

In the United States Bankruptcy Court

for the Northern District of Iowa

BENJAMIN J. TRICKEY

Debtors.

Bankruptcy No. 94-10667KC

Chapter 7

TERRY TRICKEY

Plaintiff

Adversary No. 94-1121KC

vs.

BENJAMIN J. TRICKEY

Defendant.

ORDER

On August 31, 1995, the above-captioned matter came on for trial pursuant to assignment. Plaintiff appeared pro se. Defendant/Debtor appeared with counsel Thomas McCuskey. Evidence was presented and the Court dictated its findings from the bench. However, the Court reserved the opportunity to supplement those findings with a written ruling.

STATEMENT OF THE CASE

Plaintiff Terry K. Trickey filed this adversary proceeding as the former spouse of Defendant/Debtor Benjamin J. Trickey. Pursuant to their dissolution decree, certain property distributions were made and certain payments were to be made by Defendant to Plaintiff. These included payments to equalize the distribution of property, alimony payments, and child support payments. Plaintiff has asserted in this adversary proceeding that certain of these payments were to be used as support, maintenance or alimony and seeks to have a \$150,000 dissolution award declared nondischargeable under 523(a)(5).⁽¹⁾ Defendant denies that this portion of the award is support, maintenance or alimony and asserts that the same is property distribution which is dischargeable.

FINDINGS OF FACT

Plaintiff Terry K. Trickey and Defendant/Debtor Benjamin J. Trickey were previously married. During their marriage they accumulated substantial assets and liabilities. The major assets of the parties' marriage were several bowling alleys which comfortably supported the family during the marriage. When the parties' marital relationship deteriorated, a Petition for Dissolution of Marriage was filed by Terry Trickey in 1987. A Decree of Dissolution was entered on March 23, 1988 pursuant to a Stipulation entered into between the parties.

Plaintiff has a Bachelor of Science degree in elementary education. She graduated from college in 1971. However, the evidence appears to establish that Plaintiff was not employed as a teacher during the course of the parties' marriage. Plaintiff testified that she knew she would need to care for the children for approximately ten years after the entry of the Dissolution Decree. She testified that she needed financial support to maintain a standard of living approximately similar to that experienced before the dissolution.

The terms of the parties' agreement are perpetuated in a detailed Stipulation executed by the parties on March 22, 1988. The child support provisions are contained in paragraph 9 of the Stipulation. These provide that Mr. Trickey would pay the sum of \$1,200 per month as child support for the parties' three minor children. The length of the support and the exact terms are not at issue in this case. It appears that Mr. Trickey has largely made the child support payments provided under this paragraph. The provisions for alimony payable by Mr. Trickey to Mrs. Trickey are set out in paragraph 15 of the Stipulation. They provide that Mr. Trickey would pay Mrs. Trickey the sum of \$800 per month for a period of 36 months beginning April 1, 1988. Thereafter, Mr. Trickey would pay Mrs. Trickey the sum of \$1 per year until her death or remarriage. Again, the evidentiary record establishes that Mr. Trickey made all of the payments under this provision.

The remaining financial issues were addressed in paragraph 17 of the Stipulation which is labeled "Personal Property Award." This paragraph, in relevant part, provides that Mr. Trickey was to pay Mrs. Trickey the sum of \$100,000 on September 1, 1991. In addition, Mrs. Trickey was awarded an additional property payment of \$50,000 effective April 1, 1991. This portion of the award collected interest at a rate of 10% per annum. However, the principal did not have to be paid until September 1, 1997. A third and final monetary award states: "A further property settlement shall be paid to the Petitioner in the amount of \$2,000 per month for 36 months beginning April 1, 1988".

It is these three awards under the "Personal Property Award" section of the Stipulation which are in controversy. Terry Trickey claims that these awards are in the nature of alimony, maintenance or support and were designed to provide her with financial security in the manner that she had enjoyed prior to the dissolution of the parties' marriage.

At the trial, evidence was presented relating to the \$2,000 property settlement for 36 months beginning April 1, 1988. There exists a debatable issue as to whether this is properly categorized as supplemental alimony or property distribution. There is substantial evidence to support a finding that this portion of the property distribution was included as a property award for tax considerations though it may be more properly categorized as alimony. Nevertheless, even concluding that the \$2,000 payments could be properly categorized as alimony is of no ultimate significance as these sums were paid when due by Defendant. Therefore, this portion of the property settlement has been liquidated since April of 1992.

It is the remaining two awards in the amounts of \$100,000 and \$50,000 respectively which are in contention. Mr. Trickey made one substantial lump sum payment in January of 1992 in the approximate amount of \$14,000. Additionally, he made payments of \$2,800 per month for approximately 16 months from January of 1992 until April of 1993. Since that time, he has made some interest payments though it does not appear that any additional principal payments have been paid.

CONCLUSIONS OF LAW

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. 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.

While Mrs. Trickey states that the sum should be construed as maintenance, support or alimony, the entire evidentiary record is inconsistent with such a conclusion. During this contentious dissolution, the parties negotiated at great length. The Court has been presented with substantial documentation which thoroughly documents the course of the parties' negotiations. Clearly, the parties understood at the time of the execution of the Stipulation that both the \$100,000 and the \$50,000 awards constituted property settlement to equalize the parties' distribution of assets. Mr. Trickey was awarded the parties' bowling alleys because these had been his primary business and it was felt he would be more capable than Mrs. Trickey of operating them at a profit. Additionally, the correspondence indicates that these were awarded to Mr. Trickey so he could pay the alimony and support obligations which he was assuming under the Stipulation. The two awards of \$100,000 and \$50,000 made to Mrs. Trickey constitute an approximately equal distribution of the parties' assets.

Subsequent to the dissolution, Mr. Trickey experienced financial reversals in the bowling alley business. A modification of the Dissolution Decree was contemplated by Mr. Trickey and the parties again began a long series of correspondence discussing the impact of the Dissolution Decree and potential methods of resolving the obligations still owing by Mr.

Trickey to Mrs. Trickey.

Ordinarily, actions and conduct of the parties after the entry of the Dissolution Decree is of little relevance in determining the intent of the parties at the time of the entry of the Decree. "In deciding whether to characterize an agreement as an alimony, maintenance or support obligation or a property settlement, the bankruptcy court does not examine the present situation of the parties." Boyle, 724 F.2d at 683; see also In re Fitzgerald, 9 F.3d 517, 520 (6th Cir. 1993) (noting that a majority of circuits focus only on the intent of the parties at the time of divorce).

However, in this case, the correspondence is extremely instructive on the issue of the intent of the parties at the time of the entry of the Decree of Dissolution. This post-decree correspondence unquestionably establishes that counsel for both parties, as well as the parties themselves, understood that the provisions in question were property distribution when the Stipulation was executed and entered in 1988. In the post-dissolution negotiations, Mr. Trickey offered to transform the remaining property settlement into alimony if an agreeable sum could be negotiated. This would allow him some financial relief and would make the remaining obligation nondischargeable according to the parties' correspondence. Mrs. Trickey, throughout these negotiations never questioned the fact that these were property awards. After thorough consultation with her attorneys, she chose not to consent to having a portion of the remaining award converted into a nondischargeable alimony obligation.

These negotiations are not binding in any legal sense. However, they clearly show the intent of the parties at the time of the entry of the Dissolution Decree and well afterward. There was never any doubt until the filing of the bankruptcy petition that the \$100,000 and \$50,000 property award made in the Dissolution Decree constituted property settlement and not maintenance, alimony or support. Mrs. Trickey did not meet her burden to prove by a preponderance of the evidence that these awards are actually in the nature of alimony, maintenance or support.

WHEREFORE, Plaintiff's Complaint to determine dischargeability of debt under 523(a)(5) is DENIED.

FURTHER, Plaintiff's claim of \$150,000 which arises from paragraph 17 of the Stipulation in the parties' dissolution proceeding is DISCHARGEABLE.

SO ORDERED this 20th day of September, 1995.

Paul J. Kilburg
U.S. Bankruptcy Judge

1. ¹Because Plaintiff filed her complaint herein prior to October 22, 1994, the version of 523(a)(5) as it existed prior to the Bankruptcy Reform Act of 1994 Amendments is applicable.