

Appeal History:

aff'd, Civil No. [1-91-4088](#) (N. D. Iowa March 16, 1992) (O'Brien, J.)

In the United States Bankruptcy Court
for the Northern District of Iowa
Western Division

THOMAS R. DENNISON <i>Debtor(s).</i>	Bankruptcy No. X90-01365S Chapter 7
MARCI DENNISON <i>Plaintiff(s)</i>	Adversary No. X90-0227S
vs.	
THOMAS R. DENNISON <i>Defendant(s)</i>	

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

Marci Dennison seeks a determination that debtor's obligation to her to make loan payments on her automobile is nondischargeable. Trial was held on June 3, 1991 in Sioux city, Iowa. The court now issues its findings of fact, conclusions of law and order.

FINDINGS OF FACT

The marriage of Marci J. Dennison and Thomas R. Dennison was dissolved January 19, 1990 by a decree of the Iowa District Court for Woodbury County. The decree awarded all household goods and furniture to Marci. Much of this property she had brought to the marriage. The decree provided also that Marci would be responsible for the payment of any loans secured by the household goods. The court awarded Marcia 1982 Chevrolet Caprice automobile which had been owned jointly by the couple. It awarded a 1971 Chevrolet auto and a 1981 Harley Davidson motorcycle to Thomas. They also had been owned jointly by the couple. The decree provided that Thomas would be responsible for the monthly payments to Norwest Bank (NORWEST) on a promissory note secured by the Caprice and the motorcycle.

The 1982 Caprice had been given to Norwest as the only collateral for-a loan. When the balance due on the loan was approximately \$5,500.00, the Dennisons borrowed an additional \$3,500.00 so Thomas could purchase the motorcycle. At that time, the Dennisons executed one note to Norwest to cover the refinancing of the automobile loan and the additional advance. After the couple separated but before the entry of their divorce decree, Thomas asked Norwest to release Marci from the obligation, and it did. Therefore, at the time of the divorce decree, Marci was no longer liable to Norwest on the motor vehicle loan. Thomas subsequently sold the motorcycle for \$1,500.00 and applied the money to the debt. At the time of trial, the balance owed to Norwest on the motorcycle/ Caprice note was approximately \$6,000.00. At the time of their divorce, the couple agreed that the 1982 Caprice had a market value of \$2,800.00. It

presently has a value of \$2,500.00.

Thomas has failed to pay Norwest on the motor vehicle loan. The bank is holding in abeyance its efforts to repossess the auto and will apparently reassess its position based on the outcome of this hearing. The car is in need of repairs, and Marci is presently borrowing another automobile from a friend. She is awaiting a determination of this dispute prior to repairing the Caprice. She has used the Caprice for transportation to and from work and for family needs and activities.

Marci has breached her obligation to be solely responsible on a joint loan of the couple secured by the household goods and furniture which she was awarded in the decree. She has settled with Norwest Financial and has been released from the debt. However, prior to his bankruptcy, Norwest Financial continued to pursue Thomas for the balance of the obligation not paid by Marci. There is no evidence that this obligation will not be discharged in this bankruptcy case.

Marci and Thomas have two children: Trevor, now age 5 and Tyler, now age 2. Tyler has some medical problems, including asthma. Thomas has three children from a prior marriage, and Marci has one. Marci's son by her prior marriage lives with his father during much of the year but spends summer, Christmas and spring vacations with his mother. She receives \$25.00 per week child support from her first husband during the periods her son is with her.

The court awarded the Dennisons joint custody of their two children but commended them to Marci's care. Thomas is required to pay Marci \$338.80 per month in child support. The decree did not require Thomas to make alimony payments. At the time of the decree, Marci was in good health and was employed full time with Prince Manufacturing Corporation. Her net monthly income was \$1,082.00. At the time of the decree, Thomas was employed by Cloverleaf Cold Storage taking home approximately \$1,400.00 per month. He lost his job in August, 1990, and is ineligible for unemployment compensation. He has earned some money doing parttime farm work. Thomas received very little in property distribution in the divorce, obtaining little more than the motorcycle, the 1971 Chevy, worth about \$300.00, and his clothing.

DISCUSSION

Marci Dennison contends that Thomas' obligation under the divorce decree to pay the loan secured by the Caprice is a nondischargeable support obligation to her under U.S.C. § 523(a) (5). Because the loan balance is approximately \$5,500.00 and the value of the car is only \$2,500.00, Marci asks that the court find that the non-dischargeable obligation is \$2,500.00 and that the court enter judgment in her favor in that amount.

Thomas argues that the provision in the dissolution decree regarding the 1982 Caprice is in the nature of property settlement and is therefore dischargeable under the same Code provision.

Section 523(a)(5) of the Bankruptcy Code excepts from a chapter 7 discharge any debt to a spouse for alimony, maintenance or the support of the spouse arising out of a divorce decree. 11 U.S.C. § 523(a)(5). However, in order to be excepted from discharge, the debt must be "actually in the nature of alimony, maintenance, or support . . ." 11 U.S.C. § 523(a)(5)(B). Property settlement obligations arising out of dissolution decrees, unless in the nature of alimony, maintenance or support, are dischargeable. "Whether a particular debt is a support obligation or part of a property settlement is a question of federal bankruptcy law, not state law." Williams v. Williams (In re Williams), 703 F.2d 1055, 1056 (8th Cir. 1983). Although the underlying debt is owed by Thomas to Norwest Bank, Thomas' obligation to Marci to pay it may be considered as a maintenance or support obligation--"the crucial issue is the function the award was intended to serve." *Id.* at 1057. The court must inquire as to "whether the obligation can legitimately be characterized as support. . ." Draper v. Draper, 790 F.2d 52, 54, n.3 (8th Cir. 1986).

Bankruptcy courts have relied on many factors in determining whether an obligation is one of support or of property division. Voss v. Voss (In re Voss), 20 B.R. 598, 602 (Bankr. N.D. Iowa 1982); Leppaluoto v. Combs (In re Combs), 101 B.R. 609, 616 (B.A.P. 9th Cir. 1989); Ramey v. Ramey (In re Ramey), 59 B.R. 527, 530 (Bankr. E.D. Ark. 1986); Britton v. Britton (In re Britton), 51 B.R. 323 (Bankr. N.D. Ind. 1985).

Having examined this case in light of many of these factors, the court finds that there are circumstances which favor a finding of support. Marci and the children needed the car. The state court recognized this. However, the court also

recognized Thomas' need for a motor vehicle. Nonetheless, the requirement that Thomas make the car payments would aid the family in meeting an important family need. Also, payments were to be made over time and not in a lump sum. It is not prejudicial to Marci's position that the state court did not characterize the payment as support or alimony. Although the state court required Thomas' payment in a paragraph discussing property division, this not necessarily determinative as the court's considerations for property settlement may include and displace the need for support. Iowa Code § 598.21(1)(h).

Other circumstances favor a determination that the payment requirement was part of a property division and was not intended as a support obligation. The couple were married only a short time, less than four years. Marci had been employed at a stable job for approximately 10 years. At the time of the divorce, they had equivalent incomes. However, from an examination of the affidavits of financial status which the parties submitted in state court, it is obvious that although the parties had comparable monthly incomes, Marci's monthly expenses exceeded Thomas' by a significant amount. The court, although requiring Thomas to keep up medical insurance through his employer, also required that any of the children's uninsured medical expenses be split evenly between the parties. The court also required the parties to divide the court costs and to pay their own attorneys fees. Support to the children was mandated in the amount of \$338.80 per month. There was no provision terminating Thomas' responsibility for the car payments if Marci died or remarried.

The parties have presented to the court a very close question. Having considered it, the court concludes that Thomas' obligation to make the car payments was in the nature of support. Critical to this conclusion is that the car payments provided a family necessity. Although the parties' incomes were comparable, Marci's expenses were higher, especially considering that she had physical care of the children and that in order to retain the household goods for the family, she would have to pay off the loans secured by those goods. The court does not consider that the child support fully compensated for the difference.

CONCLUSIONS OF LAW

The dissolution decree requirement that Thomas Dennison pay the loan secured in part by Marci Dennison's automobile is an obligation in the nature of support and is therefore excepted from discharge pursuant to 11 U.S.C. § 523(a) (5). The extent of the non-dischargeable debt is \$2,500.00.

ORDER

IT IS ORDERED that judgment shall enter that the obligation of Thomas R. Dennison to Marci Dennison to make payments on an automobile loan is a debt excepted from discharge under 11 U.S.C. § 523(a)(5) to the extent of \$2,500.00. In the event Marci Dennison is able to obtain release of the creditor's lien against the vehicle by a payment of less than \$2,500.00, then the judgment against Thomas R. Dennison shall, upon motion by Thomas R. Dennison, be reduced pro tanto the difference between \$2,500.00 and any lesser amount paid to the creditor.

SO ORDERED ON THIS 7th DAY OF JUNE, 1991.

William L. Edmonds
Chief Bankruptcy Judge

United States District Court

Northern District of Iowa

Western Division

IN RE

THOMAS R. DENNISON,
Debtor,

MARCI DENNISON,
Plaintiff,

vs.

THOMAS R. DENNISON,

Defendant.

Civil No. 1-91-4088

ORDER

Bankruptcy No. [X90-](#)

[01365S](#)

This matter comes before the court pursuant to the Defendant's Appeal of the Bankruptcy Judge's Order. After careful review of the oral and written arguments the decision of the bankruptcy court is affirmed.

FACTS

In this appeal of a bankruptcy court order the plaintiff and defendant are ex-husband and wife. When the two were divorced in January of 1990 one of their assets was a 1982 Chevrolet caprice. The auto apparently is valued at \$2800 but has a lien against it for \$5500. As part of the divorce Marci Dennison was awarded the car but Thomas Dennison was required to make the payments on the loan. On August 6, 1990, less than seven months after the divorce, Thomas filed for bankruptcy and sought to discharge the debt. The bankruptcy court denied discharge the debt, ruling it was not dischargeable under 11 U.S.C. § 523(a)(5). The court held that although the payments were not called support by the divorce court, the payments were made to the bank to allow Marci to keep the car, which was a necessary item for her and the children to function in society. The court thus determined the payments were "support" payments.

DISCUSSION

Thomas Dennison argues that the payment is not support. He argues that the payments were in the nature of property settlement and as such are dischargeable. Because the bankruptcy code favors a "fresh start" the presumption should be that the debt is dischargeable. Marci Dennison argues that it does not matter what the divorce court labels the payments, the bankruptcy court can determine the payments are in the nature of support. See, In Re Williams, 703 F.2d 1055, 1056-57 (8th Cir. 1983).

11 U.S.C. § 523(a)(5) excepts from discharge all payments made in divorce for alimony, support, or maintenance. Periodic payments made as a property settlement do not constitute "alimony, support, or maintenance" and are therefore dischargeable in bankruptcy. "Whether a particular debt is a support obligation or part of a property settlement is a question of federal bankruptcy law, not state law." Williams v. Williams (In re Williams), 703 F.2d 1055, 1057-58 (8th Cir. 1983).

In deciding whether to characterize an agreement to make periodic payments under a divorce decree as "alimony, maintenance or support," or a "property settlement," the bankruptcy court does not examine the present situation of the parties, but rather, the crucial question is what function the parties intended the agreement to serve when they entered into it. Boyle v. Donovan, 724 F.2d 681, 682 (8th cir. 1984). The burden of proof rests with the non-debtor payee former spouse to show that periodic payments received pursuant to a decree of divorce are in the nature of support. Voss v. Voss (In re Voss), 20 B.R. 598, 601 (Bankr. N.D. Iowa 1982). Once this is established, the burden shifts to the debtor to establish his entitlement to a discharge of the debt. *Id.* The bankruptcy court is not bound by the labels the parties may use for the debt in determining whether a payment may constitute "alimony, support, or maintenance" under section 523(a)(5). *Id.* at 601. The fact that the settlement agreement may refer to the payments as a "property settlement" is not conclusive. Sylvester v. Sylvester, 865 F.2d 1164, 1166 (10th Cir. 1989).

The Eighth Circuit looks to the intent of the parties. The Eighth Circuit has said, "Whether in any given case such obligations [pursuant to a divorce settlement] are in fact for 'support' and therefore not dischargeable in bankruptcy, is a question of fact to be decided by the Bankruptcy Court as trier of fact in light of all the facts and circumstances relevant to the intention of the parties." In re Williams, 703 F.2d at 1057-58.

The court determined that the payments were made to assist Marci and her children to maintain their standard of living. The bankruptcy court's determination that the payments were in the nature of support is not "clearly erroneous." See, Draper v. Draper, 790 F.2d 52, 54 (8th Cir. 1986) (bankruptcy's determination that payments were support subject to clearly erroneous standard of review).

Accordingly, it is ordered,

The order of the bankruptcy court is affirmed.

March 16, 1992

DONALD E. O'BRIEN, Judge

UNITED STATES DISTRICT COURT

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