

In the United States Bankruptcy Court

for the Northern District of Iowa

RODNEY ALLEN RODEMAKER
Debtor.

Bankruptcy No. 96-40678XM
Chapter 7

VERNA ROSE RODEMAKER
Plaintiff

Adversary No. 96-4106XM

vs.

RODNEY ALLEN RODEMAKER
Defendant

MEMORANDUM OF DECISION

Verna R. Rodemaker asks that debtor's obligation to her arising out of a 1996 dissolution decree be determined nondischargeable. Trial was held March 12, 1997 in Mason City. This is a core proceeding under 28 U.S.C. 157(b)(2)(I).

Findings

Verna and Rodney Rodemaker were married in August 1991. The decree dissolving their marriage entered May 28, 1996. Rodemakers have two children, Laken, age 3, and Arien, age 2. They have joint custody, but the children live with their mother. Rodney has visitation rights.

Rodney is 24 years old. He lives in Osage, Iowa in the house the couple purchased on contract shortly before they divorced. He works as a laborer for Quality Pork Processors in Austin, Minnesota. His employer pays him \$10 per hour including incentives; his employer guarantees him 36 hours of work per week.

The couple stipulated as to various aspects of the divorce including custody, child support, and property division (Exhibit A). The Decree of Dissolution (Exhibit B) incorporated the couple's stipulation. Rodney was to pay child support according to state guidelines. He currently pays \$422 per month. He is obligated also to pay the children's health insurance and to split with Verna the cost of uninsured medical expenses. Neither party was to pay the other support.

Rodney received the home, but he was required to "renegotiate and assume sole liability for the real estate contract obligation. . . ." (Exhibit A, 12(a)). He says he has done so, but he was not able to submit written proof of it. Verna believes she is still liable for the debt. She says she has been told as much by the contract seller.

Under paragraph 12(b) of the stipulation, Rodney agreed "to assume complete responsibility, agreeing to hold Verna harmless, to pay off the marital debts." He also was to pay \$500 of Verna's attorney's fees for the dissolution, but had not done so by the time he filed his bankruptcy petition.

The couple was to divide an estimated \$3,011 in net tax refunds. Rodney was to receive \$2,005.50; Verna was to receive \$1,005.50.

Rodney received the couple's Honda Civic. Rodney was involved in an accident while driving it prior to the entry of the dissolution decree. He and a passenger in the car, Dawn Palmer, were injured. An insurance company notified him of its subrogation claim against him for Palmer's injuries in the approximate amount of \$41,000. He scheduled both the insurance company and Palmer as creditors. An order discharging Rodney's debts entered June 26, 1996. The only complaint regarding dischargeability of debts was filed by Verna. Palmer lives with Rodney.

Rodney has the house which he values at \$25,000, household goods valued on the schedules at \$1,800, clothes worth \$50 and a used Mark IV automobile which he values at \$1,800. He owes \$22,300 on the house, \$1,100 on some of the household goods, and \$800 on the car. He has reaffirmed only the debt to American General Finance, Inc. on the household goods. (I take judicial notice of the debtor's reaffirmation agreement (docket no. 6)). He owes approximately \$5,180 on a student loan.

Debtor's gross income is approximately \$1,529 per month (Exhibit H). His monthly expenses are shown below:

Payroll taxes	\$ 304
Health insurance	58
Union dues	19
Child support	422
United Way contribution	2
Real estate contract	250
Real estate taxes (monthly average)	23
Expenses when children are with him	50
Food	120
Utilities	150
Phone	51
Clothes and entertainment	50
Work clothes (monthly average)	7
American General Finance	67
(from reaffirmation agreement)	
Student loan payments	71
Gasoline	<u>129</u>
Total	\$1,773

Rodney appears to be spending more than he earns--\$244 more. However, he receives contributions from Dawn Palmer for half the house payment, phone and utilities. Her contribution would be approximately \$225 per month, approximately the amount of his deficit spending.

Verna earns approximately \$700 per month as a certified nursing assistant. She also receives the \$422 monthly child support. Food stamps of about \$200-\$250 per month provide for food.

She spends the following each month:

Trailer payment	\$ 213
Lot rent	85
Utilities budget	118
Utilities over budget	42
(average over 12 months)	
Phone	100
Child care	350
CATV	30
Gasoline	75
Miscellaneous	<u>100</u>
Total monthly expenses	\$1,113

Although her income appears to exceed her expenses by only \$8 each month, she has additional payments. She is paying her attorneys \$20 per month. She is also paying \$20 per month to North Iowa Mercy Health Center and Hospital on a marital debt of approximately \$2,000 (Exhibit E). And she is paying \$20 monthly on a judgment obtained against her by Homeland Bank, N.A. The judgment was for \$715. It was a marital debt.

Under the decree, Rodney was responsible for holding Verna harmless on all marital debt. It is not entirely clear which debts the parties believe are marital debts or which creditors might pursue Verna because of their belief that she is legally obligated to them.

It appears there are two marital debts related to property--one to American General Finance, Inc. secured by the household goods retained by Rodney and the debt to Norma Wright on the house retained by Rodney. He has reaffirmed the former. The latter he continues to pay in order to keep the home. His monthly payments include both of these debts. He has the ability and incentive to pay them. Discharging his obligation to hold Verna harmless for any payment she might make on these debts does not provide him with a benefit that outweighs the detriment to her. It would be inequitable to allow him to shift the burden for payment on his property to Verna. The property settlement obligations for the house and personalty will not be discharged.

There appears to be about \$8,600 worth of marital debts from the period when the couple lived together. Also there is the alleged \$41,000 claim against Verna as a result of the auto accident. Because she also apparently had the car titled in her name, Verna may be liable for such a claim. There is approximately \$1,393 in medical bills for Rodney as a result of that accident. These may be marital debts.

When one considers the total amount of these debts--approximately \$50,000--it appears that Rodney does not have the ability to pay. That is why he no doubt filed bankruptcy. If Verna were to pay them in one lump sum, I would find that Rodney would not have the ability to pay her \$50,000, and so his obligation to her would be discharged under 11 U.S.C. 523(a)(15)(A).

But I consider that Verna also does not have the ability to pay \$50,000 to these creditors, either in a lump sum, or over time. Her prospects for paying these debts even over an extended period are not good. But she is attempting to pay those of the creditors that have pursued her and that are willing to take small payments over time. At present, she is paying \$20 a month to each of three creditors. She does not want to file bankruptcy. If all creditors who may have legal claims against her obtain judgments, their abilities to garnish her wages would be legally limited. Her income is also not sufficient to permit many more additional voluntary monthly payments. The creditors simply will not be able to get "blood from a turnip." She has only a very limited ability to pay these marital debts.

Neither Verna nor Rodney is in good financial condition. As one attorney noted, they are equally poor. But because of Verna's limited resources, I find that Rodney has the ability to hold her harmless from any debts that she actually pays. That is how I construe the Stipulation and Decree. He is either to pay the marital debts, which for the most part because of the bankruptcy he no longer is obligated to do, or he is to hold Verna harmless for her payment of them. She has paid one in full--\$250 for the repair of Rodney's truck. She is paying \$60 per month on three others. It is the amount of these payments that I consider in determining Rodney's ability to pay, not the total of \$50,000 in marital debts. Because of her limited financial abilities, more limited than his, I cannot find that Rodney does not have the ability to pay Verna for whatever payments she must make on the marital debts.

As I find Rodney has the ability to pay, I must also consider whether discharging his obligation results in a benefit to him that outweighs the detrimental consequences to Verna if his obligation is discharged. 11 U.S.C. 523(a)(15)(B). The burden of persuasion is on Rodney for this defense to nondischargeability. I find he has failed to show that the benefit to him of a discharge outweighs the detrimental consequences to Verna.

Last, except for the \$500 awarded by the state court, the plaintiff has offered no theory to support an award of attorney's fees engendered by this case. I decline to award additional fees.

Conclusion

I conclude that Rodney A. Rodemaker's dissolution decree obligation to hold Verna Rodemaker harmless as to the payment of marital debts is nondischargeable under 11 U.S.C. 523(a)(15).

ORDER

IT IS ORDERED that judgment shall enter that the obligation of Rodney A. Rodemaker to hold harmless Verna R. Rodemaker from the payment of marital debts as decreed in case number CDDM000089 in the Iowa District Court of Chickasaw County is excepted from Rodney A. Rodemaker's discharge under 11 U.S.C. 523(a)(15).

SO ORDERED THIS 25th DAY OF MARCH 1997.

William L. Edmonds
Chief Bankruptcy Judge
March 25, 1997

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to: Roger Sutton, Christine Skilton, U.S. Trustee,