

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

TROY M. MARGONI,

Debtor.

Case No. DM 13-90305
Chapter 13
Hon. Scott W. Dales

MEMORANDUM OF DECISION

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

Creditor Krista Derks (the “Creditor”) filed a proof of claim on August 14, 2013 (“Claim No. 12”), seeking to recover past due child support from the estate of chapter 13 debtor Troy M. Margoni (the “Debtor”) in the amount of \$1,814.84. The Clerk reviewed Claim No. 12 and issued a Notice of Defective Claim (the “Clerk’s Notice,” DN 22), stating that the Creditor’s name appeared where the Debtor’s name should have been and that the “[d]ocument needs to be re-filed.” The Creditor did not comply.

Evidently concerned that the Clerk struck Claim No. 12 and that the Creditor did not timely re-file, the Debtor filed a protective claim (“Claim No. 17”), which he purported to amend by filing another claim for \$2,728.21. (“Claim No. 18,” and with Claim No. 17, the “Protective Claim”).

Chapter 13 trustee Barbara P. Foley (the “Trustee”) filed an objection to the Debtor’s Protective Claim, contending that the Protective Claim was untimely under Fed. R. Bankr. P. 3004 (the “Objection,” DN 41). Eventually, the Trustee withdrew the Objection and the Debtor withdrew the Protective Claim. Nevertheless, the Creditor has filed a *pro se* response to the Objection. *See* [Creditor’s] Response to Trustee’s Objection to Claim (the “Response,” DN 49). In the Response, the Creditor asks the court to allow the Protective Claim in the amount of \$2,728.21 as past due child support.

Because the Trustee withdrew the Objection before the Creditor filed the Response, and because the Debtor has withdrawn the Protective Claim, any controversy regarding the Protective Claim is moot, and the court so finds.

This is not to say, however, that the Creditor is not entitled to payment. Indeed, notwithstanding the Clerk's Notice, Claim No. 12 remains on file. No party in interest has filed an objection to that claim, and the Clerk's Notice, which refers to LBR 5005-2(e), did not strike the claim. *Compare* LBR 5005-2(c) (Clerk's authority to strike documents) with LBR 5005-2(e) (Clerk's notice to correct filing). Nothing in the text of LBR 5005-2(e) affects the validity of any filing; instead, the court regards the Clerk's Notice as precatory, designed to encourage the Creditor to correct the defect. *Cf.* Fed. R. Bankr. P. 5005(a)(1) ("The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices."). As the record presently stands, the Creditor has filed a formally defective proof of claim, in the amount of \$1,814.84, and has not corrected the defect despite the Clerk's advice.

Because the Clerk has included Claim No. 12 in the claim register for the Debtor's case, the court will disregard the Creditor's error in identifying herself as the "debtor" on the claim form, in conformance with the harmless error principle of Fed. R. Bankr. P. 9005. The defect, in other words, does not affect any party's substantive rights.

Finally, nothing in this Memorandum of Decision shall be construed as limiting the Creditor's right to amend Claim No. 12 to modify the amount of the claim, or any parties' right to object to Claim No. 12 subject to Fed. R. Bankr. P. 9011 and other applicable law.

NOW, THEREFORE, IT IS HEREBY ORDERED that the relief requested in the Response (DN 49) is DENIED as moot.

IT IS FURTHER ORDERED that all interested parties shall treat Claim No. 12 as if it had named Troy J. Margoni as the debtor.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Troy M. Margoni, Allan J. Rittenhouse, Esq., Barbara P. Foley, Esq., chapter 13 Trustee, and Krista L. Derks.

IT IS SO ORDERED.

Dated August 15, 2014



A handwritten signature in black ink, appearing to read "S. Dales".

Scott W. Dales
United States Bankruptcy Judge