

Dated: April 30, 2021
The following is ORDERED:



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Carnita Faye Atwater
Debtor

Case No. 20-22880
Chapter 7

Scott B. Peatross
Plaintiff,
v.
Carnita Faye Atwater,
Defendant.

Adv. Pro. 20-00131

Scott B. Peatross
Plaintiff,
v.
Carnita Faye Atwater,
Defendant.

Adv. Pro. 20-00133

OPINION AND ORDER DENYING
DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

Before the Court are (1) Carnita Faye Atwater's ("Defendant") Motion for Summary Judgment [Adv. Proc. No. 20-00131, DE 8] as to Scott B. Peatross's, Administrator of the Estate of Alys Harris Lipscomb, ("Plaintiff") Complaint to Determine Dischargeability of Debt Under Bankruptcy Code Section 523 [Adv. Proc. No. 20-00131, DE 1] and (2) Defendant's Motion for Summary Judgment [Adv. Proc. No. 20-00133, DE 10] as to Plaintiff's Complaint Objecting to Discharge under Bankruptcy Code Section 727 [Adv. Proc. No. 20-00133, DE 1]. Defendant requests the Court to grant summary judgment in her favor pursuant to FED. R. CIV. P. 56, as made applicable by FED. R. BANKR. P. 7056, because the related issues of dischargeability must be precluded due to collateral estoppel. The Court ordered Plaintiff to file limited responses to Defendant's Motions for Summary Judgment on the "finality" element for collateral estoppel in Tennessee [Adv. Proc. No. 20-00131, DE 33; Adv. Proc. No. 20-00133, DE 36]. Plaintiff filed his respective responses on March 30, 2021 [Adv. Proc. No. 20-00131, DE 36; Adv. Proc. No. 20-00133, DE 39]. The Court heard oral arguments on April 6, 2021 and took the matter under advisement. The following constitutes the Court's findings and conclusions pursuant to FED. R. BANKR. P. 7052. Based on the pleadings, the arguments of counsel, and the entire record before this Court, the Court finds that Defendant's Motion for Summary Judgment is DENIED for the reasons provided herein.

JURISDICTION

Plaintiff filed these two complaints under 11 U.S.C. §§ 523(a)(2), (4) and (6) and 727(a)(2), (a)(3), (a)(4) and (a)(5), and FED. R. BANKR. P. 7001(4) and (6). This Court has jurisdiction to decide pretrial matters, such as a motion for summary judgment, in accordance with 28 U.S.C. §§ 1334(b) and 157(b)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I).

FACTUAL SUMMARY

Defendant was the in-home caregiver to Dr. Alys Lipscomb (“Dr. Lipscomb”) until Dr. Lipscomb’s death on May 21, 2014. On September 25, 2018, Plaintiff obtained a judgment from the Probate Court of Shelby County, Tennessee in case number PR-1541 against Defendant in the amount of \$2,285,078.20. On December 6, 2018, the same court awarded attorney’s fees for Plaintiff against Defendant in the amount of \$210,755.00, which makes the total amount owed to Plaintiff by Defendant \$2,495,833.20 (the “Probate Judgment”).

Defendant then appealed the Probate Judgment to the Court of Appeals of Tennessee, and the Court of Appeals affirmed the Probate Court’s decision on April 1, 2020. *See In re Estate of Lipscomb*, 2020 WL 1549596 (Tenn. Ct. App. April 1, 2020)(slip op.). Defendant subsequently appealed the Court of Appeals decision to the Supreme Court of Tennessee. Prior to any determination by the Supreme Court of Tennessee (or any briefing), Defendant filed her Chapter 13 bankruptcy petition on May 19, 2020 (Case No. 20-22880) which stayed the appeal pending before the Supreme Court of Tennessee.¹ *See* 11 U.S.C. § 362. The bankruptcy case was later voluntarily converted to one under Chapter 7 on July 21, 2020 [Case No. 20-22880, DE 27]. On October 23, 2020, Plaintiff filed an adversary complaint against Defendant alleging non-dischargeability of certain debts under §§ 523(a)(2), (4) and (6) of the Bankruptcy Code (the “523 Complaint”) [Adv. Proc. No. 20-00131, DE 1]. Defendant filed her answer to the 523 Complaint on November 20, 2020 (the “Answer”) [Adv. Proc. No. 20-00131, DE 7]. Likewise, on October 26, 2020, Plaintiff filed an adversary complaint objecting to discharge under § 727 of the Bankruptcy Code (the “727 Complaint”) [Adv. Proc. No. 20-00133, DE 1]. Defendant filed her answer to the 727 Complaint on November 24, 2020 (the “Answer”) [Adv. Proc. No. 20-00131,

¹ On June 30, 2020, the Clerk of the Appellate Courts, James M. Hivner, issued a “Notice-Order-Staying Appeal Due to Bankruptcy”. [Bankr. Adv. Proc. 20-131, DE 36-1].

DE 7]. Defendant then filed her two Motions for Summary Judgment requesting the Court to grant summary judgment pursuant to Fed. R. Bankr. P. 7056 as to all counts contained in the 523 Complaint [Adv. Proc. No. 20-00131, DE 8] and the 727 Complaint [Adv. Proc. No. 20-00133, DE 10].

SUMMARY JUDGMENT STANDARD

“Summary judgment is appropriate where ‘there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.’” *Bell v. United States*, 355 F.3d 387, 391-92 (6th Cir. 2004) (quoting FED. R. CIV. P. 56(c)). “The reviewing court must assess the available proof to determine whether there is a genuine factual issue that justifies a trial.” *Id.* at 392 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). “In doing so, the court must view the facts and all the inferences drawn from such facts in the light most favorable to the nonmoving party.” *Id.* (citing *60 Ivy St. Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987)). “The moving party has the burden of establishing that no genuine issue of material fact exists, but the nonmoving party also has a responsibility ‘to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.’” *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). “Ultimately, the court must determine whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

DISCUSSION

Defendant seeks summary judgment as to all counts set forth in the 523 Complaint and 727 Complaint. Defendant alleges that the related issues of dischargeability are precluded due to collateral estoppel. As discussed below, Defendant, the movant, is not entitled to judgment as a

matter of law under the doctrine of collateral estoppel, and her motions for summary judgment must therefore be DENIED.

Defendant is not entitled to judgment as a matter of law because (1) Tennessee law on collateral estoppel applies in this case and (2) such law provides that collateral estoppel does not apply because there has not been a *final* judgment for the purposes of collateral estoppel.

Collateral Estoppel and Finality in Tennessee

“Under the Full Faith and Credit Act, 28 U.S.C. § 1738, federal courts are required to ‘give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so.’” *Peterson v. Heymes*, 931 F.3d 546, 554 (6th Cir. 2019) (quoting *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75 (1984)); see *Marrese v. American Academy of Orthopaedic Surgeons*, 105 S.Ct. 1327, 1332 (1985) (“It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken.”) (citation omitted); *Allen v. McCurry*, 449 U.S. 90, 96 (1980); *Anderson v. City of Blue Ash*, 798 F.3d 338, 350 (6th Cir. 2015); *Ohio ex rel. Boggs v. City of Cleveland*, 655 F.3d 516, 519 (6th Cir. 2011); *ABS Indus., Inc. ex rel. ABS Litig. Trust v. Fifth Third Bank*, 333 F. App’x 994, 998 (6th Cir. 2009) (quoting *Ingram v. City of Columbus*, 185 F.3d 579, 593 (6th Cir. 1999)). Accordingly, “[t]he preclusive effect of the state court’s decision in [] federal litigation is governed by Tennessee law.” *George v. Hargett*, 879 F.3d 711, 718 (6th Cir. 2018) (citation omitted).²

² When this Court heard oral arguments on April 6, 2021, Defendant argued that federal law on collateral estoppel, not Tennessee law, controlled. In support, Defendant cited *Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001). However, this Court finds *Semtek* inapplicable to this case because the facts at hand are distinguishable. *Semtek* involved the issue of what preclusive effect a state court in Maryland should give to a judgment from a federal court sitting in diversity in California dismissing an action removed from a California state court because such action was time barred by the California statute of limitations. *Semtek*, 531 U.S. at 499-500. Here,

In Tennessee, collateral estoppel “is a judicially created doctrine that ‘promotes finality, conserves judicial resources, and prevents inconsistent decisions.’” *George v. Hargett*, 879 F.3d at 718 (citing *Mullins v. State*, 294 S.W.3d 529, 534 (Tenn. 2009)). It “also promotes comity between state and federal courts.” *Id.* (citing *Allen v. McCurry*, 449 U.S. at 95-6). “The doctrine generally bars parties from relitigating issues that have been decided in prior litigation between the same parties or their privies.” *Id.* (citing *Mullins*, 294 S.W.3d at 534-35).

To prevail [in Tennessee] with a collateral estoppel claim, the party asserting it must demonstrate (1) that the issue to be precluded is identical to an issue decided in an earlier proceeding, (2) that the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding, (3) that the judgment in the earlier proceeding has become final, (4) that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding, and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

Id. (quoting *Mullins*, 294 S.W.3d at 535).

The dispositive issue for the matter at hand is whether the judgment from the probate court has become final under Tennessee law on collateral estoppel. “Determining what constitutes a ‘final judgment’ can be an elusive task because that term is used in two closely related senses.” *In re Shyronne D.H.*, No. W2011-00328-COA-R3-PT, 2011 WL 2651097 *5 (Tenn. Ct. App. July 7, 2011). “In the first sense, [as used to determine appellate jurisdiction] a judgment is final ‘when it decides and disposes of the *whole* merits of the case leaving nothing for the further judgment of

the question is what preclusive effect a federal bankruptcy court in Tennessee must give to a Tennessee state court judgment.

Further, *Semtek* makes clear that Tennessee law on collateral estoppel would apply. The rule from *Semtek* is that the law governing the preclusive effects of a federal court sitting in diversity is the law of the state in which the federal court sits. *Id.* at 507-09. There is an exception to the rule from *Semtek*, e.g., the rule does not apply where state law is incompatible with federal interests, such as “federal courts’ interest in the integrity of their own processes.” *Id.* at 509. No party argued any incompatible federal interest; therefore, the Court finds that no such exception applies. Accordingly, Tennessee law would apply.

the court.” *Id.* (quoting *Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 460 (Tenn. 1995)).

In the second sense, as used to determine whether *res judicata* or collateral estoppel apply, a “judgment becomes final thirty days after its entry unless a party files a timely notice of appeal or specified post-trial motion.” *Id.* at *6 (quoting *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996) and TENN. R. APP. P. 4(a)-(c)). “Before that time, the judgment lies ‘within the bosom of the court’ and ‘may be set aside or amended on motion of a party or upon the court’s own motion’” or may be appealed. *Id.* (citing *McBurney v. Aldrich*, 816 S.W.2d 30, 34 (Tenn. Ct. App. 1991)).

Thus, “a judgment may be considered ‘final’ in order to confer jurisdiction on an appellate court . . . while not being ‘final’ for purposes of *res judicata* [or collateral estoppel] because such an appeal is pending.” *Id.* Importantly, the rule in Tennessee is that “‘a judgment is not final [for preclusive purposes] . . . where an appeal is pending.’” *Id.* (quoting *Creech v. Addington*, 281 S.W.3d 363, 377-78). In other words, “in Tennessee, a judgment from a case in which an appeal is pending is not final and cannot be *res judicata* until all appellate remedies have been exhausted.” *Id.* (citing *Humphreys v. BIC Corp.*, 923 F.2d 854 (6th Cir. 1991) (unpublished)).

Here, there was a final, appealable judgment in the related state court probate action. Defendant appealed that judgment to the Tennessee Court of Appeals, which affirmed the probate court’s judgment. Defendant then appealed to the Supreme Court of Tennessee. The Supreme Court of Tennessee is stayed from any consideration of the case for the time being because of 11 U.S.C. § 362. Since Defendant’s appeal of the probate court judgment is still pending, the probate court’s judgment has no preclusive effect under collateral estoppel because the judgment has not become a final, non-appealable judgement. Therefore, Defendant’s motions for summary

judgment must therefore be DENIED. Defendant is not entitled to judgment as a matter of law based on collateral estoppel.

CONCLUSION

For the foregoing reasons, the Court finds that Defendant's motions for summary judgment shall be **DENIED**.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested persons:

Carnita Faye Atwater
1098 Firestone Ave
Memphis, TN 38107

James D. Gentry
Gentry Arnold, PLLC
5100 Poplar Avenue, Suite 2008
Memphis, TN 38137

Paul A. Matthews
5400 Poplar Avenue, Suite 100
Memphis, TN 38119

Betty Sue Bedwell
Bedwell Law Firm, Inc.
200 Jefferson Avenue, Ste 202
Memphis, TN 38103

U.S. Trustee
Office of the U.S. Trustee
One Memphis Place
200 Jefferson Avenue, Suite 400
Memphis, TN 38103