

In the United States Bankruptcy Court

for the Northern District of Iowa

MICHAEL J. LEASE and
CATHERINE C. LEASE

Debtor(s).

Bankruptcy No. X91-01730M

Chapter 7

CATHERINE C. LEASE

Plaintiff(s)

Adversary No. X91-0211M

vs.

IOWA COLLEGE AID COMMISSION

Defendant(s)

ORDER RE: DISCHARGE OF STUDENT LOAN

The issue presented to the court is whether excepting Catherine Lease's student loans from discharge would impose an undue hardship on her and her dependents. If the loan is not discharged as an "undue hardship," defendant seeks judgment for the debt. Trial was held on June 9, 1992 in Mason City.

Catherine Lease (LEASE or DEBTOR) and her husband, Michael, filed a joint petition under chapter 7. At the time of filing, Lease was indebted to the Iowa College Aid Commission (COMMISSION) for three student loans originally made by the Home Federal Savings & Loan Association of Algona. As of May 24, 1991, the total debt to the Commission was \$6,852.05. The debt draws interest from that date at nine per cent per year. The court calculates interest to the date of judgment to be \$653.86.

Lease obtained the loans in 1982, 1983 and 1984 while a student at North Iowa Area Community College in Mason City. She

studied psychology and human development, and graduated in 1985 with an associate of arts degree. While a student, debtor worked for Gerard of Iowa as a houseparent and counselor for emotionally disturbed youth. Her highest rate of pay was \$5.70 per hour. She married in the spring of 1985 and moved to the Waverly-Cedar Falls area so her then-husband could attend the University of Northern Iowa. For three and one-half years, she was employed in Waverly by Brimwood, a Lutheran children's home, where she worked with emotionally disturbed adolescents. In 1989, the couple moved to McGregor, Iowa, where they were employed in a restaurant owned by her husband's family. She left that job after three months to work in Wisconsin at Wyalusing Academy where she earned \$4.07 per hour. In 1989, she separated from her husband and returned to Mason City. She divorced in 1990. In January, 1989, she again obtained employment with Gerard of Iowa. Gerard transferred her to Minnesota, but she returned to Mason City in February, 1991. It was then she married Michael Lease. After her return, she got a job with North Central Human Service where she was employed for approximately two months. She received \$5.59 per hour for a 32-hour week. She was terminated for missing work. She had been absent because she stayed home with her children when they were sick. In late May of 1992, she obtained employment with the Westview Care Center in Britt, Iowa. She will earn \$4.65 per hour, working seven hours a day for alternating four and five-day weeks.

Debtor is 34 years old and in good health. She has two children, a four-year-old and a nine-month-old. Michael Lease has been unemployed since March. He quit his job with Armour/ ConAgra because of tendonitis in his arms. He had worked for Armour for a period of less than one year. Immediately prior to going to work for Armour, he held two jobs,

a part-time job with the Mason City Globe Gazette and a job with Gerard of Iowa.

The evidence as to his pay was weak. In his questioning of the debtor, counsel for the Commission interjected hearsay as to Michael's gross and net pay for 1991. There was oral mention of gross and net monthly pay as disclosed in Lease's answers to interrogatories; the interrogatories were not introduced into evidence. Mrs. Lease was confused by the questions of counsel for the Commission. She did recall on direct examination that Michael's gross income from all sources in 1991 was \$16,000.00. The evidence shows he earned at least this much and perhaps as much as \$19,000.00.

Michael is not presently receiving unemployment compensation. An initial decision by the State concluded that he quit without good cause and therefore was not eligible for unemployment benefits. That decision is on appeal, with Michael maintaining that he quit because of the tendonitis in his arms. If he is awarded compensation, he would receive approximately \$219.00 per week, or approximately \$949.00 per month of eligibility. There was no evidence as to how long he might receive benefits. He is presently searching for employment.

Prior to Michael's loss of work, the couple had expenses of approximately \$900.00 to \$1,000.00 per month. This amount included \$225.00 for rent; \$140.00 for utilities; an average of approximately \$20.00 per month for water; \$240.00 for groceries; \$43.00 for telephone service; \$49.00 for auto insurance for two vehicles.

Since Michael quit his job with Armour, his parents have provided financial help. Presently, the only other source of income is Catherine's check, which should average approximately \$676.00 gross per month.

Since Michael quit his job, phone bills have increased to a range of \$200.00 to \$300.00 per month, as debtors keep in closer contact with Michael's family. Also, food costs have increased as the couple's infant child requires more sustenance.

In addition to help from Michael's parents, the couple is receiving some public assistance in the way of medical care for the children. The debtors have applied for food stamps; their application is pending.

Michael has two children from a previous marriage; their ages are nine and 15. They live in Oklahoma with their mother. Michael is obligated to pay \$250.00 per month in child support to his former wife. The children are spending June with the Leases in Iowa. During the visit, no support is owed.

Mrs. Lease does not dispute the existence or amount of the debt to Commission. She agrees that normally the debt would be excepted from discharge under 11 U.S.C. § 523(a)(8). However,

she contends that the debtors' circumstances make repayment "hopeless" and that the debt thus should be discharged under 11 U.S.C. § 523(a)(8)(B) .

A usually nondischargeable student loan may nonetheless be discharged if the debtor can show that "excepting such debt from discharge . . . will impose an undue hardship on the debtor and the debtor's dependents. 11 U.S.C. § 523(a)(8) (B). The burden of proof of undue hardship is on the debtor. Binder v. United States Dept. of Education (In re Binder), 54 B.R. 736, 739 (Bankr. D. N.D. 1985).

The court must consider whether there would be any money left from the debtors' estimated future income to enable them to make some payment on the loan without detrimentally affecting the debtors' ability to maintain a minimal standard of living. Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews), 661 F. 2d 702, 704 (8th Cir. 1981) *citing* Wegfehrt v. Ohio Student Loan Comm'n. (In re Wegfehrt), 10 B.R. 826, 830 (Bankr. N.D. Ohio 1981). Included in such consideration is the court's gauging of "what the debtor's chances are of obtaining and retaining steady employment and what income can be expected." Andrews, 661 F.2d at 704, n. 4 *citing* In re Bagley, 4 B.R. 248 (Bankr. D. Ariz. 1980).

Were this court to focus only on present circumstances, it would agree with the debtor that repayment of the loans is impossible, and it would find them dischargeable. Certainly, debtors now find themselves in a critical financial situation.

Mrs. Lease has begun a new job. She is now the only breadwinner for the family. She expects to earn in alternate weeks only \$130.20 or \$162.75. This is not enough for her to provide a minimum standard of living for herself and her family. Furthermore, the court finds that her income, in the field of work she has chosen, will not likely ever rise above the range of \$7,000.00 to \$12,000.00.

The outcome of this case, however, does not hinge on her income alone. Michael is obligated to support her and the children. Iowa Code § 252A.3. In the past, he has earned net pay of at least \$1,100. 00 per month. This income along with Catherine's is sufficient to maintain a minimum standard of living and to pay something on the student loans.

To obtain discharge of these loans, the debtor needed to show that Michael, due to his tendonitis, was not foreseeably employable or was not capable of earning a paycheck sufficient to support the family. The debtor has failed to make such a showing. Michael has been unemployed since March. There was no medical evidence that he is permanently disabled, either partially or completely. There is no proof that Michael could not obtain other gainful employment in which the tendonitis, even if persistent, would not inhibit his work. In order to obtain discharge of these student loans, there must be more than proof of current unemployment or a current medical problem. There needed to be a showing that the medical condition will continue so as to prevent or seriously constrain Michael's employment for

the future. The debtor has depicted a present crisis, but has not shown that there is a substantial likelihood that the critical circumstances will persist. There is no doubt that debtor cannot presently pay the loans even at a reduced rate of payment. But based upon the evidence presented by the debtor, the court cannot find that these circumstances will persist indefinitely.

The court has considered whether even if Michael obtained employment, the repayment of the loans would impose an undue hardship on the family. Catherine is capable of earning gross wages of \$7,500.00 to \$12,000.00 per year. Michael was able to earn at least \$16,000.00 gross wages per year before he was affected by the tendonitis in his arms. To the extent he can regain such wages and even if they rarely if ever increased, the couple is capable of earning approximately \$25,000.00 per year between them. On that, they must support a family of four, and Michael must make monthly support payments for the benefit of one or both of his two older children for at least the next three to nine years. Without more evidence, this court cannot determine that such an income level is inadequate to support a minimal standard of living for the family and also repay the loans. Debtor did not introduce any evidence relevant to that question. She chose instead to base her position on the family's present inability to support itself based on her salary alone. Thus, the court cannot find for the plaintiff based on a lack of ability to pay the loan, even considering employment of both debtors.

Accordingly, the debts must be excepted from discharge under 11

U.S.C. § 523(a)(8)

ORDER

IT IS ORDERED that judgment shall enter that the indebtedness of Catherine C. Lease to Iowa College Aid Commission is not dischargeable. On the Commission's counterclaim, judgment shall enter that Iowa College Aid Commission shall recover from Catherine C. Lease the sum of \$7,505.91.

SO ORDERED ON THIS 15th DAY OF JUNE, 1992.

William L. Edmonds
Chief Bankruptcy Judge