

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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RONALD LEE ANDERSON  
Debtor.

Bankruptcy No. X86-02033F  
Chapter 7

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RONALD LEE ANDERSON  
Plaintiff

Adversary No. X87-0034F

vs.

GENEVA ANDERSON  
Defendant.

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### MEMORANDUM OF DECISION AND ORDER

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The matter before the court is a complaint by the debtor seeking a determination that his indebtedness to Geneva Anderson arising out of a divorce decree is dischargeable under 11 U.S.C. 727(b) and is not excepted from discharge under 11 U.S.C. 523(a)(5).

Trial was held in Fort Dodge, Iowa on October 27, 1988.

The court now issues the following findings of fact and conclusions of law pursuant to Bankr. R. 7052. This is a core proceeding under 28 U.S.C. 157(b)(2)(I).

#### FINDINGS OF FACT

1. Ronald Lee Anderson filed his Chapter 7 bankruptcy case on September 5, 1986.
2. Mr. Anderson is a retired military man having served 20 years in the Navy between 1954 and 1974.
3. He was married in 1967 to Geneva Anderson, the defendant.
4. On July 19, 1985, their marriage was dissolved by a Judgment and Decree entered in the Iowa District Court for Plymouth County. As part of the Judgment and Decree, the Court adopted the Stipulation entered into by the parties as to property rights, alimony, attorneys' fees, Court costs, and other matters.
5. The Stipulation as adopted by the state court provided that neither of the parties would have an award of alimony.
6. The Stipulation and Decree further divided certain property of the marriage and made other distributions including the following:
  9. The Respondent [Ronald Lee Anderson] is specifically awarded all of his military retirement pay and no division is made herein of said military retirement pay.

10. Respondent [Ronald Lee Anderson] hereby agrees to voluntarily elect to provide survivor benefit plan coverage for the Petitioner [Geneva Anderson] as his former spouse after this dissolution under the terms of the Uniformed Services Former Spouses' Protection Act. After the entry of a Decree of the Court approving and incorporating in said Decree this written Stipulation, the Respondent shall execute any and all forms, election documents, or other documents necessary to elect said former spouse coverage under the Survivor Benefit Plan, and shall forward said documents to the Navy Finance Center to the appropriate authority.
7. On August 12, 1985, Ronald Anderson and Geneva Anderson each executed an "Election Statement for Former Spouse Coverage pursuant to the Stipulation. The election was forwarded to the Navy in compliance with the decree in order to provide Survivor Benefit Plan (PLAN) coverage.
8. When Anderson retired from the Navy in 1974, he began receiving monthly retirement payments of approximately \$360.00. Later increases in that payment were due to cost of living adjustments. Following the election, the Navy deducted from the retirement payments sums between \$168.00 and \$180.00 per month to pay for the plan.
9. No payments are presently being made to Geneva Anderson under the plan and none would be made until Ronald Anderson's death and then only if she survives him.
10. In addition to the retirement pay, Ronald Anderson receives pay from his employment as a maintenance man. He receives between \$1,100 and \$1,150 per month from that position during summer months and approximately half of that amount during winter months.
11. Ronald Anderson testified that the survivorship benefit plan was agreed to by him as part of the dissolution stipulation in order to even out the property settlement. He further testified that during the negotiations leading to the Stipulation, he had requested alimony. Geneva Anderson agrees essentially with this characterization and states that her earnings were in excess of his earnings at the time of the divorce.
12. Geneva Anderson is a registered nurse and has been so employed for the past 20 years.
13. Ms. Anderson had originally requested as a part of the division of property, one-half of Ronald Anderson's Navy retirement entitlements. She agreed to drop this demand in return for coverage under the survivorship benefit plan.
14. Mr. Anderson's income from retirement payments has risen to \$850 per month with approximately 20% of that figure being paid to federal and state taxes. As a result of the withholding by the government for taxes and the survivorship benefit plan payments, he presently receives approximately \$490 per month. The amount paid for the plan is now approximately \$200 per month.

## DISCUSSION

Plaintiff-debtor argues that the survivorship benefit plan provided to Geneva Anderson by the dissolution decree is a property settlement. Therefore, debtor argues that any post-petition payments to be subtracted from his retirement pay are dischargeable obligations and are not excepted from discharge under 11 U.S.C. 523(a)(5).

Defendant Geneva Anderson, appearing pro se, does not strenuously dispute that the election of the survivorship benefit plan was property settlement, although she does state she will need the money for her retirement.

The crux of her defense, however, is that Anderson's election to create for her an interest in the survivor benefit plan was irrevocable and may not now be changed.

From the evidence--primarily the Stipulation filed in the dissolution proceeding and the testimony of Ronald Anderson and Geneva Anderson--this court finds and concludes that Ronald Anderson's agreement to elect plan coverage for Geneva Anderson, which agreement was embodied in the dissolution decree, was part of a property settlement and was not alimony or support within the meaning of 11 U.S.C. 523(a)(5).

It does not necessarily follow, however, that because the election was part of a property settlement, that post-bankruptcy reductions in his retirement pay are dischargeable debts.

Resolution of this case turns in part on whether or not Ronald Anderson's election of the plan and the withholding of money from his retirement payments, pursuant to the election, are revocable.

If revocable, then any continuing obligation to pay for the plan as a property settlement, is dischargeable as an obligation of the debtor under 11 U.S.C. 727.

If Ronald Anderson may not revoke his election to create the plan, then although the plan was part of a property settlement, it is not a continuing obligation which may be discharged.

In other words, if debtor has irrevocably transferred a property interest by virtue of the plan election, then he has fulfilled his obligation under the decree and may not now discharge it.

Ronald's election to provide a survivorship benefit plan to Geneva pursuant to the stipulation and decree was made under 10 U.S.C. 1447, et. seq., and particularly 10 U.S.C. 1448(b)(2).

The cost of the plan is financed by a reduction in Ronald Anderson's retirement pay pursuant to 10 U.S.C. 1452(c).

A change in the election originally made under 10 U.S.C. 1448(b) may only be made pursuant to 10 U.S.C. 1450(f)(1) and (f)(2). These subsections are set out in pertinent part as follows:

(f)1) A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child. The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under the first sentence of this paragraph. Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make an election under such section).

(2) A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and

who makes an election pursuant to such order or agreement, may not change such election under paragraph (1) unless--

- A. in a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person--
  - i. furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and
  - ii. certified to the Secretary concerned that the court order is valid and in effect; or

The "court order" which modifies the provision of all previous court orders as referred to in 10 U.S.C. 1448(f)(2)(A)(i) is defined in 10 U.S.C. 1447(8) as follows:

The term "court order" means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, or annulment or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

Based on the statute's definition of "court order" as found in 10 U.S.C. 1447(8), a court order does not mean a bankruptcy discharge order or a judgment determining dischargeability of debt.

It appears, therefore, that Ronald Anderson may only change his plan election if the change is permitted by a state court order modifying the property settlement.

Generally, a property division by a dissolution decree is not subject to change on a petition for modification absent extraordinary circumstances. In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980).

These extraordinary grounds include fraud, duress, coercion, mistake or other grounds "as would justify the setting aside or changing a decree in any other case." Knipfer v. Knipfer, 259 Iowa 347, 144 N.W.2d 140, 145 (Iowa 1966).

Debts created by dissolution decree which are in the nature of property settlements are dischargeable in bankruptcy. In re Anderson, 62 B.R. 448, 454 (Bankr. D. Minn. 1986).

A "debt" as defined in the Bankruptcy Code is liability on a claim. 11 U.S.C. 101(11).

A "claim" is defined as either a "right to payment" or the right to an equitable remedy for breach of performance if such breach gives rise to a right to payment. . . ." 11 U.S.C. 101(4)(A) and (B).

The divorce decree, so far as it regarded the survivorship benefit plan, created a "claim" within the meaning of the Bankruptcy Code under 11 U.S.C. 101(4)(B). Ronald Anderson did not breach his obligation of performance, however, and did elect to provide the coverage to Geneva Anderson.

Had he not done so, Geneva Anderson could have obtained coverage under the survivorship benefit plan by appropriate filings with the Secretary under 10 U.S.C. 1450(3)(A).

This court concludes that Ronald Anderson's election pursuant to the divorce decree transferred to Geneva Anderson a property right which could only be revoked under state law by a showing of extraordinary grounds.

Ronald Anderson, however, has not raised such grounds but instead seeks discharge of a property settlement "debt" arising from the decree.

Ronald Anderson, having performed under the decree by the execution of election, however, has no "debt" which he may now discharge. See Chandler v. Chandler (In re Chandler), 805 F.2d 555, 557 (5th Cir. 1986), reh'g denied, 810 F.2d 198 (1987), cert. denied, 107 S.Ct. 2180 (1987).

### CONCLUSIONS OF LAW

Ronald Anderson's election to provide a survivorship benefit plan to Geneva Anderson pursuant to Iowa dissolution decree is not a "debt" within the meaning of 11 U.S.C. 727(b).

### ORDER

IT IS THEREFORE ORDERED that the complaint of Ronald Anderson against Geneva Anderson is hereby dismissed at plaintiff's cost.

SO ORDERED ON THIS 15th DAY OF NOVEMBER, 1988.

William L. Edmonds  
Bankruptcy Judge