

In the United States Bankruptcy Court

for the Northern District of Iowa

CAROL ANN CALLAHAN
Debtor.

Bankruptcy No. 94-11672KC
Chapter 7

HUBERT F. CALLAHAN
Plaintiff

Adversary No. 94-1172KC

vs.

CAROL ANN CALLAHAN
Defendant.

ORDER RE DEFENDANT'S MOTION TO DISMISS

On August 1, 1995, the above-captioned matter came on for hearing pursuant to assignment. Plaintiff Hubert F. Callahan appeared in person pro se. Debtor/Defendant Carol Ann Callahan appeared in person with Attorney Alan Bohanan. The matter before the Court was Debtor's Motion to Dismiss. After discussion with both parties, the parties agreed, pursuant to the record made and on the record, that the Court could proceed to the merits of the dispute on this date for the convenience of the parties. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(I).

FINDINGS OF FACT

Plaintiff and Debtor were husband and wife until a decree of dissolution was entered in the District Court for Cedar County, Iowa on February 3, 1994. The final decree incorporated a stipulated distribution of all the parties' assets and liabilities. Both parties were represented by counsel and entered into the stipulation of settlement on January 22, 1994. Included in the stipulation at paragraph 6 was the following provision:

6. Rehabilitative Alimony. Petitioner [Debtor] hereby agrees to pay the Respondent [Plaintiff] herein rehabilitative alimony by paying the sum of \$100 to the Respondent upon the entry of the decree herein, and \$100 upon the 1st day of March, 1994 and \$100 upon the 1st day of April,

1994. Other than aforementioned, any and all other alimony or spousal support or maintenance is hereby waived.

The evidentiary record establishes that Debtor did not make any of the three designated \$100 payments. She filed her Chapter 7 Petition October 17, 1994. The 341 meeting was held November 21, 1994. Throughout this period, Plaintiff did not make any assertion of nondischargeability. However, Plaintiff filed a complaint on December 1, 1994, amended on December 13, 1994, asserting that the \$300 obligation set forth in paragraph 6 of the stipulation is nondischargeable under 523(a)(5). Debtor filed the pending Motion to Dismiss on June 20, 1995. The issue for determination is whether the \$300 awarded in paragraph 6 of the stipulation is actually in the nature of alimony or support, or whether it is truly a property settlement incorporated into the decree as a part of the overall property distribution in this dissolution action.

Both parties testified at the time of hearing. Debtor testified that paragraph 6 was not an award of alimony but was part of the property settlement. She testified that after the disposition of the washer and dryer, there remained a \$300 differential between the net award to Plaintiff and the net award to Debtor. It is the position of Debtor that in order to equalize this distribution, the parties agreed that Debtor would pay Plaintiff the sum of \$300. For reasons which are unclear on the record, Debtor states that this was incorporated into the stipulation as alimony as opposed to a straight cash judgment to equalize distribution of property. Debtor made some reference to the fact that this was done to preclude a discharge of this obligation in bankruptcy.

Plaintiff was allowed to state his side of this issue. He was unclear as to the purpose of the distribution. Upon questioning, he stated that the award may have been part of the property settlement. Subsequently, he indicated that it was indeed alimony though the purpose for such an award could not be articulated by Plaintiff.

The stipulation and decree attached to the complaint and received by the Court establish that at the time of the entry of the decree, Plaintiff had income of \$1,000 per month and Debtor had no income. The documents establish that Plaintiff is retired and is now 70 years of age. At the time of the dissolution decree, Debtor was self-employed. She is presently 48 years of age. Plaintiff indicated that he is disabled. However, the evidentiary record does not establish a distinct causal relationship between the asserted rehabilitative alimony claim and any disability.

CONCLUSIONS OF LAW

Debtor argues that Plaintiff's 523(a)(5) dischargeability complaint should be dismissed because it was not timely filed. Additionally, Debtor asserts that the claim for rehabilitative alimony was in fact not alimony but was part of the property settlement and is, therefore, dischargeable. Plaintiff asserts that his claim based on paragraph 6 of the stipulation actually constitutes alimony which is nondischargeable.

TIMELINESS OF COMPLAINT

Under Bankruptcy Rule 4007(b), a complaint other than under 523(c) may be filed at any time. A complaint under 523(c) must be filed no later than 60 days after the 341 meeting. Section 523(c) governs the exceptions to discharge found in 523(a) paragraphs (2), (4), (6) or (15). Plaintiff's complaint is based on 523(a)(5). Therefore, it may be filed at any time. Debtor's assertion that Plaintiff's complaint should be dismissed as untimely is without merit. Her Motion to Dismiss should be denied.

ALIMONY

The Eighth Circuit considered the dischargeability of obligations arising from dissolutions of marriage in In re Williams, 703 F.2d 1055 (8th Cir. 1983).

The Bankruptcy Reform Act of 1978 prohibits the discharge of a debtor's obligation to make alimony, maintenance, or support payments to his or her former spouse. Whether a particular debt is a support obligation or part of a property settlement is a question of federal bankruptcy law, not state law. Debts payable to third persons can be viewed as maintenance or support obligations; the crucial issue is the function the award was intended to serve. Though we of course regard the decisions of the state courts with deference, bankruptcy courts are not bound by state laws that define an item as maintenance or property settlement, nor are they bound to accept a divorce decree's characterization of an award as maintenance or a property settlement. . . . "Provisions to pay expenditures for the necessities and ordinary staples of everyday life" may reflect a support function. . . . Whether in any given case such obligations 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.

Id. at 1057-58 (citations omitted); 11 U.S.C. 523(a)(5).

These pronouncements in Williams have been followed in In re Morel, 983 F.2d 104, 105 (8th Cir. 1992) (issue is one of intent of the parties), cert. denied, 113 S. Ct. 2423 (1993); Adams v. Zentz, 963 F.2d 197, 199 (8th Cir. 1992) (crucial issue is function award was intended to serve); Draper v. Draper, 790 F.2d 52, 54 (8th Cir. 1986); and Boyle v. Donovan, 724 F.2d 681, 683 (8th Cir. 1984). In determining intent, the court should focus on the function that the obligation was intended to serve when the parties entered into the agreement, and not examine the present situation or needs of the parties. Boyle, 724 F.2d at 683. The court need not make a precise inquiry into financial circumstances to determine precise levels of needs or support. Draper, 790 F.2d at 55 n.3. A proceeding to determine dischargeability of debts awarded in a divorce decree is not an appeal of the dissolution court's decision. In re Pallesen, No. X92-00202S, Adv. No. X92-0075S, slip op. at 14 (Bankr. N.D. Iowa Jan. 14, 1993).

Many factors have been found to be indicative of intent in this context. In In re Voss, 20 B.R. 598, 602 (Bankr. N.D. Iowa 1982), the Court focuses on four factors in finding that the debtor's obligation to make payments on a second mortgage constitutes support. That case also notes that several other factors are relevant. Id. at 602 n.4. Other cases in this district list from six to fifteen factors relevant to a determination of the parties' intent that an obligation is in the nature of support. See In re Pence, No. L-90-1163C, Adv. No. L-90-0172C, Adv. No. L-90-0173C, slip op. at 6 (Bankr. N.D. Iowa Sep. 30, 1991); Pallesen, slip op. at 9-10.

The Third Circuit has concisely set out three principal indicators which subsume the multiple factors relevant to intent used by various courts. In re Gianakas, 917 F.2d 759, 762 (3d Cir. 1990). These factors are 1) the language of the agreement in the context of surrounding circumstances, 2) the parties' financial circumstances and 3) the function served by the obligation at the time of the divorce or settlement. Id. at 762-63.

In applying the foregoing, the party objecting to dischargeability has the burden to prove by a preponderance of evidence that the obligation is in the nature of alimony, maintenance or support. Pallesen, slip op. at 6. As set forth in Williams, the ultimate issue for the Court's determination is establishing the function or purpose that the award was intended to serve at the time of the entry of the dissolution. While an almost endless list of factors can be considered on the issue, ultimately, the Court must look at each case individually and determine what factors are relevant to a determination of the critical issues of intent.

Ordinarily, the clearly defined designation of an award as alimony in a decree of dissolution has considerable impact in determining the intent of the parties and the dissolution court at the time of the award. Here, the stipulation which was incorporated into the decree of dissolution clearly states that Plaintiff was to be awarded three \$100 periodic payments in the form of rehabilitative alimony. However, the nature of the award itself, the relationship of the parties, the amount of income which the parties had at the time of the decree of dissolution and the parties' statements that, to some extent at least, this was designed to equalize the property distribution, lead to the conclusion that this is the rare instance where the designation does not reveal the true situation.

While designated as alimony, it is clear to the Court, after hearing the parties' testimony and considering the record, that this was nothing more than a property distribution equalizer and served no real function as an award of alimony. The fact that only three payments of \$100 were to be made is compelling evidence of the fact that this was not designed for any long term rehabilitative purpose. The fact that it was designed to equalize distribution of a washer and dryer is further indication that this was designed as a property award. Finally, the fact that Defendant/Debtor had no income at the time of the dissolution and Plaintiff was making \$1,000 per month in some form of income convinces the Court that this was truly a property award and not in the nature of alimony and support.

WHEREFORE, Debtor's Motion to Dismiss is DENIED.

FURTHER, Plaintiff's Complaint to determine dischargeability of debt is DENIED.

FURTHER, Plaintiff's claim of \$300 designated as "Rehabilitative Alimony" in the parties' dissolution decree and stipulation is DISCHARGEABLE.

SO ORDERED this 29th day of August, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge