SO ORDERED.

SIGNED this 07 day of December, 2007.

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:	)	
	)	
WILLIAM FREDERICK MUNCK and	)	
SUSAN TAYLOR MUNCK,	)	**Case No. 02-41690**
	)	**Chapter 13**
Debtors.	)	
	)	

MEMORANDUM OPINION AND ORDER DENYING BOTH THE MOTION TO REOPEN AND MOTION FOR SHOW CAUSE ORDER

This matter is before the Court on the Motion by Creditor YoungWilliams Child Support Services to Reopen Case to Determine Dischargeability,[1] and Debtors' Motion for Show Cause Order.[2] YoungWilliams Child Support Services is seeking to reopen this case, which was closed on January 27, 2006, for the purposes of determining whether a debt owed

[1]Doc. 60.

[2]Doc. 72.

to JoAnn McGuire[3] was discharged in this bankruptcy. Debtors are seeking an order to show cause why the West Virginia Department of Health & Human Resources, Bureau of Child Support Enforcement (hereafter West Virginia), should not be held in contempt for taking action to collect the debt in question. Both parties have fully briefed the issues, and the Court is now ready to rule.

This matter constitutes a core proceeding[4] and this Court has jurisdiction to decide it.[5]

I. FINDINGS OF FACT

Debtors filed a voluntary petition for bankruptcy relief under Chapter 13 of the Bankruptcy Code on July 8, 2002. That same day, they filed their Chapter 13 plan, which contained the following provision:

> CHILD SUPPORT: Current child support is generally paid through the plan. If child support arrearages do exist, indicate how they are to be paid: To be paid through plan, once actual amount determined. However, **all debts denominated as "reimbursement support" to be discharged upon completion of the plan.**[6]

The term "reimbursement support" mentioned in the plan clearly referred to a judgment awarded to creditor, JoAnn McGuire, less than eight months earlier, on January 17, 2002 in the Circuit Court of Kanawha County, West Virginia in the amount of $24,252.00.[7] That

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[3]Ms. McGuire is the mother of Debtor William Munck's child.

[4]28 U.S.C. § 157(b)(2)(I) (determinations as to the dischargeability of particular debts).

[5]28 U.S.C. § 1334.

[6]Plan, Doc. 2 (emphasis added).

[7]A copy of the judgment was attached to the State's Motion to Reopen, and shows the final order was entered January 17, 2002. Ms. McGuire's objection to confirmation, Doc. 8, says the judgment was rendered November 29, 2001. The difference in dates is immaterial to this decision. In addition, the former bankruptcy judge then handling this

judgment provided, in paragraph 6: "JOANN MCGUIRE is awarded a judgment against WILLIAM FREDERICK MUNCK from October 1, 1990 to November 30, 2001 in the amount of Twenty-Four Thousand Two-Hundred Fifty Two and 00/100 ($24,252.00) for reimbursement support." This judgment was apparently intended to reimburse Ms. McGuire for the support she had exclusively provided to the child (perhaps with the State's assistance[8]) during the child's minority since, by the time Mr. Munck's paternity was established and the judgment was entered, the child was over eighteen years old.

On August 12, 2002, Ms. McGuire filed an objection to the proposed Chapter 13 plan, claiming that the provision in question sought to discharge her nondischargeable child support obligation.[9] Although Ms. McGuire signed the objection, *pro se*, the style and language of the objection appears to have been drafted by someone with legal knowledge. Although no counsel's name is provided, McGuire's name is typed and underneath it, the words "OF COUNSEL" are indicated.[10]

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matter signed an order on February 14, 2003 holding that a debt in the amount of $947.00 owed to the West Virginia Department of Heath & Human Services was in the nature of a child support arrearage entitled to priority, and Debtors paid that amount through the Chapter 13 plan. *See* Doc. 16 (Order Granting Objection to Claim) and Doc. 52 (Trustee's Final Report). That same order sustained the objection to the portion of the claim that was based on the judgment granted to Ms. McGuire.

[8]Exhibit 3 to YoungWilliams' brief in further support of its Motion (Doc. 81), suggests that Ms. McGuire first applied for public assistance in May 2000.

[9]Doc. 8.

[10]The Court mentions that creditor, JoAnn McGuire, appears to have had legal assistance in preparing her objection because of the oft-repeated standard that the Court will more liberally construe the pleadings of *pro se* litigants. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). A liberal construction was not required, since the pleading was legally precise. In addition, the letters that make up exhibits to Debtors' Brief (Doc. 65), show that McGuire was represented by counsel, Joseph Caldwell, who had encouraged Ms. McGuire to obtain local counsel in Kansas since he was apparently not licensed to practice in Kansas.

To convey why it seems clear that someone with legal knowledge prepared or assisted in the preparation of the Objection, the Court will quote some of the key language. The objection stated "The Circuit Court of Kanawha County, West Virginia, by Order Dated November 29, 2001, entered an Order in the sum of $24,252,00 in favor of JoAnn McGuire for reimbursement support. This sum is nondischargeable under the provisions of 11 U.S.C. § 523 of the Bankruptcy Code." The objection then stated that "To the extent that the Plan attempts to discharge an otherwise nondischargeable claim, the Plan is not filed in good faith and contrary to the applicable statutes of the U.S. Bankruptcy Code." Debtors responded to Ms. McGuire's objection on August 19, 2002, claiming that "JoAnn McGuire is neither 'a spouse, former spouse, or child of the debtor'" and that the judgment entered in her favor in West Virginia was not exempt from discharge under 11 U.S.C. § 523.[11]

The confirmation hearing was held on October 30, 2002. Ms. McGuire's objection to the plan provision providing for the discharge of her debt for reimbursement support was heard. The Court confirmed the plan, overruling Ms. McGuire's objection. The Order Confirming Plan was then entered November 22, 2002.[12] In addition, the Courtroom Minute Sheet entered of record on October 30, 2002 contains the following note: "Claim of $24,000 of Ms. McGuire is not allowed as a claim to be paid through the bankruptcy."[13] In the Order

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[11]Doc. 9. This case was filed before October 17, 2005, when most provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 become effective. All statutory references to the Bankruptcy Code are thus to 11 U.S.C.A. §§ 101 - 1330 (2004), unless otherwise specified. All references to the Federal Rules of Bankruptcy Procedure are to Fed. R. Bankr. P. (2004), unless otherwise specified.

[12]Doc. 12.

[13]Doc. 11, reflecting the name of the court reporting firm that recorded the hearing.

Confirming Plan, the Court specifically "determined that the debtors' Plan meets the requirements of Chapter 13 of Title 11 of the United States." The Court found that "the Plan as ORIGINALLY FILED" should be confirmed."[14] No appeal was ever taken from the order confirming the Chapter 13 plan,[15] Debtors paid off the confirmed plan, and were granted their discharge on November 25, 2005.[16]

JoAnn McGuire was not the only party interested in the child support debt WHO received actual notice of the plan and its provisions. It is undisputed that West Virginia also received actual notice of the bankruptcy, and that specific litigation outside the plan confirmation context should have put them on notice that Debtors had and were still specifically challenging Ms. McGuire's support claim. On January 3, 2003, West Virginia timely filed a proof of claim in the amount of $27,672.27, asserting an unsecured priority claim owed by debtor William F. Munck for "alimony, maintenance or support owed to a spouse, former spouse, or child" and relying on 11 U.S.C. § 507(a)(7) as the basis therefor.[17] Debtors filed a timely objection to that claim, and the Court ultimately split the claim, allowing $947 as a priority debt representing a child support obligation owed by Mr. Munck

[14]*Id.* with emphasis in original.

[15]On October 14, 2004, the Debtors filed an Amended Chapter 13 Plan, which contained the same provisions regarding the reimbursement support judgment as the original plan. Doc. 35. The Amended Chapter 13 Plan was confirmed, without objection, by an order dated November 28, 2004. No appeal of that order was ever filed.

[16]Doc. 54.

[17]Proof of Claim 13-1.

to the West Virginia, and disallowing the rest and remainder of the claim.[18] West Virginia did not appeal that order, either, although the record shows that a copy of the order was mailed to it on February 19, 2003.[19]

West Virginia received all of its allowed payment, but now seeks to collect (on Ms. McGuire's behalf) the amount owed to her as reimbursement for her support of the child during his minority. This is the amount that the plan specifically provided would be discharged. On January 25, 2007, the State of West Virginia, by the Secretary of Kansas Department of Social and Rehabilitation Services ("Kansas SRS"), by and through Carl G. Wheeler, YoungWilliams Child Support Services ("YoungWilliams") Staff Attorney, moved to reopen this bankruptcy case to determine the dischargeability of the debt owed to Ms. McGuire.[20]

After the underlying issue was briefed, the Court stayed its ruling pending receipt of the long-awaited decision by the Tenth Circuit Court of Appeal in the *In re Mersmann* case.[21] While the parties were awaiting that decision, on September 13, 2007, Debtors filed their

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[18]The Order held that the claimed $27,672.27 contained a judgment in favor of Joann McGuire "not the West Virginia Department of Health & Human Resources; and, as such, it was filed out of time and should be denied...." The remainder of the claim, for $947.00, was noted to constitute "child support arrearage" and the order indicated that amount would be paid through the plan. Doc. 16.

[19]Doc. 17.

[20]Although YoungWilliams' role and standing in this proceeding is contested by Debtors, at a minimum it is clear that it is attempting to enforce a debt that was assigned by Ms. McGuire to the State of West Virginia for collection purposes. Therefore, for the purposes of this motion, the Court will allow YoungWilliams to step into the shoes of Ms. McGuire, who was clearly a creditor in this case.

[21]505 F.3d 1033 (10th Cir. 2007).

motion for an order to show cause, claiming that West Virginia should be required to appear before the Court to answer why it began collection efforts against Mr. Munck to collect the very debt that he claimed had been discharged. West Virginia apparently garnished the Social Security Disability payment owed to Debtor William F. Munck in the amount of $235 in August 2007.

YoungWilliams responded, claiming that it had requested, on August 29, 2007, that the Social Security Administration terminate the withholding order pending the decision in this case. YoungWilliams asserts, and Debtor has not contested, that the termination letter had not been sent in time to prevent the initial garnishment of $235, but that all future garnishments have been stopped. YoungWilliams also informed the Court that it would issue an immediate refund of the $235 already withheld. There is nothing in the record to indicate that the refund has not been received.

II. ANALYSIS

A. Motion to Reopen

YoungWilliams claims that if it is allowed to reopen this case, it will be able to demonstrate by a preponderance of the evidence that, pursuant to 11 U.S.C. § 523(a)(5), the debt in question is a nondischargeable child support obligation. Section 523(a)(5) provides:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -
>
> > (5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a

> governmental unit, or property settlement agreement, but not to the extent that–
>
> > (A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt whish has been assigned to the Federal Government or to a State or any political subdivision of such State); or
> >
> > (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

Rule 7001(6) provides that proceedings to determine the dischargeability of a debt are adversary proceedings.

Because this matter is before the Court on a motion to reopen the case to determine the dischargeability of a debt, the Court must decide, before reopening the case, whether YoungWilliams has any possibility of success on its dischargeability claim. Debtors have objected to reopening the case because, among other reasons, they claim the confirmed Chapter 13 plan that specifically called for the discharge of the debt in question is binding upon all parties. For the reasons articulated below, the Court finds that the express terms of Debtors' Chapter 13 plan control this motion. Any attempt to reopen the case for the purpose of litigating the dischargeability of the debt to Ms. McGuire would, therefore, be futile, because any such litigation is barred by the provisions of 11 U.S.C. § 1327(a), which serves the same purpose served by the general doctrine of res judicata. The Court will deny the motion to reopen this case.

The decision by the Tenth Circuit Court of Appeals that is the starting point for any analysis of the binding effect of a Chapter 13 plan confirmed before September 24, 2007, is

In re Andersen.[22] In *Andersen*, the debtor included a provision in her Chapter 13 plan that excepting her student loans from discharge pursuant to § 523(a)(8) would create an undue hardship on the debtor and her dependants, and that confirmation of the plan would constitute a finding to that effect and that the student loan debt would be discharged. The student loan creditor filed an untimely objection to the plan, which was denied because it was untimely, and did not appeal the order of confirmation.

After the debtor received her discharge, the student loan creditor began efforts to collect the student loans in question. The Tenth Circuit Court of Appeals eventually held that the Chapter 13 plan, which clearly indicated that the repayment of the student loans would constitute an undue hardship and would be discharged, was binding on all parties. Thus, the student loan creditor was bound by the plan's terms, and could not collect the discharged debt. In so holding the Tenth Circuit stated:

> Moreover, we have recently said that, upon becoming final, the order confirming a chapter 13 plan represents a binding determination of the rights and liabilities of the parties as ordained by the plan. Absent timely appeal, the confirmed plan is res judicata and its terms are not subject to collateral attack. We therefore agree with the BAP that the order of confirmation is res judicata as to the issue of hardship. Although the provision at issue did not comply with the Code, it is now too late for ECMC to make the argument that HEAF failed to timely raise. This is especially true where, as here, the plan has been confirmed, no appeal challenging the confirmation order was brought, all payments under the plan have been made, and the order of discharge has been entered. The purpose of section 1327(a) is the same as the purpose served by the general doctrine of res judicata. There must be finality to a confirmation order so that all parties may rely upon it without concern that actions which

[22]179 F.3d 1253 (10th Cir. 1999). *Andersen* was overruled by *In re Mersmann*, 505 F.3d 1033 (10th Cir. 2007), but only prospectively. Because the plan in this case was confirmed long before *Mersmann* was decided, *Andersen* is still controlling here.

> they may thereafter take could be upset because of a later change or revocation of the order.[23]

The holding in *Andersen* was then clarified in *In re Poland*.[24]

In *Poland*, the debtor attempted to apply the holding in *Andersen* to her own plan, and included language that simply said her student loans would be discharged upon completion of the plan. In that case, the Tenth Circuit declined to give preclusive effect to the plan provisions, resulting in the student loans being excepted from discharge.[25] *Poland* made clear that it was the factual determination that the student loans would constitute an undue hardship on the debtor that was binding upon the parties under *Andersen*, not the blanket statement that the student loans would be discharged.

The Court finds that *Andersen*, as clarified by *Poland*, controls in this case.[26] Debtors' Chapter 13 plan clearly indicated that "child support" would be paid through the plan once the actual amount was determined, but that "reimbursement support" would be discharged. The plan made clear that it intended to differently treat the "reimbursement support" owed to Ms. McGuire as opposed to the "child support" owed to the State. The "child support"

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[23] *Id.* at 1258-59 (internal citations and quotations omitted).

[24] 382 F.3d 1185 (10th Cir. 2004).

[25] *Id.* at 1189.

[26] YoungWilliams has attempted to limit the holding of *Andersen* and *Poland* only to cases involving student loan debts. The Court finds, however, that although the *Andersen* and *Poland* facts were limited to student loans, the holdings regarding the preclusive effect of a confirmed Chapter 13 plan are much broader. *See, e.g. In re Reed*, 2007 WL 2023577 (Bankr. D. Kan. 2007) (applying holding of *Andersen* in a case involving the treatment of post-petition tax refunds in a Chapter 13 confirmation order), *Onyx Investments, L.L.C. v. Foster*, 2007 WL 1347696 (D. Kan. 2007) (applying holding of *Andersen* in a case involving the treatment of a mortgage in a Chapter 13 plan), *In re Bilal*, 296 B.R. 828 (Bankr. D. Kan. 2003) (applying holding of *Andersen* in a Truth in Lending Act case), and *Adair v. Sherman*, 230 F.3d 890 (7th Cir. 2000) (citing *Andersen* in support of a finding that valuation of collateral contained in a Chapter 13 plan is binding).

would be paid in full by the plan, and it was, and the "reimbursement support" owed to Ms. McGuire would not be paid at all, and would be subject to discharge when Debtors received their discharge.[27]

The differentiation that Debtors' plan was drawing between the State's claim, and Ms. McGuire's claim, was made even more clear in Debtors' response to Ms. McGuire's very specific objection to the Chapter 13 plan, which objection squarely put at issue the legal question whether a plan could discharge "reimbursement support." Debtors' response clearly claimed that because Ms. McGuire was "neither 'a spouse, former spouse, or child of the debtor'" that the judgment she obtained was not excepted from discharge under any subsection of § 523.[28] Judge Pusateri apparently agreed with Debtors' position when he overruled Ms. McGuire's objection to confirmation at the hearing conducted on October 30, 2002.

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[27]Nothing in this opinion should be read to hold that "reimbursement support" such as that ordered payable by Mr. Munck would be properly non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(5) and 1328(a)(2). The Court is not allowed to revisit that issue since it has already been decided in this case, and that decision is the law of this case. *See Underwriters Nat'l Assurance Co. v. N. Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 709 n.16 (1982) (holding "[a]s we have consistently held, the fact that the rendering court may have made an error of law with respect to a particular question does not deprive its decision of the right to full faith and credit, so long as that court fully and fairly considered its jurisdiction to adjudicate the issue."). *See also United States v. Tippett*, 975 F.2d 713, 719 (10th Cir. 1992) (holding that the "res judicata consequences of a final, unappealed judgment on the merits [are not] altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case.") (citing *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981)).

[28]Doc. 9 (which states that "JoAnn McGuire has raised objection to the Plan, claiming that a debt denominated as 'reimbursement support' owed to her is not dischargeable, pursuant to 11 U.S.C. § 523."). The exhibits attached to Debtors' Brief (Doc. 65) also demonstrate that McGuire's counsel and Debtors' counsel exchanged a series of letters concerning the merits of Debtors' argument that the debt in question was not excepted from discharge because of the specific language of § 523(a)(5). There can be no doubt that McGuire and Debtors "actually litigated" this issue, or at least that McGuire had every opportunity to do so. It appears neither she nor counsel on her behalf elected to appear at the confirmation hearing on October 30, 2002, but that does not change the underlying analysis that she had "a full and fair opportunity to litigate the claim" at that time.

Once the Chapter 13 plan was confirmed, and no appeal was taken from the confirmation order that clearly adopted the provisions of the plan, the determination that the debt owed Ms. McGuire did not fit within the scope of § 523(a)(5) became binding upon the parties. As the Tenth Circuit recently reminded us in *In re Mersmann*,[29] "[r]es judicata requires the satisfaction of four elements: (1) the prior suit must have ended with a judgment on the merits; (2) the parties must be identical or in privity; (3) the suit must be based on the same cause of action; and (4) the party must have had a full and fair opportunity to litigate the claim in the prior suit." All of those elements have been satisfied here.

The facts of this case are actually much stronger for Debtors than they were for the debtor in *Andersen*. In *Andersen*, as well as *Poland*, a major stumbling block facing the court in binding the creditors to the adverse plan terms was the fact that those creditors claimed they did not receive sufficient notice through the Chapter 13 plan to protect their interests. In other words, they raised due process concerns.[30] In those cases, the plans were confirmed without objection (or in the case of *Andersen*, with an untimely objection that was disallowed) by the creditor - so the issue was actually decided by default, and not upon a specific objection raised by a creditor, and adjudicated by a court. In this case, however, both creditors (McGuire and West Virginia) had actual and timely notice of the plan

[29]505 F.3d at 1049.

[30]*See In re Mersmann*, 505 F.3d at 1046 (citing *Banks v. Sallie Mae Servicing Corp. (In re Banks)*, 299 F.3d 296 (4th Cir. 2002) for the proposition that although a confirmation order is generally afforded preclusive effect, "we cannot defer to such an order if it would result in a denial of due process." 299 F.3d at 302 (Baldock, J., sitting by designation)).

language that is now at issue, and McGuire filed a timely objection to the plan based on that language.

As a result of her objection, the Court duly considered the position of the creditor and confirmed the plan over Ms. McGuire's objection, implicitly making a determination that the debt in question was not within the exception to discharge found in § 523(a)(5).[31] Ms. McGuire chose not to appeal that decision. YoungWilliams, which is now standing in the shoes of Ms. McGuire, is bound by the Court's decision and cannot seek to collaterally attack the issue after Ms. McGuire failed to protect her own rights by appealing the decision adverse to her.

As noted above, *Andersen* was reversed, prospectively, by *In re Mersmann*, and thus *Andersen* still controls this case because of its pre-September 24, 2007 confirmed plan. Even if *Mersmann* was controlling here, because the actual creditor affected by the discharge provision had a decision entered against her on the very issue of dischargeability raised by her objection, the same result would likely apply. In *Mersmann*, the Tenth Circuit held "[i]n short, if an issue must be raised through an adversary proceeding it will not have a preclusive effect **unless it is actually litigated**."[32] In this case, the issue surrounding the dischargeability of the debt in question was actually litigated, decided in favor of Debtors,

[31]This Court did not order the transcript of the hearing conducted on October 30, 2002, because the courtroom minute sheet is clear on the issue. Neither party apparently thought this issue was significant, and also did not order the transcript.

[32]Emphasis added.

and never appealed. Therefore, even under *Mersmann*, the outcome of this case would not change.

Finally, West Virginia argues that language on the back of the discharge order[33] received by Debtors requires a finding that obligations, like that owed to Ms. McGuire, are not dischargeable. It states "[s]ome of the common types of debts which are not discharged in a chapter 13 bankruptcy case are: a. Domestic support obligations." That order goes on to say **"[t]his information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case."**[34]

This language is not helpful to West Virginia for two reasons. The most important reason is that this issue was raised in *Mersmann*, and rejected by this Court in its original *Mersmann* decision.[35] It was then again rejected by the Bankruptcy Appellate Panel for the Tenth Circuit Court of Appeals in its *Mersmann* decision.[36] It was then rejected by the Court of Appeals for the Tenth Circuit in its *Mersmann* decision.[37] The second reason this

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[33]Doc. 54.

[34]Emphasis in original.

[35]*In re Mersmann*, 305 B.R. 42 (Bankr. D. Kan. 2004) (holding that the confirmation order controls over the discharge order, because discharge order is a form document automatically generated by the clerk and cannot serve to revive an already discharged debt).

[36]*In re Mersmann*, 318 B.R. at 546 (affirming bankruptcy court in holding that "Discharge Order, one of 1,100 form orders automatically generated by the clerk of the bankruptcy court, was not deliberately made, and it did not reflect the intent of the parties or the bankruptcy court reflected in the more specific Confirmation Order.").

[37]*In re Mersmann*, 505 F.3d at 1040 n.5 (stating that "[t]he lower court found that the clerk of the bankruptcy court automatically generates the discharge orders and simply failed to tailor it to the facts of Mersmann's case. Such an error is within the purview of Rule 60(a) motions to amend.").

language is not helpful is that the emphasized language specifically notes that some cases do not fall within the general rules because the law is "complicated" in this area, mitigating any reliance that a creditor could reasonably have regarding such language.

B. Motion for Order to Show Cause

The Court finds that the Motion for Order to Show Cause should also be denied, without prejudice. The record indicates that YoungWilliams attempted to stop collection efforts on this debt prior to the garnishment of Debtor's Social Security Disability check, but that its attempt was a few days late. YoungWilliams did request an immediate reimbursement to Debtor, and there is no claim that any further collection efforts were taken. Therefore, the Court finds that the collection efforts, and any actual damages caused thereby, have been remedied. If Debtors contend that the $235 was never returned, or that there have been any additional garnishments or collection efforts, Debtors should file a partial motion for reconsideration, within 10 days, outlining any such actions and damages.

The Court further finds that Debtors' request for attorney fees and punitive damages is unwarranted in this case. By definition, this area of the law was unsettled, as demonstrated by the fact that the parties agreed this decision should be stayed pending the decision by the Tenth Circuit in *In re Mersmann*, and as demonstrated by the fact that a concurring/dissenting opinion was filed in that case. Accordingly, the Court does not find that the creditor should be punished for attempting to discern whether the confirmed plan

deemed the debt discharged, in light of the uncertain state of the law on this issue in the Tenth Circuit.[38]

IV. CONCLUSION

For the foregoing reasons, the Court finds that the Motion to Reopen should be denied. Although this Court is also no fan of "discharge-by-declaration" plans, when Fed. R. Bankr. P. 7001 instead requires an adversary proceeding, it would be futile to allow YoungWilliams to reopen this matter to litigate the dischargeability of the debt it is attempting to collect on behalf of Ms. McGuire, because that issue was actually litigated here. The Chapter 13 plan provided that the "reimbursement" debt owed Ms. McGuire was not in the nature of child support and was thus dischargeable, and the judge then handling the confirmation proceedings agreed. If any confusion existed on that issue, Debtors again raised that point in their objection to West Virginia's claim, which was partly sustained on that basis. YoungWilliams is bound by the Court's rulings on this issue. Based on this ruling, the Court declines to address any of the other issues raised by Debtors in their objection to the motion to reopen this case.

The Court also finds that the Motion for Order to Show Cause should be denied, subject to a motion for reconsideration in the event Debtor did not receive reimbursement of

[38]It cannot be overlooked that well before the time West Virginia started to collect against Mr. Munck, a panel of the Tenth Circuit Court of Appeals in *In re Poland*, 382 F.3d 1185 (10th Cir. 2004) had concluded that "while binding precedent, *Andersen* was "wrongly decided and should be reconsidered." *Id.* at 1189 n.2.

the $235 that was withheld from his Social Security Disability check while this Motion was pending.

IT IS, THEREFORE, BY THE COURT ORDERED that the Motion to Reopen Case to Determine Dischargeability of Debt[39] is denied.

IT IS FURTHER ORDERED that the Motion for Order to Show Cause[40] is denied.

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[39]Doc. 60.

[40]Doc. 72.