney Preston Wilson, argues that the plan as proposed by the Debtor should not be confirmed because it fails to treat his claim for reimbursement of attorney's fees as a nondischargeable domestic support obligation (*see* 11 U.S.C. § 1328(a)(2)) and because the plan fails to satisfy the best interest of creditors test (11 U.S.C. § 1325(a)(2)). The Debtor, represented by attorney Steven N. Douglass, opposed the motion with her testimony and exhibits consisting of the parties' Marital Dissolution Agreement (Tr. Ex. 1)

and the recorded *Order of Attorney's Fees and Suit Expenses*, which is the basis of Mr. Parsons' Proof of Claim (Tr. Ex. 2). Mr. Parsons did not give testimony or submit any exhibits. After carefully reviewing the pleadings, exhibits, and other documents filed in the bankruptcy case, and considering the testimony of the single witness, the court makes the following findings of fact and conclusions of law.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over a contested matter arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The confirmation of plans of reorganization arises under the Bankruptcy Code and thus is a core proceeding. *See* 11 U.S.C § 1325(a) and 28 U.S.C. § 157(b)(2)(L). The bankruptcy court has authority to enter a final order confirming a debtor's proposed plan in a Chapter 13 case subject only to appellate review. *See* 11 U.S.C. § 1325(a); 28 U.S.C. § 157(b)(1). Venue of this contested matter is proper to the Western District of Tennessee because this matter arises in a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

FINDINGS OF FACT

The following background facts are taken from *Parsons v. Parsons*, No. W2016-01238-COA-R3-CV, 2017 WL 1192111 (Tenn. Ct. App. Mar. 30, 2017):

> On July 10, 2014, Appellant Kelly Parsons, and Appellee Richard Parson filed a marital dissolution agreement (MDA) that was incorporated into a final decree of divorce, which was entered by the trial court on July 16, 2014. During the

parties' marriage, Mr. Parsons was employed by the Federal Aviation Administration (FAA) as an air-traffic controller. In November 2013, seven months prior to the divorce, Mr. Parsons retired from his job pursuant to an FAA mandate, requiring retirement at the age of 56. Mr. Parsons' retirement benefits included a monthly annuity from the Civil Service Retirement System (CSRS) in the amount of $5,325. Additionally, Mr. Parsons was to receive a monthly supplement from the Federal Employees Retirement System (FERS) in the amount of $1,370 until he turned 62 and became eligible for social security. In order to maintain eligibility and continue receiving the FERS supplement, Mr. Parsons' earnings could not exceed $15,120 per year.

The terms of the parties' MDA provided that Ms. Parsons would receive 50% of Mr. Parsons' gross monthly CSRS annuity and 50% percent of Mr. Parsons' FERS supplement, to wit:

> Husband is eligible for retirement benefits under the Civil Service Retirement System based on employment with the United States Government. Wife is entitled to fifty percent (50%) of Husband's gross monthly annuity under the Civil Service Retirement System. Wife is entitled to fifty percent (50%) of Husband's FERS supplement under the Civil Service Retirement System. The United States Office of Personnel Management is directed to pay Wife's share directly to Wife. Wife shall be treated as the surviving spouse to the extent necessary to ensure Wife's receipt of her portion of the pension and FERS benefits in the event of Husband's death. Wife will receive a proportionate share of any cost of living increases made by the annuity and/or FERS supplement.
>
> The parties shall retain Attorney Blake Bourland to prepare any necessary documents required for the division of this gross monthly annuity and FERS supplement and the parties shall equally divide the cost of same.
>
> Prior to Wife's receipt of fifty percent (50%) of the annuity and FERS supplement, Husband shall pay to Wife fifty percent (50%) of said benefits to compensate Wife while the necessary documents are being processed, in the amount of two thousand six hundred eight dollars ($2,608) monthly, due on the 1st of July, 2014, and the first business day of the month each month thereafter until Wife's receipt of the pension and FERS benefit.

Pursuant to the MDA, in July 2014, the parties hired Mr. Bourland to draft and submit the necessary orders allocating Mr. Parsons' federal retirement benefits pursuant to the MDA. On August 22, 2014, the trial court entered a consent order

assigning the FERS benefits. However, Mr. Bourland was unable to secure payment of Ms. Parsons' portion of the FERS supplement, due to the apparent refusal of the Office of Personnel Management to allocate the funds pursuant to the parties' MDA.

In April 2015, pursuant to the parties' parenting plan, Ms. Parsons received Mr. Parsons' 2014 tax return and discovered that in addition to the federal retirement benefits contemplated in the MDA, Mr. Parsons had earned income in excess of $52,000, which exceeded the FERS cap of $15,120. Thus, Mr. Parsons was not eligible for the FERS supplement of $1,370 per month.

On June 22, 2015, Ms. Parsons filed a petition for civil and criminal contempt. In her petition, she alleged that Mr. Parsons should be held in willful civil and criminal contempt for failing and refusing to pay her the 50% share of his FERS supplement. Ms. Parsons also alleged, inter alia, that Mr. Parsons owed an arrearage of $4,795 for unpaid FERS benefits. The petition requested that the trial court order Mr. Parsons to pay such arrearages and, that the trial court award Ms. Parsons attorney's fees for filing the petition. The petition also alleged that Mr. Parsons owed Ms. Parsons money in relation to expenditures on behalf of the parties' children; however, these expenditures are not at issue on appeal.

On July 27, 2015, Mr. Parsons' attorney sent a letter informing Ms. Parsons that Mr. Parsons' FERS supplement had been reduced to zero beginning August 2015. The letter also indicated that "because fifty percent (50%) of Zero Dollars ($0.00) is Zero Dollars ($0.00), [Ms. Parsons] will not receive a FERS supplement payment beginning August 1, 2015."1 A letter from the Office of Personnel Management indicated that the reason for the elimination of the FERS supplement is because Mr. Parsons' earned income during 2014 exceeded the $15,120 income cap. Ms. Parsons argues that her interest in Mr. Parsons' retirement benefits is a property interest, and as such, is non-modifiable. Ms. Parsons also argues that the entry of the final decree of divorce gave her a vested interest in one-half of Mr. Parsons' FERS supplement, and that Mr. Parsons' failure to compensate her to the extent of her vested interest was an improper unilateral modification of the final decree of divorce. Mr. Parsons argues that Ms. Parsons knew prior to the entry of the MDA and the final decree of divorce that Mr. Parsons' income would exceed the $15,000 cap. Specifically, Mr. Parsons produced a letter from his new employer, Raytheon, dated April 7, 2014 stating that his hourly rate would be $26.50 and that he could not exceed more than 1500 hours per year. However, we note that Mr. Parsons signed the permanent parenting plan on July 10, 2014 swearing and affirming that his gross monthly income was only $4,597.00 per month, which included his federal retirement benefits and his expected earnings from Raytheon.

The hearing on the contempt petition was held on March 2, 2016. After Ms. Parsons' attorney completed direct examination of Ms. Parsons, Mr. Parsons' attorney made an oral motion to dismiss (see discussion infra) on the ground that

> Ms. Parsons failed to elect whether she was seeking civil or criminal contempt. Prior to ruling on the motion, the trial court heard statements from counsel for both parties regarding the status of the proof. The attorneys were in agreement that Ms. Parsons had not completed her proof; however, Mr. Parsons argued that the case was fundamentally flawed because it had proceeded without Ms. Parsons electing whether she was proceeding on either civil or criminal contempt. Mr. Parsons argued that the only remedy was dismissal. In order to expedite the proceeding, Ms. Parsons agreed to dismiss the criminal contempt component and proceed solely on the allegations of civil contempt. Despite statements from both attorneys that Appellant had not closed her proof, the trial court granted the motion to dismiss ….

Parsons I, 2017 WL 1192111, at *1-2. The case was appealed to the Tennessee Court of Appeals, which determined that the trial court applied an incorrect burden of proof and improper procedure. It vacated the trial court's order and remanded the case for further proceedings. *Id.* at *6.

After further proceedings, a second appeal was filed. The proceedings before the trial court were summarized by the Tennessee Court of Appeals in its second opinion, *Parsons v. Parsons*, W2018 – 02008-COA-R3-CV, 2019 WL 6770520 (Tenn. Ct. App. Sept. 18, 2019) (*"Parsons II"*), as follows:

> On remand from Parsons I, Ms. Parsons filed an amended petition for contempt on June 23, 2017. In addition to contempt, Ms. Parsons amended her petition to add, in the alternative, a breach of contract claim. Specifically, Ms. Parsons alleged that Mr. Parsons breached the MDA because he failed to pay her 50% of his FERS Supplement from December 2014 through the date of her amended petition. On September 12 and 13, 2017, the trial court heard Ms. Parsons' amended petition. On November 29, 2017, the trial court announced its ruling.1 In pertinent part, the trial court held that: (1) there was no contempt because Ms. Parsons did not have a vested interest in the FERS Supplement; and (2) there was no order requiring Mr. Parsons to compensate Ms. Parsons should the FERS Supplement terminate. The trial court also denied Ms. Parsons' breach of contract claim on its finding that the MDA was a valid contract, which could not be altered "even under equitable interpretations." Nonetheless, the trial court ostensibly restored Ms. Parsons' share of the FERS Supplement by awarding an upward deviation in child support equal to $685 per month, which amount is equal to 50% of Mr. Parsons' previous FERS Supplement.
>
> On December 20, 2017, Mr. Parsons filed a motion to alter or amend, wherein he sought reversal of the portion of the trial court's order awarding an upward deviation in child support. On August 31, 2018, the trial court heard Mr.

> Parsons' motion. By order of October 18, 2018, the trial court granted the motion and reversed its prior ruling. Specifically, the trial court found that its award of $685 per month "was an erroneous upward deviation in child support." Ms. Parsons appeals.

Parsons II, 2019 WL 6770520, at *2. In *Parsons II* the Tennessee Court of Appeals affirmed in part, reversed in part, and remanded for further proceedings. Specifically, the court reversed the trial court's order denying Mr. Parsons' request for an award of attorney's fees under the MDA because it found that "Mr. Parsons was definitively the prevailing party at trial … [and] the prevailing party on appeal." *Parsons II*, 2019 WL 6770520, at * 8.

The MDA provides for an award of attorneys' fees as follows:

> Noncompliance
>
> Should either party incur any expense or legal fees in a successful effort to enforce or defend this Marital Dissolution Agreement, in whole or in part, the Court SHALL award reasonable attorney fees and suit expenses to the party seeking to enforce this Agreement. No breach, waiver, failure to seek strict compliance, or default of any of the terms of this Agreement shall constitute a waiver of any subsequent breach or default of any of the terms of this Agreement.

Tr. Ex. 1, p. 4. Based upon that language, the Tennessee Court of Appeals remanded the case for a determination of Mr. Parsons' reasonable trial and appellate attorney's fees and expenses and for entry of judgment.

On remand, the trial court determined that Mr. Parsons should be awarded $90,311.06. Judgment was entered in that amount on November 19, 2020. The *Order on Attorney's Fees and Expenses* was recorded with the Shelby County Register of Deeds on the same day. Tr. Ex. 2.

The Debtor commenced this bankruptcy case by filing a voluntary petition under Chapter 13 on December 18, 2020, less than 30 days after the entry of the *Order on Attorney's Fees and Expenses.* At the hearing on the *Objection to Confirmation,* Mr. Wilson conceded on the part of

Mr. Parsons that the lien created by the recordation of the *Order on Attorney's Fees and Expenses* constituted a preferential transfer that might be avoided pursuant to 11 U.S.C. § 547(b). As a result, Mr. Parsons' claim will not be treated as a secured claim for purposes of this opinion.

The Debtor filed her proposed Chapter 13 Plan on January 4, 2021. ECF No. 11. It provided for payment of $400 semi-monthly for 60 months, for total payments of $48,000. It provided for the Debtor's mortgage payment to be paid outside the plan and provided for one secured claim owed to Honda Financial Services, to be paid $362.00 per month to pay a claim of $3,853.97 together with interest at 9.0%. It provided for no domestic support obligations nor for any priority unsecured claims. It estimated that nonpriority unsecured claims totaled $217,211.06. The Debtor also filed Official Form 122C-1: Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period. ECF No. 10. Form 122C-1 indicates that the Debtor had current monthly income of $3,891.46, which rendered currently monthly income for the year of $46,697.52. This placed the Debtor below the median family income for a household of 2 persons in Tennessee. Thus, the Debtor's applicable commitment period is three years. *See* 11 U.S.C. § 1325(b)(4).

The Debtor also filed Official Form 106Sum: Summary of Your Assets and Liabilities and Certain Statistical Information. ECF No. 9, p. 1. It shows total real estate of $165,000.00 consisting entirely of the Debtor's residence; total personal property of $657,375.00; claims secured by property at $129,300.00, and total nonpriority unsecured claims of $217,211.06. Of the total personal property of $657,375.00, $628,000 consisted of retirement accounts that would not be available to satisfy creditor claims, leaving personal property of $29,375, which includes the debtor's car, valued at $15,000.

The Debtor also filed Official Form 106C Schedule C: The Property You Claim as Exempt. ECF No. 9, p. 9. The Debtor claims a $5,000 homestead exemption in her home under Tennessee Code Annotated section 26-2-301; $10,001 personal property exemptions under Tennessee Code Annotated section 26-2-103; and a $500 exemption in clothing pursuant to Tennessee Code Annotated section 26-2-104.

Mr. Parsons filed his *Objection to Confirmation of Plan* on March 4, 2021. ECF No. 24. Notwithstanding this objection, an *Order Confirming Plan Combined with Related Orders* was entered April 7, 2021. ECF No. 27. Mr. Parsons filed a *Motion to Alter or Amend Order Confirming Plan and Order Allowing Claims* on April 21, 2021. ECF No. 37. The *Motion to Alter or Amend* noted that the *Order Confirming Plan* was entered prior to disposition of his *Objection to Confirmation.* Because of the recusal of Bankruptcy Judge M. Ruthie Hagan, the case was reassigned to Bankruptcy Judge Jennie D. Latta, and Chapter 13 Trustee Sylvia Ford Brown on May 24, 2021. ECF Nos. 41 and 42. The *Objection to Confirmation* and *Motion to Alter or Amend* were reset to June 3, 2021.

The Debtor filed a *Motion to Amend Plan* on May 26, 2021, to correct the interest rate for the treatment of the claim of Honda Financial Services from 9.0% to 0.9% and to provide for an attorney fee to Mr. Douglass. ECF No. 45.

On June 3, 2021, the hearing on the *Objection to Confirmation* and the *Motion to Alter or Amend* were continued to June 17, 2021, at the request of the parties.

At the hearing, the Debtor testified that she is employed as a teacher at an annual salary of $65,000. She testified that Mr. Parsons is a retired air traffic controller who continues to be employed as a trainer of air traffic controllers with annual income of approximately $255,000. The Debtor testified that the couple has two adult children, one of whom lives with her when he is not

attending the University of Tennessee. The Debtor testified that Mr. Parsons has not contributed to the college educations of the two children.

The Debtor testified that she purchased her home in 2014 for $165,000 as a "fixer upper." She values her home today at the same $165,000. She based that value upon the original purchase price and the fact that the home remains in need of substantial repairs such as a new roof, a new driveway, replacement of rotting windows and doors, replacement of aged carpet, and repair of parquet floors that have buckled. The Debtor's testimony is consistent with the value she placed upon her home in Schedule A filed in this case. Although the Debtor admitted the property is assessed for tax purposes at a higher value, no other proof was introduced concerning the value of the home. As the Debtor's testimony and her Schedule A are the only indications of value before the court, the court finds that the value of the Debtor's residence is $165,000.

Fidelity Bank filed a proof of claim in the amount of $120,982.39 secured by the Debtor's residence. This results in equity in the amount of $44,017.61. The Debtor has claimed $5,000 of this amount as exempt. A standard real estate commission of 6%, or $9,900.00, would be charged in the event the house were sold. Deducting these amounts, the court finds that $29,117.61 would be available to satisfy creditor claims if the house were sold in a hypothetical chapter 7 case.

The Debtor valued her 2016 Honda Civic at $15,000. American Honda Finance Corporation filed its proof of claim in the amount of $3,853.97. The Debtor claimed an exemption of $3,200 in the remaining value of the car. If American Honda Finance were permitted to sell the car to satisfy its lien, and the car were sold for $15,000, American Honda Finance would be paid in full leaving $11,146.03 to be returned to the estate before $3,200 was paid to the Debtor representing her claimed exemption. The remaining proceeds of $7,946.03 would be available to satisfy creditor claims.

The value of the Debtor's personal property excluding her retirement accounts and her car is $14,375. She has claimed exemptions in the amount of $10,501.00. If the remaining personal property were sold to pay creditor claims, $3,874.00 would remain for creditor claims after payment of the Debtor's claimed exemptions.

The court finds that for purposes of the best interest of creditors test, the assets available for distribution to the trustee and unsecured creditors in a hypothetical Chapter 7 case would be the total of the three amounts that would be available for distribution, which is $40,937.63.

CONCLUSIONS OF LAW

The Bankruptcy Code directs the court to confirm a Chapter 13 plan if the requirements specified at section 1325(a) are satisfied. Mr. Parsons argues that the Debtor's plan fails to comply with the following requirements: that the plan comply with the provisions of chapter 13 and other applicable provisions of title 11 (section 1325(a)(1)); that the plan be proposed in good faith (section 1325(a)(3)); that the value, on the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 on that date (section 1325(a)(4)); that the action of the debtor in filing the petition was in good faith (section 1325(a)(7)); and that the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition[1] if the debtor is required by a judicial or administrative order, or by a statute, to pay such domestic support obligation (section 1325(a)(8)).

[1] There is no suggestion by Mr. Parsons that there are any amounts required to be paid under a domestic support obligation that first became payable after the filing of the petition.

Is Mr. Parsons' Claim a Domestic Support Obligation?

Mr. Parsons' main argument is that his claim represents a domestic support obligation and is therefore nondischargeable under section 1328(a)(2) of the Bankruptcy Code. For purposes of evaluating the Debtor's proposed plan, however, another feature of the treatment of domestic support obligations comes into play. Section 1325(a)(1) requires compliance with the other provisions of Chapter 13 and the Bankruptcy Code. Section 1322(a)(2) requires payment in full, in deferred cash payments, of all claims entitled to priority under section 507 unless the holder of the claim agrees to a different treatment. Read together, these sections require that claims entitled to priority be paid in full in order for a Chapter 13 plan to be confirmed. Domestic support obligations are entitled to first priority of distribution under section 507(a)(1). If Mr. Parsons is correct that his claim represents a domestic support obligation, the Debtor's plan cannot be confirmed as proposed because it treats Mr. Parsons' claim as a nonpriority unsecured claim.

"Domestic support obligation" is a defined term for purposes of the Bankruptcy Code:

> (14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--
>
> (A) owed to or recoverable by--
>
> (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or
>
> (ii) a governmental unit;
>
> (B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) 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;
>
> (C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

> (i) a separation agreement, divorce decree, or property settlement agreement;
>
> (ii) an order of a court of record; or
>
> (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and
>
> (D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

11 U.S.C. § 101(14A). The *Order on Attorney's Fees and Suit Expenses* represents a debt that is owed to a former spouse of the debtor, established before the date of the order for relief entered in this case, by reason of the applicable provisions of an order of a court of record, that has not been assigned to a nongovernmental entity. The only issue remaining before the court with respect to the *Order on Attorney's Fees and Suit Expenses* is whether it creates an obligation that is in the nature of alimony, maintenance, or support of the Debtor's former spouse.

Mr. Parsons argues that the award of attorney's fees represents alimony in solido or lump sum alimony under Tennessee law. *See* Tenn. Code Ann. § 36-5-121(d)(1) ("The court may award rehabilitative alimony, alimony in futuro, also known as periodic alimony, transitional alimony, or alimony in solido, also known as lump sum alimony or a combination of these, as provided in this subsection (d)"); and Tenn. Code Ann § 36-5-121(d)(5) ("Alimony in solido may be awarded in lieu of or in addition to any other alimony award, in order to provide support, including attorney fees, where appropriate."). These sections do not conclusively provide that an award of attorney's fees *shall be* deemed alimony in solido under Tennessee law, however. They merely provide that alimony in solido *may be* awarded when appropriate and *may* include attorney fees. In support of his argument, Mr. Parsons relies upon the Tennessee Supreme Court's decision in *Gonsewski v. Gonsewski,* 350 S.W.3d 99 (Tenn. 2011). The court in *Gonsewski* does say that "[i]t is well-settled

that an award of attorney's fees in a divorce case constitutes alimony in solido" citing Tennessee Code Annotated section 36-5-121(h), which provides, in part, "alimony in solido may include attorney fees, where appropriate." *Gonsewski,* 350 S.W.3d at 113. Subsection (h) of section 36-5-121 is immediately followed by subsection (i), however, which lists the relevant factors a Tennessee court must consider in determining whether to grant an order for support and maintenance. These relevant factors are the following:

> 1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
> (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
> (3) The duration of the marriage;
> (4) The age and mental condition of each party;
> (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
> (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
> (7) The separate assets of each party, both real and personal, tangible and intangible;
> (8) The provisions made with regard to the marital property, as defined in § 36-4-121;
> (9) The standard of living of the parties established during the marriage;
> (10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
> (11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and
> (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

Tenn. Code Ann. § 36-5-121(i).

In the context of this bankruptcy case, the question of whether an award is in the nature of alimony, maintenance, or support is one of federal bankruptcy law. *Long v. Calhoun (In re*

Calhoun), 715 F.2d 1103, 1107 (6th Cir. 1983). This court must look to the nature of the obligation to determine whether it was actually meant for support. *Thomas v. Clark (In re Thomas),* 591 Fed. Appx. 443, 445 (6th Cir. 2015). "A debt is 'in the nature of support' if two conditions are met: first, 'the state court or parties intended to create a support obligation'; and second, the debt has 'the actual effect of providing necessary support.'" *Thomas*, 591 Fed. Appx. at 445, quoting *In re Fitzgerald*, 9 F.3d 517, 520 (6th Cir. 1993). In determining whether attorneys' fee awards are in the nature of support when awarded in connection with the original divorce proceedings or a child custody dispute, the bankruptcy courts are directed to look to "'traditional state law indicia' of support obligations." *Rugiero v. DiNardo (In re Rugiero)*, 502 Fed. Appx. 436, 439 (6th Cir. 2012), quoting *Sorah v. Sorah*, 163 F.3d 397, 401 (6th Cir. 1998).

The award of attorney's fees in this case is based upon the parties' Marital Dissolution Agreement rather than any evaluation by the state court of the relevant factors specified in the Tennessee Code for consideration in making an award for support. The Tennessee Court of Appeals made clear that the award was necessitated by the language of the agreement which specifies that "[s]hould either party incur any expense or legal fees in a successful effort to enforce or defend this Marital Dissolution Agreement in whole or in part, the Court SHALL award reasonable attorney fees and suit expenses to the party seeking to enforce this Agreement." Tr. Ex. 1, p. 4; *Parsons II*, 2019 WL 6770520, at * 8. Moreover, the Marital Dissolution Agreement specifically provides that alimony was waived by both parties: "Wife and Husband claim no alimony of any type either pendente lite, permanent, periodic, in future, in solido, rehabilitative or traditional, and waive any claim they might have thereto in any divorce action between them except as elsewhere set out in this document." Tr. Ex. 1, p. 15. There is no indication that the state trial court gave any thought to the need for support in connection with the *Order on Attorney's Fees*

and Suit Expenses. Tr. Ex. 2. Mr. Parsons failed to provide any evidence demonstrating his need for support at the time the *Order on Attorney's Fees and Suit Expenses* was entered, and the Debtor testified that, to the contrary, his annual income is more than three times her annual income.

The court concludes based on the record provided by the parties that the *Order on Attorney's Fees and Suit Expenses* represents an obligation arising out of a contract between the parties and is not in the nature of alimony, maintenance, or support. Mr. Parsons' claim, therefore, is not a domestic support obligation and is not entitled to priority payment under the Debtor's Chapter 13 plan. This part of Mr. Parsons' objection shall be overruled.

Does the Proposed Plan Satisfy the Best Interest of Creditors Test?

The second part of Mr. Parsons' *Objection to Confirmation* is that as a result of the failure of the Debtor to properly value her home, the proposed plan fails to satisfy the best interest of creditors test, which provides that "the court shall confirm a plan if …. the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of title 11 on that date. 11 U.S.C. § 1325(a)(4). The court has found that the amount that would be available to pay administrative expenses and the claims of unsecured creditors if the estate of the Debtor were liquidated under Chapter 7 is $40,937.63. The Debtor proposes to pay $800 per month for 60 months, or $48,000. Of this amount, $3,853.97 will be paid to Honda Financial Services Corporation, leaving a balance of $44,146.03, to be paid to administrative claimants and unsecured creditors. The proposed plan satisfies the best interest of creditors test.

Does the Plan Propose that All of the Debtor's Projected Disposable Income Received in the Applicable Commitment Period Be Applied to Make Payments to Unsecured Creditors?

While not specifically mentioned by Mr. Parsons, the Bankruptcy Code requires the court to make one additional inquiry concerning confirmation of a Chapter 13 plan when an unsecured creditor objects. Unless the plan provides for payment in full of the objecting creditor's claim, the court must determine whether the plan provides that all of the debtor's projected disposable income to be received during the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b)(1).

"Disposable income" for purposes of subsection 1325(b)(1) means current monthly income received by the debtor (with certain exceptions not applicable here) less amounts reasonably necessary to be expended for the maintenance or support of the debtor or dependent of the debtor and charitable contributions. 11 U.S.C. § 1325(b)(2). "Current monthly income" is a defined term meaning "the average monthly income from all sources that the debtor receives … derived during the 6-month period ending on … the last day of the calendar month immediately preceding the date of the commencement of the case …." 11 U.S.C. § 101(10A). The Debtor's current monthly income provided in Official Form 122C-1 is $3,891.46. ECF No. 10.

Because the Debtor is a below median debtor, the amounts reasonably necessary to be expended for her maintenance are to be determined without regard to section 707(b)(2). *See* 11 U.S.C. § 1325(b)(3). For below median debtors, the bankruptcy courts generally look to the expenses set forth in Schedule J as the starting point for determine a debtor's reasonable expenses. The Debtors lists expenses totaling $7,365.50 in her Schedule J. Mr. Parsons did not object to any of the items or amounts listed by the Debtor. The court has reviewed the Debtor's expenses and

finds none of them to be unusual except the provision of $2,000 per month for "childcare and children's education costs." The Debtor testified that she has an adult son who is a college student. The court assumes that this large monthly amount represents his expenses. Even if these expenses are subtracted from the total, however, the Debtor's monthly expenses exceed her current monthly income by some $1,900 per month.

The "applicable commitment period" is provided at section 1325(b)(4). Because the Debtor is a below median debtor, her applicable commitment period is three years. In order to satisfy the best interest of creditors test, however, the Debtor has proposed to make payments over five years, thus satisfying the temporal requirement of section 1325(b)(1)(B). *See, e.g., Baud v. Carroll*, 634 F.3d 327, 351 (6th Cir. 2011) (The temporal requirement of the applicable commitment period applies even if the debtor has zero or negative projected disposable income.). The Debtor's plan proposes to pay $48,000.00 over the life of the plan, which exceeds her projected disposable income of $0.00. The plan thus also satisfies the monetary requirement of section 1325(b)(1)(B). The proposed plan is capable of confirmation.

CONCLUSION

The *Objection to Confirmation* filed by Mr. Parsons is OVERRULED and the *Motion to Alter and Amend* is DENIED. Mr. Parsons' claim is not a domestic support obligation entitled to priority treatment under the plan, and the plan satisfies the best interest of creditors test. Mr. Parsons' references to other subsections of section 1325(a) as possible sources of objection, specifically subsections (3), (7), and (8), are likewise overruled because Mr. Parsons failed to develop any arguments in support of those objections. Finally, as the result of Mr. Parsons' objection, the court made an independent review to determine whether the plan was capable of confirmation pursuant to the formula set out at section 1325(b)(1) and determined that the plan

proposes to devote all of the Debtor's projected disposable income over the applicable commitment period to repayment of unsecured creditors. Thus, the plan as proposed is capable of confirmation and has, in fact, been confirmed.

cc: Debtor
Attorney for Debtor
Creditor Richard J. Parsons
Attorney for Richard J. Parsons
Chapter 13 Trustee