

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

CHERYL A. STRAUB

Bankruptcy No. X87-01828S

Debtor.

Chapter 7

ORDER RE: MOTION FOR SUMMARY JUDGMENT

The matter before the court is a motion for summary judgment filed by the trustee, Wil Forker. A hearing was held in Sioux City, Iowa on October 6, 1988.

The parties have filed briefs in support of their positions. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

I.

On August 27, 1987, the debtor filed a Chapter 7 bankruptcy petition and schedules. Among the property claimed as exempt on Schedule B-4 were: "Payments made to the debtor pursuant to a matrimonial settlement, used to support debtor's child." The amount claimed as exempt was \$15,411.74.

The debtor claims that the matrimonial settlement is exempt under Iowa Code § 627.6(8)(d).

The marriage of the debtor and her ex-husband, Richard Straub, was dissolved pursuant to a divorce decree entered by a New York court in or around November, 1982. On November 23, 1982, the debtor and Richard Straub entered into a matrimonial settlement agreement. Among other things, the settlement agreement provided that Richard Straub would pay to debtor Cheryl Straub \$17,000.00 payable in equal monthly installments of \$164.04 for a term of 20 years.

The payment to the wife was calculated by determining her interest in real property and an annuity. An initial payment of \$5,000.00 was made at the time of the signing of the agreement.

The actual payment to the wife was \$134.04 per month, as the agreement provided for \$30.00 to be deducted monthly for a college expense reserve fund for the debtor's daughter. Richard Straub was to contribute \$60.00 monthly to the fund.

The debtor and her ex-husband had one child born of their marriage. Christine Straub was born June 19, 1971. She resides with her father as provided by the decree, subject to visitation with the debtor during summer months and Christmas holidays. The agreement provides: "Each party shall be responsible for the maintenance and support of the child when the child is residing with that party."

Paragraph 2 of the settlement agreement provides: "ALIMONY AND MAINTENANCE. The wife represents that she is capable of furnishing her own support and will not seek any payment from her husband for her alimony or maintenance."

On her schedule of Current Income and Current Expenditures, the debtor stated that she is employed as a teacher at the Lake View-Auburn Consolidated School District. Her current take-home pay was estimated at \$1,076.64 per month. The only other income included on the schedule was the monthly payment received from her ex-husband.

The trustee contends that his objection to exemption should be sustained since the debtor's interest in the matrimonial settlement agreement is in the nature of a property settlement and not support or alimony.

Trustee also contends that there is no genuine issue as to any material fact and that he is entitled to a judgment as a matter of law. The debtor agrees there is no dispute as to facts, but argues that the trustee is not entitled to judgment as a matter of law since the facts show that the debtor's interest in the matrimonial agreement is in the nature of support.

The debtor contends that even though the matrimonial agreement specifically states that there are no alimony payments, the monthly payments received by the debtor are in essence support payments and therefore are exempt under Iowa Code § 627.6(8)(d). The debtor argues that the bankruptcy court should look to the substance of the obligation rather than the labels imposed by the agreement itself.

II.

Summary judgment is proper when no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. Sommers v. Budget Marketing, Inc., 667 F.2d 748, 750 (8th Cir. 1982). The court must consider the facts in a light most favorable to the non-movant and the non-movant is entitled to all reasonable inferences which may be derived from the underlying facts as shown by the pleadings, depositions and affidavits presented. Sommers, 667 F.2d at 749-50. Summary judgment will be

denied if the moving party fails to show the absence of a genuine issue of material fact. Foster v. Johns-Manville Sales Corp., 787 F.2d 390, 393 (8th Cir. 1986).

III.

Iowa Code § 627.6(8)(d) provides:

"A debtor who is a resident of this state may hold exempt from execution the following property:

8. The debtor's right in:

d. Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and dependents of the debtor."

In order to determine if the matrimonial settlement payments are exempt under Iowa Code § 627.6(8)(d), the court must first determine whether the payments are alimony, support, or separate maintenance or whether the payments are in the nature of a property settlement.

It is well settled, for purposes of dischargeability under 11 U.S.C. § 523(a)(5), that federal law determines whether payments under a divorce decree are in the nature of support, alimony or child support. See H. Rep. No. 595, 9th Cong., 2d Sess. 364, reprinted in 1978 U. S. Code Cong. & Ad. News, 5787, 5865; In re Ramey, 59 B.R. 527, 529-30 (Bankr. E.D. Ark. 1986); In re Edwards, 33 B.R. 942, 946 (Bankr. N.D. Ga. 1983). However, in this case, there is no dischargeability issue regarding the monthly payments. The question before the court is whether these payments are exempt under Iowa law.

While alimony payments are exempt under Iowa law, payments which are part of a property settlement are not. Iowa Code § 627.6(d)(8).

The purpose of an exemption statute is to provide the debtor with a means to support himself and his family. Shepard v. Findley, 204 Iowa 107, 214 N.W. 676, 678 (1927).

Alimony has been defined by the Iowa courts as "an allowance to the wife from the husband for her support in a divorce action, in lieu of the legal obligations of the husband to support her." Knipfer v. Knipfer, 144 N.W.2d 140, 143 (1966); In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

The exemption statute and support statute (Iowa Code § 598.21(3)) are both intended to provide support to an individual.

Property settlements and alimony are closely related. However, they are distinguishable and serve different purposes. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The division of property is based on each spouse's right to a joint and equitable share of jointly accumulated property. Id. at 437. Alimony is for the purpose of spousal support. Knipfer v. Knipfer, 144 N.W.2d 140, 143 (Iowa 1966).

In order to determine whether payments constitute alimony or a property settlement, the courts look to all relevant factors. Some of these factors include the provisions of the dissolution agreement, circumstances under which agreement was made, and the nature and value of the property owned and divided between the parties. Knipfer v. Knipfer, 144 N.W.2d 140, 143 (Iowa 1966).

The issue of whether a debt is in the nature of alimony, maintenance or support depends on the individual circumstances of each case. In re Edwards, 33 B.R. 942, 946 (Bankr. N.D. Ga. 1983); citing In re Hoover, 14 B.R. 592 (Bankr. N.D. Ohio 1981) affirmed 38 B.R. 325 (N.D. Ohio 1983); In re Brace, 13 B.R. 551 (Bankr. N.D. Ohio 1981); In re Evans, 2 B.R. 85 (Bankr. W.D. Mo. 1979).

The tax courts have relied on a seven-factor test to determine whether payments are part of a property settlement or alimony for tax purposes. See Beard v. Commissioner of Internal Revenue, 77 T.C. 1275, 1284-85 (1981).

This court believes that these same seven factors are relevant to the determination of whether payments are in the nature of support and therefore eligible for exemption.

The seven factors used by the tax court include: (1) the intent of the parties; (2) whether valuable property rights were surrendered in exchange for the payments; (3) whether the payments are subject to termination upon death or remarriage; (4) whether the payments are secured; (5) whether the payments equal approximately one-half of the property accumulated by the parties during the marriage; (6) whether the need of the recipient was a factor in determining the amount payable; (7)

whether there was a separate provision for support and/or division of property in the remainder of the decree or agreement. Schatten v. United States, 746 F.2d 319, 322 (6th Cir. 1984) citing Beard v. Commissioner of Internal Revenue, 77 T.C. 1275, 1284-85 (1981).

The matrimonial agreement entered into by the debtor and her ex-husband specifically provided that "the wife represents that she is capable of furnishing her own support and will not seek any payment from her husband for her alimony or maintenance." (Matrimonial Agreement paragraph 2). This language supports the conclusion that the debtor and her ex-husband never intended that any payments made under this agreement were for her support, as the debtor represented she was capable of providing for her own support.

The property owned by the debtor and her ex-husband at the time of their divorce included: (1) real property--a house owned by the parties, as tenants by the entirety in the State of New York, which was subject to a mortgage loan; (2) personal property--furniture and furnishings used by the parties at their marital residence; (3) motor vehicles; (4) annuity rights--ex-husband's annuity in retirement programs for employees of the State University of New York.

There were no outstanding loans or indebtedness other than the mortgage loan at the time of the divorce.

The matrimonial agreement provided that the debtor would be paid by her ex-husband the following amounts:

Interest in real property	\$13,000.00
Interest in annuity	9,000.00
Total	\$22,000.00.

The amount paid for the interest in real property was represented as payment to the wife of one-half of the present equity of the house (\$10,000.00) plus reimbursement to Mrs. Straub of her \$3,000.00 "contribution," presumably toward the house. The payment for the interest in the annuity represented one-half of its current value.

The matrimonial agreement provided that the payments to be made by the husband to the wife would be payable in installment payments for a term of twenty years bearing interest on the unpaid balance at the rate of 10% per annum.

Each spouse kept one car for his/her use. The furniture and other home furnishings were divided between the debtor and her ex-husband.

These provisions of the agreement indicate that the debtor and her ex-husband intended that the payments would represent her interest in property rather than support payments. In exchange for the installment payments, the debtor surrendered valuable property rights in the real estate and annuity contracts.

It is also important to note that the payments equal approximately one-half of the property accumulated by the parties during the marriage, which is another factor courts often look at in determining whether a payment was intended to be alimony or property settlement.

There is no indication that the need of the recipient was a factor in determining the amount payable. The agreement specifically states that the debtor was capable of supporting herself and therefore was seeking no alimony.¹

¹ The court does note that the agreement provided for a hiatus in deductions from the monthly settlement payments for the college fund if her gross income fell below a certain level.

The payments under the matrimonial agreement would be an obligation of the Richard Straub estate in event of his death prior to full payment. Additionally, the agreement provides that in the event of the debtor's death prior to full payment of Richard Straub's obligation, any balance must be paid for the benefit of the child.

The fact that the payments will not end upon the death of either party provides support for the conclusion that the payments were intended as a property settlement and not as support. See Elizabeth Warren v. Frederick Taff (In re Taff), 10 B.R. 101, 104 (Bankr. D. Conn. 1981).

The fact that the payments were to be made over time rather than in a lump sum is immaterial in determining whether the payments under the matrimonial agreement were alimony or a property settlement. In re Marriage of Woodward, 229 N.W.2d 274, 279 (Iowa 1975). There is no indication that these payments were intended to be for the support of the debtor. The facts in this case indicate that the payments to the ex-wife were for an equal distribution of property and therefore intended to be a property settlement rather than alimony or support.

There is no genuine issue as to any material fact in this case and therefore the trustee is entitled to judgment that the property is not exempt under Iowa law.

ORDER

IT IS ORDERED that the trustee's motion for summary judgment is granted.

IT IS FURTHER ORDERED that the trustee's objection to Cheryl A. Straub's claim of exemption to the matrimonial settlement payments is sustained. Judgment shall enter accordingly.

SO ORDERED THIS 17th DAY OF NOVEMBER 1988.

William L. Edmonds
Chief Bankruptcy Judge