

STATE OF MICHIGAN
COURT OF APPEALS

ARLENE M. BERRYMAN,

Plaintiff-Appellee,

v

DOUGLAS C. SUTPHIN,

Defendant-Appellant.

UNPUBLISHED

April 8, 2010

No. 289228

Oakland Circuit Court

LC No. 2002-667616-DM

Before: Jansen, P.J., and Murray and Gleicher, JJ.

MURRAY, J. (*concurring*).

I concur in the majority opinion’s decision to affirm the trial court’s order, but would remand for the sole purpose of having the trial court amend its order to require that defendant pay the money directly to plaintiff’s counsel to whom the debt existed. As the majority opinion indicates, it is unclear from the record whether plaintiff’s attorney fee debt was actually discharged through her Chapter 7 bankruptcy. However, even if it had been, that would not impact the trial court’s order because a “Chapter 7 discharge does not actually extinguish a debtors debts; however, he is no longer personally liable for the discharged debts.” *In re Graham*, 297 BR 695, 697 (Bankr ED Tenn, 2003), citing *In re Williams*, 291 BR 445, 446 (Bankr ED Tenn, 2003), in turn citing *Houston v Edgeworth*, 993 F2d 51, 53 (CA 5, 1993). See, also, *Star Phoenix Mining Co v WestOne Bank*, 147 F3d 1145, 1147 n 2 (CA 9, 1998); *In re Castle*, 289 BR 882, 886 (ED Tenn, 2003). Thus, even if plaintiff’s debt to her attorney was discharged in the Chapter 7 proceeding, that did not eliminate the actual debt that existed to the attorney. Therefore, the circuit court was free to determine that defendant should pay the outstanding attorney fees, as long as that decision was supportable under the normal rules governing the award of attorney fees in divorce actions. Since it was, defendant’s argument is properly rejected.

/s/ Christopher M. Murray