

In the United States Bankruptcy Court

for the Northern District of Iowa

LARRY CARSON EWING

Debtor(s).

Bankruptcy No. 92-11343LC

Chapter 7

WILMA ANN EWING

Plaintiff(s)

Adversary No. 92-1231LC

vs.

LARRY CARSON EWING

Defendant(s)

ORDER

On May 21, 1993, the above-captioned matter came on for hearing on pending Motions. Plaintiff Wilma Ann Ewing appeared by Attorneys Doug Meyer and Larry Thorson. Defendant Larry Carson Ewing appeared by Attorney Kathleen Corcoran. The matters before the Court are a Motion to Extend Pre-Trial Deadlines as well as a Motion for Summary Judgment filed by Defendant Larry Carson Ewing.

1. MOTION TO EXTEND PRE-TRIAL DEADLINES

The parties filed a Motion to Extend Pre-Trial Deadlines. This matter was previously discussed in a Pre-Trial Hearing and an Order was entered on May 13, 1993 extending the pretrial statement deadline as well as the discovery deadline to June 25, 1993. This essentially renders the Motion to Extend Pre-Trial Deadlines moot. The deadlines set in the Order of May 13, 1993 will continue to control. Additionally, trial will be set in this adversary matter after filing of the pretrial statements by counsel.

2. MOTION FOR SUMMARY JUDGMENT

This adversary proceeding originally arises out of a controversy as to whether the parties dissolution decree contains a distribution which would constitute support under § 523(a) (5) of the Bankruptcy Code and therefore constitutes a non-dischargeable debt or alternatively whether it is a property settlement which is subject to discharge in this bankruptcy proceeding.

Defendant Larry Carson Ewing has filed a present Motion for Summary Judgment asserting that there are no facts in controversy and that as a matter of law the dissolution proceeding contained only property settlement and there are no matters which would be legally considered support and therefore, the debts are dischargeable under the Bankruptcy Code. Both parties have submitted briefs to the Court for consideration.

Rule 7056 of the Federal Rules of Bankruptcy Procedure addresses summary judgment in Bankruptcy Court. Summary judgment may only be granted when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.

The Court has examined this adversary proceeding and the briefs as well as the affidavits filed herein. It is the conclusion of this Court that the intent of the parties and the intent of the categorization of the distribution of the parties' assets and liabilities. This, in turn, has a significant impact upon whether these debts are dischargeable or not under § 523(a)(5) of the Code. As long as there is a controversy in this issue, the Court cannot determine the ultimate issues presented under this adversary proceeding. As such, it is conclusion of this Court under Rule 7056(d) that there are legitimate issues of fact in controversy which precludes Summary Judgment. These issues must be presented in an evidentiary context and the Court must make findings of fact before the appropriate rules of law can be applied. As such, the Motion for Summary Judgment must be denied.

Based on the foregoing, IT IS THEREFORE THE ORDER OF THIS COURT that:

1. The Motion to Extend Deadlines is moot and the Order of May 13, 1993 dealing with deadlines shall control. Trial will be set upon submission and filing of the pre-trial statements.
2. For the reasons set forth herein, the Motion for Summary Judgment under Rule 7056 must be and is hereby denied in its entirety.

SO ORDERED this 21st day of May, 1993

Paul J. Kilburg, Judge
U.S. Bankruptcy Court