

In the United States Bankruptcy Court
for the Northern District of Iowa

DANIEL JAMES ELLIS
Debtor(s).

Bankruptcy No. 99-00191-D
Chapter 7

JANET BETH ELLIS
Plaintiff(s)

Adversary No. 99-9085-D

vs.

DANIEL JAMES ELLIS
Defendant(s)

**ORDER RE COMPLAINT FOR NONDISCHARGEABILITY OF SUPPORT
OBLIGATIONS**

This matter came on for trial before the undersigned on February 22, 2000 on Plaintiff's Complaint for Nondischargeability of Support Obligations. Plaintiff Janet Beth Ellis was represented by Attorney Carolyn J. Beyer. Debtor/Defendant Daniel James Ellis was represented by Attorney Thomas Verhulst. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

FINDINGS OF FACT

Plaintiff Janet Beth Ellis and Debtor Daniel James Ellis were married on December 14, 1988 in Arizona. By 1994, they had separated. Plaintiff eventually filed a petition for dissolution of marriage in the Iowa District Court for Buchanan County. That court entered a decree dissolving the marriage on September 17, 1996.

During the divorce proceedings, both parties sought custody of their two minor children, Kaitlyn Marie Ellis and Michelle Ann Ellis. The court awarded joint custody, giving Plaintiff primary physical care and allowing Debtor visitation rights. Debtor was also ordered to pay \$1,099 per month in child support.

This custody battle constituted the only significant dispute in the divorce proceedings. Plaintiff did not seek alimony or support payments on her own behalf. The amount of the child support payments was not seriously contested. Rather, the payment level was taken directly from Iowa statutory guidelines. Finally, Plaintiff did not seriously contest the unequal division of marital property contained in the Iowa court's Judgment and Decree.

According to the testimony of both parties at trial, Plaintiff received a substantially smaller award of marital property than did Debtor. Significantly, Debtor was awarded full ownership of two going

concerns, Ellis Electric Company and Ellis Trucking Company. Plaintiff was awarded the house and stock in the Buchanan County Abstracting Company. Both parties estimate the disparity in the settlement value at \$100,000. While neither party could explain why this disparity existed, Plaintiff suggested that she was less concerned with the property settlement than she was with getting out of the marriage.

A disparity also existed with regard to the parties' net monthly income at the time of the decree. Plaintiff's net monthly income from her work at the Jackson County Abstract Company equaled \$1,055.84. The Iowa court struggled to define Debtor's net monthly income, noting that estimates from both parties ranged from \$1,764.00 to \$8,054.72. The court ultimately determined Debtor's net monthly income at the time of the decree to be \$3,763.00.

In the Judgment and Decree containing these findings, the Iowa District Court awarded Plaintiff attorney's fees in the amount of \$3,700.00. This amount was payable directly to Plaintiff's attorney. Part of this award (\$200) was Debtor's sanction for being previously held in contempt of court. The court did not state whether this award was intended as support. Plaintiff testified at trial that her ability to support her children without the award of attorney's fees would have been diminished. Both parties admit that they lack personal knowledge regarding the Iowa court's intention in awarding the attorney's fees to Plaintiff.

Plaintiff argues that the attorney's fees constitute a support obligation arising from a divorce decree. As such, the debt is nondischargeable under 11 U.S.C. § 523(a)(5). Debtor counters that the fees were awarded not as support, but rather as part of the property settlement. While Debtor does not dispute the nondischargeability of the \$200 in fees representing his penalty for contempt, he maintains that the remaining \$3,500 is not excepted from discharge under § 523(a)(5).

DISCUSSION

The party seeking to except a debt from discharge under § 523(a)(5) must prove by a preponderance of the evidence that the obligation is in the nature of alimony, maintenance, or support. Grogan v. Garner, 498 U.S. 279, 287 (1991). While exceptions to discharge are generally construed narrowly, exceptions to discharge for support obligations deserve a more liberal construction. In re Kline, 65 F.3d 749, 751 (8th Cir. 1995). The policy of § 523(a)(5) favors enforcement of familial support obligations over giving debtors a "fresh start." Id.

Whether a particular obligation is in the nature of support is a question of federal bankruptcy law, not state law. In re Williams, 703 F.2d 1055, 1056 (8th Cir. 1983). The bankruptcy court must determine the purpose that the obligation was intended to serve at the time it was created. Id. at 1057. The current needs and financial circumstances of the parties are irrelevant to this determination. In re Draper, 790 F.2d 681, 683 (8th Cir. 1986). The question of intent is a question of fact to be determined in light of all the circumstances existing at the time of the dissolution decree. Williams, 703 F.2d at 1057-58.

An award of attorney's fees in a dissolution proceeding can be considered a nondischargeable support obligation, even when the fees are payable directly to the former spouse's attorney. Kline, 65 F.3d at 751. Such an award must be intended as a support obligation, however. Williams, 703 F.2d at 1057. Often this determination is difficult since divorce courts do not address the intent behind obligations created by the decree.

The nature of the underlying litigation is one factor that informs the court's inquiry into whether attorney fees were intended as "support" under § 523(a)(5). In re Poe, 118 B.R. 809, 811 (Bankr. N.D. Okla. 1990); In re Pluemer, Adv. No. 93-2071-LD, slip op. at 5 (Bankr. N.D. Iowa Jan. 11, 1994). Where the contested issues in the divorce revolve around questions of child support, maintenance, or custody, an award of attorney's fees to the prevailing party is generally considered to be an award of support. See, e.g., In re Foiles, 174 B.R. 692, 695 (E.D. Va. 1994)(affirming bankruptcy court's determination that attorney fees were support when awarded to the spouse having custody of children), aff'd, 62 F.3d 1414 (4th Cir. 1995); In re Gionis, 170 B.R. 675, 683 (B.A.P. 9th Cir. 1994) (holding that an award of attorney's fees to the spouse with lesser income was an award for support where that spouse also had custody), aff'd, 92 F.3d 1192 (9th Cir. 1996). This is because an award of attorney's fees under such circumstances has a direct nexus with the award for support; the fee award frees up money for the children's support. See In re Shea, 221 B.R. 491, 498 (Bankr. D. Minn. 1998); In re Pence, Adv. No. L90-0173-C, slip op. at 9 (Bankr. N.D. Iowa May 13, 1991).

The relative financial condition of each spouse at the time of the decree also speaks to the state court's intent in awarding attorney's fees. In re Moeder, 220 B.R. 52, 55 (B.A.P. 8th Cir. 1998). When a significant disparity in income exists between spouses in a divorce, a bankruptcy court may properly view an award of attorney's fees as an award of support. In re Clark, 207 B.R. 651, 655 (Bankr. E.D. Mo. 1997). Similarly, inequality in the award of marital property supports the conclusion that attorney's fees were awarded as support. Moeder, 220 B.R. at 55.

Applying these principles, Plaintiff's claim for attorney's fees should be excepted from discharge under § 523(a)(5). The primary dispute in the divorce proceedings was over child custody. Plaintiff prevailed on this issue and was awarded primary physical care along with child support. Generally, an award of attorney's fees in connection with a custody dispute amounts to an award for support under § 523(a)(5). See Foiles, 174 B.R. at 695; Gionis, 170 B.R. at 683.

The fact that Plaintiff had custody of the children at the time of the divorce and made less per month than Debtor supports the conclusion that the attorney's fee award was intended as a support obligation. See In re Gianakas, 917 F.2d 759, 763 (3d Cir. 1990). At the time of the decree the parties had substantially disparate incomes. According to the factual findings of the Iowa District Court, Debtor made about \$2,700 more per month than did Plaintiff. Plaintiff's income was sufficiently low to suggest that payment of attorney's fees would have been burdensome. Plaintiff testified at trial that this was the case. In these circumstances, the purpose of an attorney fee award is to provide the needier individual with the financial means to bring or defend the divorce action. In re Pallesen, Adv. No. X92-0075-S, slip op. at 8 (Bankr. N.D. Iowa Jan. 14, 1993). In other words, the fee award serves a support function. Id.

The substantial disparity in the parties' share of the marital property also supports the conclusion that the attorney's fees were intended to serve a support function. Both parties testified at trial that Debtor received approximately \$100,000 more in marital property than did Plaintiff. Debtor was awarded full ownership of two going concerns, Ellis Electric Company and Ellis Trucking Company. The property settlement left Debtor with ample means for providing for his own support. Plaintiff, on the other hand, was awarded little property that could serve as a source of income and support. The award of attorney's fees in these circumstances is intended to bridge the gap between Debtor's and Plaintiff's means of supporting themselves.

SUMMARY AND CONCLUSION

The parties' divorce decree does not explicitly reveal the intent of the Iowa District Court in awarding Plaintiff attorney's fees. In order to determine the purpose of the award, this Court must examine all of the facts and circumstances relevant to the issue of intent that existed at the time of the decree. Relevant facts and circumstances include the nature of the divorce litigation, the parties' relative financial position at the time, and any disparity in the division of marital property.

Plaintiff and Debtor's divorce was primarily characterized by a custody dispute. Plaintiff won primary physical custody and child support. The award of attorney's fees was part and parcel of this support obligation, especially in view of the significant disparity in the parties' earning power at the time. The substantial disparity between Debtor's and Plaintiff's share of the marital property further supports the conclusion that the award of attorney's fees was intended as a support obligation. Excepting Plaintiff's claim from discharge furthers the policy favoring enforcement of support obligations in bankruptcy.

WHEREFORE, the attorney's fee award arising from the Plaintiff and Debtor's divorce decree was intended as a support obligation.

FURTHER, Plaintiff's claim is excepted from discharge under 11 U.S.C. § 523(a)(5).

SO ORDERED this 14th day of March, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge