

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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TERRY GEARHART

*Debtor(s).*

Bankruptcy No. 93-10494LC

Chapter 7

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RHONDA GEARHART

*Plaintiff(s)*

Adversary No. 92-1231LC

vs.

TERRY GEARHART

*Defendant(s)*

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### **RULING ON MOTION FOR SUMMARY JUDGMENT**

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On March 29, 1994, the above-captioned matter came on for hearing on a Motion for Summary Judgment filed by Defendant on February 16, 1994. Defendant filed this Motion for Summary Judgment pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure. Defendant has filed a supporting Memorandum. Plaintiff filed a Resistance on March 7, 1994 and has also filed a supporting Memorandum in resistance to Defendant's Motion for Summary Judgment.

This matter was scheduled for hearing on this Summary Judgment Motion for 9:00 a.m. on March 29, 1994. At approximately 8:55 a.m. on March 29, 1994, a Motion to Continue was filed by Plaintiff. No opportunity for hearing on this Motion to Continue was afforded the Court. At 9:00 a.m., the Court commenced, and pursuant to the record made, the Motion to Continue was summarily overruled as untimely.

The Court, pursuant to the record made, allowed Mr. Stitely to present his arguments on his Motion for Summary Judgment. It is the position of Defendant that a Decree of Dissolution between Plaintiff and Defendant in this action was entered in Delaware County District Court on or about October 30, 1992. The Decree of Dissolution, in part, directed that Terry Gearhart, in order to equalize the distribution of assets, would pay to Rhonda K. Gearhart the sum of \$24,000, payable half by December 31, 1992 and the remainder by May 1, 1993. Thereafter, Defendant Terry Gearhart filed a Chapter 7 Petition in U.S. Bankruptcy Court on March 23, 1993. The issue for determination, in the present adversary proceeding, is whether this obligation is dischargeable as property settlement or whether it is nondischargeable pursuant to 11 U.S.C. § 523(a)(5).

In support of his Motion for Summary Judgment, Defendant states that subsequent to the Decree of Dissolution in Delaware County District Court, a contempt hearing was held in State Court relating to the payment of support obligations. Apparently, a part of that contempt hearing related to Rhonda Gearhart's assertion that the previously discussed \$24,000 award was properly categorized as support. Defendant states that State Court entered an Order on August 31, 1993 finding Terry Gearhart guilty of contempt for nonpayment of support. However, Defendant asserts that the contempt finding was based on other support obligations and that the State trial judge specifically determined that the

previously discussed \$24,000 obligation was property settlement and not support. Defendant therefore concludes, that as this was determined to be property and not support, the intent of the trial judge is clear and summary judgment should be entered as a matter of law in favor of the Defendant and against the Plaintiff in this adversary proceeding.

Defendant is correct that the intent of the judge in granting the dissolution proceeding is relevant. Ewing v. Ewing, Adv. No. 92-1231LC, slip op. at 2 (Bankr. N.D. Iowa May 21, 1993). The 8th Circuit rule is thoroughly discussed in In re Williams, 703 F.2d 1055 (8th Cir. 1983). While the intent of the trial judge is important in the determination of whether an item is property or support, other factors are also relevant, including the intent of the parties. Even though the State District Court Judge in the present case made a determination that the item in question was support and not property, the determination is not binding in Bankruptcy Court. This is a determination which must be made by the Bankruptcy Court applying all of the criteria set forth in Williams. It would be inappropriate to make a finding, as a matter of law, that there are no further fact issues for determination in this case based solely upon the one criteria enunciated by Defendant in his Motion. Rule 7056 of the Federal Rules of Bankruptcy Procedure require that a Summary Judgment can only be granted when there are no disputed facts at issue and the case can be decided as a matter of law. While obviously compelling and while the Court gives due deference to the State Court determination, the law requires that the Bankruptcy Court gives its own independent determination of intent. Intent is seldom capable of determination as a matter of law. As such, it is the conclusion of this Court that issues remain in this case which preclude summary judgment.

**WHEREFORE**, for the reasons set forth herein, Defendant's Motion for Summary Judgment is **OVERRULED** and **DENIED**.

**SO ORDERED** this 29th day of March, 1994.

Paul J. Kilburg  
U.S. Bankruptcy Judge