

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

VERNON C. HOOPS
Debtor.

Bankruptcy No. 95-51751XS
Chapter 7

SHEILA HOOPS
Plaintiff

Adversary No. 95-5206XS

vs.

VERNON C. HOOPS
Defendant.

MEMORANDUM OF DECISION

Sheila Hoops asks for a determination that debtor's obligations to her arising out of a dissolution decree are nondischargeable as support under 11 U.S.C. 523(a)(5). Alternatively, she asks that the obligations be determined nondischargeable under 11 U.S.C. 523(a)(15). Vernon C. Hoops, the debtor, contends that the obligations are in the nature of a property settlement and that they should be discharged, first because he does not have the ability to repay them, and second because even if he could repay, the benefit to him of discharge outweighs the detrimental consequences to his former spouse.

Trial was held March 14, 1997 in Sioux City. Alice S. Horneber, Esq. appeared for plaintiff. Donald H. Molstad, Esq. appeared for defendant/debtor Vernon Hoops. The court now issues this memorandum of decision which contains findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. 157(b)(2)(I).

Findings

Vernon and Sheila Hoops were married in 1973. He was approximately 30 years old at the time and had farmed since high school. He has always held off-farm jobs. The couple lived on an acreage near Alta, Iowa. Sheila was not employed off the farm. She was a "farm wife" and a mother to the couple's two children--Courtney, born in January 1975, and Roxanne, born in January 1978. She is 44 years old.

In 1989, the last year he farmed, Hoops raised crops on 500 acres. He had a line of equipment most of which he had acquired since his marriage to Sheila. His operation was financed primarily by the then Farmers Home Administration (FmHA).

The couple separated. Sheila and the children moved to Nevada, Iowa in August 1989. Around that time, she filed for divorce. Sheila offered Vernon a stipulation in contemplation of the dissolution decree (Exhibit B). Among other things, she proposed that Vernon pay her child support in the amount of \$300 per month per child, monthly alimony of \$400 until her remarriage or the death of either of them, and a property settlement of \$30,000 payable over six years (Exhibit B).

Vernon did not want to pay alimony. He believed alimony payments were endless and that it was better for him to pay finite child support or a property settlement. Vernon persevered on the point. The parties' stipulation and agreement (Exhibit F), filed with the state court, did not provide for alimony. However, the property settlement to Sheila was increased from \$30,000 to \$50,000. Instead of five years, it was payable over 10 years in monthly installments of \$416.66. Only delinquent payments would bear interest. At the time of the divorce proceedings, Vernon estimated that his net worth was \$62,317 (Exhibit D).

The parties disagree as to how the \$50,000 property settlement figure was reached. Vernon says Sheila demanded it when he would not pay alimony, and that he agreed so long as no interest was charged. In his view, there was no practical difference to him between \$50,000 over 10 years without interest and \$30,000 over six years. Sheila disagrees that that is how the figure was agreed on. She looked on the payments as support.

The parties agreed that child support would be \$800 per month while both children were minors. When Courtney turned 18, support would be reduced to \$500 per month. However, if Courtney continued her education after high school, the parties were to attempt to agree on a suitable amount of continued support for her. (Exhibit F, 6).

Other provisions of the agreement were:

1. Vernon would make the car loan payments on the 1988 Honda awarded to Sheila;
2. Vernon would pay any and all debts associated with his farming operation and would indemnify Sheila for any payments by her of such debts;
3. Sheila would be entitled to attorney's fees for enforcement of the agreement.

(Exhibit F, 8, 12 and 14).

The dissolution decree was issued March 14, 1990 (Exhibit E). It incorporated the foregoing provisions of the parties' stipulation (Exhibit E).

After the divorce, Vernon's farming operation had financial difficulties. He "sat out" the 1990 crop year. In 1990, he sold stored grain but had no farm deductions so his income taxes were higher than normal. He was unable to get back into farming in 1991. He surrendered his farm equipment to FmHA in 1992, but the proceeds of the creditor's sale did not pay the debt, and the sale of the equipment created further tax liabilities which Vernon could not pay. Vernon and Sheila were able to compromise their remaining debt to FmHA in 1992. They owed nearly \$80,000, but FmHA accepted \$250 from Vernon and \$50 from Sheila in full satisfaction.

In April 1991, Vernon began working for Schuster Trucking as a driver. He is paid by the mile and receives a meal allowance and also load and drop pay. He is guaranteed \$352 per week. Since and including 1992, he has averaged \$33,877 in gross wages per year.

Vernon lives in LeMars with a friend at her house. He contributes \$420 to housing costs. He owns no car. He borrows a 1982 Lincoln from his brother who pays for any repairs. Vernon had owned a car after the divorce, but he transferred it to his mother to satisfy a debt of between \$3,500-\$4,000.

Vernon became delinquent in paying the property settlement and the payments on Sheila's car. In late 1993, the parties agreed to a modification of the dissolution decree (Exhibit G).

The modification provided that beginning in September 1993, Vernon would pay \$500 per month support for Roxanne until she began college and \$300 per month support for Courtney for the period of her college education. After Roxanne graduated from high school, and if she continued her education, the support was to be \$400 per month for each daughter (Exhibit G).

Payments on the property settlement were also modified. So long as both daughters were in school, the payments were reduced to \$100 per month. At the time either daughter was no longer in school, the property settlement payments would increase to \$300 per month and would remain at that amount until the then-balance of \$44,120 was fully paid. Unpaid installments would draw annual interest at 10 per cent. Sheila attempted to have language added to the modification which would have recognized the support character of the property settlement. She proposed the following: "This is required for petitioner to meet living expenses and while referred to as property settlement, it is in the nature of support."

Vernon refused to agree. He would sign the modification only if the sentence was struck. It was. At the time of the modification, Vernon believed that if he filed bankruptcy, a property settlement would be discharged.

Courtney did not complete college. She dropped out in December 1994. Vernon was aware Courtney had left college. He nonetheless continued to pay support payments as though she had not. He expected Sheila to transfer the money to Courtney and not to apply it instead to the property settlement. He made support payments for both daughters until he filed bankruptcy. Vernon agrees that he was aware that Courtney's leaving college could have reduced the support, but he paid it anyway because his daughter needed the help.

Vernon filed his chapter 7 petition on September 14, 1995. He scheduled tax obligations to the Internal Revenue Service and the State of Iowa totaling almost \$46,000 (Exhibit W). He scheduled unsecured debts of nearly \$64,000 with \$44,120 of that amount owed to Sheila on account of the property settlement. His tax and other obligations have been discharged. The child support obligation remains. Vernon expects that Roxanne will complete her two-year degree within the next year and a half. Since the divorce, he has paid \$10,238 on the property settlement. He paid nothing on the property settlement in 1996.

Vernon does not own any significant assets. His most substantial is a 401(k) plan with his employer. Its value at the time he filed was \$5,200. He has no known health problems.

During 1996, Vernon had average monthly take-home pay of \$2,036. He itemized his average monthly expenses as follows:

Child support	\$ 400.00
Rent and storage	420.00
Phone	167.86

Payments - Courtney	153.48
Payments - Roxanne	141.66
401(k) plan	130.00
Health insurance	108.33
Lodging while working	37.50
Car - gas	45.67
Personal care	26.84
Recreation	13.00
Post office box	3.34
Legal fees	58.17
Food	<u>330.21</u>
Total	\$2,036.06

Sheila's employment prospects have slowly improved. Her first job after her separation was at a bank in Nevada. It paid her \$4.50 per hour. She found a succession of various other jobs, full and part-time, temporary and permanent. She had periods of unemployment. She managed to get a two-year college degree.

She moved to Carroll and took a job with the post office. It was part-time with flexible hours. She stayed until January 1996, when she moved to Fenton, Missouri to take a job with the post office in nearby St. Louis.

She and Roxanne live in a mobile home. Sheila gives support payments to Roxanne, but Roxanne contributes \$100 per month for food.

Sheila has been working full 40-hour weeks, although full-time work is not guaranteed her. In 1996, Sheila's gross pay was approximately \$27,000. She has been paying 5 per cent of her pay into a voluntary retirement account. Sheila's gross annual income for 1994-1996 has averaged approximately \$25,000.

She has had financial difficulties since the divorce. Vernon's payments under the decree have been sporadic. He did not make payments on her car loan. Her 1988 Honda was repossessed, and she had to borrow and pay \$2,200 to get it back. Also, Vernon was not able to pay 1989 federal income taxes. It was the last year the couple had filed a joint return. To obtain some payment, the IRS offset Sheila's tax refunds from 1991 to 1995, taking a total of \$6,014.

Sheila has significant debts. She owes approximately \$26,000 on her mobile home loan. She owes a credit union approximately \$5,900 on a loan secured by her car. She owes her parents \$4,000, and various other creditors about \$15,000.

Without considering child support or property settlement payments, her monthly take-home pay is about \$1,833. Monthly expenses include the following:

Insurance	\$ 80
Utilities	162

Trailer mortgage	272
Lot rent	212
Phone	120
Maintenance	75
Food	300
Transportation	150
Recreation	50
Contributions	40
Car loan	200

These total \$1,661, but they do not include any expenses for clothing, uninsured medical care, or property taxes on the mobile home. Also, Sheila's monthly payments on her credit card debt are approximately \$372. She is spending more than she earns but not because of extravagance. It appears that it is rather because she started out behind the proverbial "eight ball."

Discussion

The court must determine whether the obligations at issue are support or property settlement. I am not bound by state law or the characterizations in the decree in making that determination. The task is to decide whether an obligation is actually in the nature of support. Draper v. Draper, 790 F.2d 52, 54, n. 3 (8th Cir. 1986). Payments to third parties can be viewed as support obligations, depending on their intended function. Williams v. Williams (In re Williams), 703 F.2d 1055, 1057 (8th Cir. 1983).

Vernon's obligations to make Sheila's car payments served a support function. She needed a car to travel to work and for other personal use. Under the dissolution decree, Vernon is obligated to Sheila for repayment of the money which Sheila paid to get the car back after repossession. This \$2,200 obligation is nondischargeable under 11 U.S.C. 523(a)(5).

I find also that a portion of the property settlement served a support function. At the time of the divorce, Sheila had been a housewife for 16 years. She had not been employed outside the home and had no particular training or advanced education. She would have to make an effort to become employable and to earn a living on her own. Vernon had been the only breadwinner. It is reasonable that support would have been intended at least for some period after the divorce. My conclusion does not change because Vernon was adamantly against characterizing any obligation as support or paying support. The label "property settlement" seems to have been used in Vernon's interest at first to prevent indefinite payments and later, to facilitate a possible bankruptcy discharge of the obligation.

But I cannot find that all of the property settlement was a support obligation. It was reasonable for the parties to agree to share a net worth of approximately \$62,000. I find that of the property settlement obligation set out in the decree, \$30,000 was property settlement and \$20,000 was in the nature of a support obligation. The parties agree and the evidence otherwise supports a finding that Vernon paid \$10,238 on the property settlement. This amount will be prorated between the support and property settlement components of the decree's "property settlement." Forty per cent, or \$4,095, will be applied to the support portion, leaving a balance of \$15,905 plus interest. I conclude this obligation is nondischargeable under 11 U.S.C. 523(a)(5).

The unpaid portion of the property settlement is \$23,858. This obligation is nondischargeable under 11 U.S.C. 523(a)(15) unless Vernon can prove that he does not have the ability to pay it (523(a)(15) (A)) or that the benefit to him of discharging the obligation outweighs the detriment to Sheila which would follow from discharge (523(a)(15)(B)).

Considering all of Vernon's obligations to Sheila arising from the decree, I find that Vernon has the financial ability to meet these obligations. He does not live extravagantly. He is able to save \$130 per month in a 401(k) plan at work. He tries to help his daughters beyond his obligation to pay child support. In 1996, he gave them \$3,541. He also paid \$4,800 in child support for Roxanne, an obligation that will end in the next one to three years. His total monthly payment to Sheila under the decree would be \$300 at that time. His only debt is to Sheila. His tax obligations have been discharged, as have his other debts. Vernon has not shown an inability to pay.

I find, however, that discharging the property settlement would result in a benefit to Vernon which outweighs the detrimental consequences to Sheila. The entire property settlement was premised on Vernon's retention of the farm equipment and the continuation of his farming operation. Had the farm operation succeeded, it would have enabled Vernon to provide a living for himself, meet his obligations to Sheila, and to help his daughters. It did not work out that way. There has been no showing that the loss of the equipment and the cessation of farming was improperly caused by Vernon. He did not keep what was contemplated by the decree. Bankruptcy law contemplates a fresh start for debtors. It would be inequitable to continue to saddle Vernon with what would amount to payments to Sheila for the right to keep equipment which he no longer has. Nondischarge of the property settlement would burden Vernon into retirement.

There is, of course, a detriment to Sheila in not getting the remaining \$23,858. But it is not so serious as the burden on Vernon of having to continue payments on the lost property. Sheila's earning power has improved. She now has a college degree, and it is likely she will continue to earn wages equivalent to Vernon's. Vernon will remain obligated on the support component of the decree which will supplement her income and help her to pay off the debts she has incurred in the difficult years immediately following the divorce. Discharging the property settlement component of the decree is equitable because it places the burden of the loss of the farm assets equally on Vernon and Sheila. I conclude that the property settlement portion of the decree, represented by a remaining balance of \$23,858 should be discharged under 11 U.S.C. 523(a)(15)(B).

Vernon was obligated to pay any and all debts associated with the farming operation. His farm and off-farm income created the taxes for which the couple was liable in 1989. Sheila agreed to a joint return, and Vernon agreed to pay the taxes. These taxes and Vernon's obligation to repay Sheila her payment of a portion of them are covered by the decree under paragraph I (Exhibit E, page 9). It is more likely that this is a property settlement. Vernon has the ability to repay Sheila \$6,014. As to this obligation, the detrimental consequences of not receiving the money far outweighs the benefit to Vernon of discharge. She has paid the money from tax refund offsets. Despite her growing income, she is in debt, to a great extent, because Vernon has not lived up to his obligations to her and because he could not pay his debts. Discharging the tax repayment obligation would leave Sheila in debt. At present, Sheila is less able to pay her living expenses and debts than is Vernon. On balance, discharging this obligation hurts Sheila more than it helps Vernon. I conclude that Vernon's obligation to repay Sheila \$6,014 for her payment of the 1989 tax obligation is nondischargeable under 11 U.S.C. 523(a)(15).

The remaining obligation is for Sheila's reasonable attorney's fees in compelling adherence to the decree. I find this is a support obligation and that it is nondischargeable under 11 U.S.C. 523(a)(5).

IT IS ORDERED that the following obligations of Vernon C. Hoops to Sheila Hoops arising out of a Judgment and Decree dated March 14, 1990 and an Order for Modification of Decree dated November 8, 1993 are determined to be nondischargeable under 11 U.S.C. 523(a)(5): support in the amount of \$15,905 plus interest; support in the amount of Sheila Hoops' reasonable attorney's fees in enforcing the decree and order; and reimbursement of automobile payments made by Sheila in the amount of \$2,200 plus interest.

IT IS FURTHER ORDERED that Vernon C. Hoops' property settlement obligation to Sheila Hoops arising from said decree and order is nondischargeable under 11 U.S.C. 523(a)(15) for 1989 tax payments made by Sheila Hoops in the amount of \$6,014 plus interest.

IT IS FURTHER ORDERED that Vernon C. Hoops' obligation to pay Sheila Hoops a remaining balance of property settlement in the amount of \$23,858 is discharged under 11 U.S.C. 523(a)(15)(B).

Judgment shall enter accordingly.

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: Alice Horneber, Don Molstad and U.S. Trustee.