

Appeal History:

aff'd, [C90-3029](#) (N. D. Iowa Dec. 31, 1990) (Hansen, J.),
aff'd, 983 F. 2d 104 (No. [91-1152NI](#))(8th Cir. 1992),
cert. denied, 113 S. Ct. 2423 (1993)

In the United States Bankruptcy Court

for the Northern District of Iowa

Richard Morel
Debtor(s)

Bankruptcy No. X88-01160M
Chapter 7

KATHRYN E. MOREL
Plaintiff(s)

Adversary No. X-89-0053M.

vs.

RICHARD J. MOREL
Defendant(s)

MEMORANDUM OF DECISION AND ORDER RE: DISCHARGEABILITY

The matter before the court is a complaint by Kathryn E. Morel seeking a determination of the dischargeability of a debt arising from a marriage dissolution decree. Trial was held in Mason City, Iowa on February 12, 1990. The court now issues its 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

The 23-year marriage of Kathryn and Richard Morel was dissolved by the Iowa District Court for Cerro Gordo County on April 14, 1977. The decree awarded Kathryn Morel \$200.00 per month child support, \$500.00 per month in alimony for eight months, and a property settlement of \$175,000.00 of which \$50,000.00 was to be paid in 1977 with the remainder to be paid in annual \$25,000.00 installments until fully paid. Kathryn

Morel's alimony was increased by the Iowa Court of Appeals to \$1,000.00 per month and it was to be paid until she remarried or either party died. The property settlement was increased to \$200,000.00, but annual payments were reduced to \$15,000.00.

On May 16, 1989, the District Court modified the dissolution decree by reducing alimony payments to \$600.00 per month. No subsequent modifications have been made with respect to the decree. Because the parties' children have all reached the age of majority, child support is not an issue.

Kathryn Morel was not employed full time during the Morels' marriage. She testified that although she worked approximately two days a week in the family jewelry business and participated in the management of family rental property, her main responsibility was as a homemaker. Shortly after the divorce, she invested money received as a result of the decree in four rental units--three houses and a four-unit building. These units were purchased between 1979 and 1980. She expended additional time and money on the renovation of these properties to prepare them for rental. In recent years, the venture has failed. She has been forced to sell three of the four properties at losses; the remaining unit has been a small and unreliable source of income. Due to property tax arrearages, this last rental property, as well as Kathryn Morel's own house, may soon be foreclosed upon.

Except for managing these rental properties and holding a temporary sales job in 1988, Kathryn Morel has not been employed since the divorce. She has a high school education, and has

taken classes in geriatric care and in computer operation, but she is unable to perform jobs in either field effectively due to her arthritis. She states that this arthritic condition has also prevented her from taking jobs in retail sales, the only other field in which she has prior experience. In addition to arthritis, Kathryn Morel has osteoporosis and is in the early stages of glaucoma. She concedes that none of these conditions had been diagnosed at the time of the entry of the dissolution decree. There is no evidence that they existed at that time.

At the height of his success, Richard Morel owned five jewelry stores located in Iowa and Minnesota. However, increased competition and high interest rates on business loans forced him out of the business in 1986. He has been self-employed since that time, working sporadically as a sales consultant while seeking more permanent employment. Richard Morel filed his chapter 7 bankruptcy on August 1, 1988. He currently earns approximately \$22,000.00 a year after taxes.

Although both parties dispute the amount of the unpaid portion of the property settlement, this issue is not presently before the court. The only issue the court need determine is whether this remaining balance of the state court property settlement is dischargeable in bankruptcy.

DISCUSSION

Kathryn Morel contends that the property settlement payments are now and always have been necessary for her maintenance and

support and, therefore, the remaining balance of the property settlement is not dischargeable by virtue 11 U.S.C. § 523(a)(5).

Richard Morel argues that maintenance and support were provided for in the dissolution decree through alimony and child support payments, and that the property settlement was simply intended to be a division of the marital property unaffected by considerations of maintenance and support. As such, he contends the property settlement is dischargeable.

Only obligations in the nature of alimony, maintenance, or support are non-dischargeable under § 523 (a)(5). Voss v. Voss (In re Voss), 20 B.R. 598, 601 (Bankr. N.D. Iowa 1982). The burden of proving that this property settlement was in the nature of support falls on Kathryn Morel. Id.

Whether a particular debt is a support obligation or part of a property settlement is a question of bankruptcy law, not state law. Williams v. Williams (In re Williams), 703 F.2d 1055, 1056 (8th Cir. 1983); In re Voss, 20 B.R. at 601. Therefore, bankruptcy courts are not bound by the characterization

of an award in the divorce decree; the crucial issue is the function the award was intended to serve. In re Williams, 703 F.2d at 1057.

In determining this intent, the court must look to all the circumstances surrounding the creation of the liability. Seablom v. Seablom (In re Seablom), 45 B.R. 445, 450 (Bankr. D. N.D. 1984). To this end, both parties have cited the four factors set forth in the Voss case. These factors are as follows:

- (1) Whether the payments are necessary for the economic safety of the debtor's dependents;
- (2) The relative earning power of the spouses and whether the payments in question equalize the differences in income;
- (3) Whether the payments are made directly to the dependent spouse; and
- (4) Whether the payments were extended over a period of time.

In re Voss, 20 B.R. at 602. While relevant, the court in Voss did not intend these four factors to be an exclusive list of considerations. The court stated in footnote 4 of its decision that several other factors were not considered because the effect of their application was difficult to determine given the facts of the case. In re Voss, 20 B.R. at 602. Another factor mentioned was whether or not payments to the dependent spouse terminate upon the death of either party or upon the remarriage of the dependent spouse. Id. When relevant, this factor has also been incorporated into the Voss test. See Soldwisch v. Soldwisch (In re Soldwisch), Bankr. No. 85-0258OW, Adv. No. 860104W, slip op. no. at 5 (Bankr. N.D. Iowa, May 22, 1987). All five of these factors are relevant in the case at bar.

Although these property settlement payments may currently be necessary for the economic well being of Kathryn Morel, the needs and financial circumstances of the parties subsequent to the entry of the dissolution decree are irrelevant to this inquiry. Draper v. Draper, 790 F.2d 52, 54 (8th Cir. 1986); Harrel v Harrel (In re Harrel), 754 F.2d 902, 907 (11th Cir. 1985). At the time of the decree, the property settlement was not intended for the economic safety of Richard Morel's spouse and minor children; the alimony and child support payments ordered in the dissolution decree attended to these financial needs. Together, pursuant to the Appeals Court modification, these support obligations originally totaled \$14,400.00 annually.

The relative earning capacity of each party was taken into consideration by the Iowa Court of Appeals in fixing Kathryn Morel's alimony at \$1,000.00 per month. There was no discussion of relative incomes in the fixing of the property settlement amount. Rather, this figure was arrived at by examining the values of the family business enterprises. This is further indicia that while the decreed alimony payments were in the nature of support, the property settlement was not.

The fact that all property settlement payments were to be made directly to Kathryn Morel over an extended period of years does not necessarily indicate that the award was for support. Due to the size

of the property settlement and the divorce court's determination that the value of the jewelry business would be greater if it remained intact as an operating entity, the court finds that this arrangement was primarily for reasons of convenience and feasibility and not because the payments were intended as support payments. See In re Soldwisch, Bankr. No.

85-0258OW, Adv. No. 86-0104W, slip op. no. at 6.

Finally, the alimony obligation is terminable upon the death of either party or upon the remarriage of Kathryn Morel, while no such limitation is placed upon the property settlement obligation. The dissolution decree orders the payment of this property

settlement regardless of death or remarriage. "Generally, an obligation which does not terminate upon death or remarriage is viewed by bankruptcy courts as a property settlement regardless of how labeled." In re Seablom, 45 B.R. at 450. See also Sharp v. Hysock (Matter of Hysock), 75 B.R. 113, 114 (Bankr. D. Del. 1987); Boyd-Leopard v. Douglas (In re Boyd-Leopard), 40 B.R. 651, 655-6 (Bankr. D. S.C. 1984).

There is little ambiguity in the decree with respect to the nature of this property settlement. The Iowa courts and the parties themselves have until now never treated this property settlement as a support obligation. In the original dissolution decree, the Iowa district court in its findings of fact stated that:

The court concludes that any property settlement should leave the business in the hands of the respondent, and that any property settlement should involve payments of cash to petitioner within the capacity of the respondent to do so.

Petitioner has a need for cash for her support until such time as she can arrange her financial affairs to provide her a regular income, and the court concludes that alimony for a short period of time would be proper.

Plaintiff's exhibit 1, page 5. The dissolution decree itself evinces a distinction between the division of property and an alimony obligation based on Kathryn Morel's need for financial support. This distinction has not been affected in any way by subsequent appeals and modifications.

Although the court is sympathetic to Kathryn Morel's declining health and financial difficulties, it cannot ignore the plain

language and intent of the dissolution decree. The property settlement in the Morels' dissolution decree was not in the nature of a support obligation, and therefore it is dischargeable under 11 U.S.C. § 523(a)(5).

ORDER

IT IS THEREFORE ORDERED that the unpaid balance of the property settlement between Richard Morel and Kathryn Morel is dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(5). Judgment shall enter that the unpaid balance of the \$200,000.00 obligation of Richard J. Morel to Kathryn E. Morel arising out of Equity Case No. 1414 in the Iowa District Court for Cerro Gordo County is discharged.

SO ORDERED THIS 1st DAY OF MARCH, 1990.

William L. Edmonds

Chief Bankruptcy Judge

In the United States District Court

For the Northern District of Iowa

Central Division

IN RE:

RICHARD J. MOREL,
Debtor.KATHRYN E. MOREL,
Plaintiff-Appellant.

AFFIRMING

BANKRUPTCY COURT'S

vs.

3029

No. [X88-01160M](#)RICHARD J. MOREL,
Defendant-Appellee.

ORDER

DECISION
No. C90-

Bankruptcy

This matter is before the court on appellant Kathryn E. Morel's appeal, filed April 4, 1990, from a decision of the bankruptcy court(fn.1) entered March 1, 1990. Appellee Richard J. Morel resists the appellant's appeal and urges this court to affirm the bankruptcy court. Both sides have filed briefs outlining their arguments.

This court has carefully reviewed the record on appeal and has also carefully studied the briefs filed by the parties. Finding no error in the well reasoned opinion of the bankruptcy judge, this court determines that it could add little to this case by a separate opinion coming to the same legally warranted conclusions. The court also rejects appellant's argument that 11 U.S.C. 5 523(a)(5) violates the Constitution of the United States. Accordingly,

IT IS ORDERED:

The decision of the bankruptcy court entered March 1,

1990, is hereby affirmed.

Done and Ordered this 31st day of December 1990.

David R. Hansen, Judge, UNITED STATES DISTRICT COURT

1 The Honorable William L. Edmonds, United States Bankruptcy Judge.

United States Court of Appeals

For The Eighth Circuit

No. 91-1152NI

In re Richard J. Morel,

Debtor.

Kathryn E. Morel,
Appeal from the United

District Court
Appellant,
Northern District

v.

Richard J. Morel,
Bankruptcy No. [X88-01160M](#)

Appellee.

On
States
for the
of Iowa.

Submitted: November 9, 1992
Filed: December 30, 1992

Before RICHARD S. ARNOLD, Chief Judge, LAY, Senior Circuit Judge, and LOKEN, Circuit Judge.

RICHARD S. ARNOLD, Chief Judge.

This appeal is brought by Kathryn E. Morel, former wife of Richard J. Morel, against her former husband, who is now in bankruptcy. The question presented is whether the unpaid portion of a property settlement embodied in the parties' divorce decree is dischargeable in bankruptcy. The Bankruptcy Court(fn.1) held in favor of the debtor, finding that the obligation in question was not in the nature of alimony, maintenance, or support, within the meaning of 11 U.S.C. S 523 a)(5). The District Court2 affirmed, and so do we.

1 The Hon. William L. Edmonds, United States Bankruptcy Judge for the Northern District of Iowa.

2 The Hon. David R. Hansen, United States District Judge for the Northern District of Iowa. Judge Hansen is now a United States Circuit Judge for the Eighth Circuit.

The issue turns on the intention of the parties, which is a question of fact. Williams v. Williams, 703 F.2d 1055, 1057-58

(8th Cir. 1983).(fn.3) Our review, like that of the District Court on the initial appeal, must be conducted according to the clearly-erroneous standard. Mrs. Morel argues for a different standard of review, but the Williams case states clearly that "[a] finding of fact on (the question of support) may be set aside by the District Court or by us only if clearly erroneous." Id. at 1058. This holding binds this panel. We have no power to change it.

Under the statute, the question is whether the debt was "for alimony to, maintenance for, or support of" the debtor's former wife. 11 U.S.C. § 523(a)(5). The opinion of the Bankruptcy Court fully explains why the debt does not fall within this category. The decree of dissolution of marriage contains a separate provision for alimony, payable until the death of either party, or until the remarriage of the former wife. The obligation to pay the property settlement was partly in a lump sum and partly periodic, but it was unconditional. That is, the obligation did not cease upon the death or remarriage of either spouse.⁴ These factors, along with others mentioned in the opinion of the Bankruptcy Court, point clearly

3 The decree in Williams was based upon an agreement by the parties to the divorce proceeding that was approved by the divorce court. In this case, the decree was the culmination of contested divorce proceedings. Although the inquiry must necessarily focus more upon the intent of the court in a contested proceeding, the issue for the Bankruptcy Court under § 523(a)(5) remains one of intent.

4 The state trial court ordered child support of \$200 a month, alimony for eight months at \$500 a month, and a property settlement of \$175,000. The Iowa Court of Appeals increased the property settlement to \$200,000. It also increased the alimony from \$500 to \$1,000 a month and made it payable until Kathryn's remarriage or the death of Kathryn or Richard.

towards the conclusion that Court reached.

Moreover, we note our usual practice of according special deference to a finding of fact as to which two lower courts have concurred. Such a finding has already received one appellate review as of right, and it comes to this Court doubly fortified. See Judge v. Production Credit Assoc., 969 F.2d 699, 700 (8th Cir. 1992) (per curiam); In Re Schwen's, Inc., 693 F.2d 48, 49 (8th Cir. 1982)(per curiam).

The former wife also argues that the statute authorizing discharge of property-settlement agreements is unconstitutional under the Due Process and Takings Clauses of the Fifth Amendment. As to due process, her argument is procedural. She says she did not get adequate notice in the Bankruptcy Court of her former husband's efforts to secure a discharge. We disagree. Ample notice of the request for discharge was given to Mrs. Morel. A trial of the facts was held. Legal arguments were made and considered.

As to the Takings Clause issue, the argument is that contracts arising out of the dissolution of a marriage should be given a special status, different from that of other contracts. We agree that the former spouse's interest can easily be categorized as property, and that, in a sense, it has been taken from her. The effect of the discharge is to destroy the interest, to reduce it to nothing. The taking, however, is not for public use. The government does not get the property. It simply disappears, as a result of long standing policy, expressly authorized by the Constitution, Article 1, Section 8, cl. 4. The existence of this power has been long accepted and widely known. It can rightly be regarded as a condition that inheres in every contract creating a debt. And, in any event, even if the Takings Clause

argument should succeed, it would not prevent the discharge. It would merely give the former wife an action against the United States to recover the fair market value of her former property interest.

Affirmed.

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