In the United States Bankruptcy Court

for the Northern District of Iowa

MERLE DUANE GREEN *Debtor(s).*	Bankruptcy No. 99-01124-C Chapter 7
JUDY K. HOLDER *Plaintiff(s)* vs. MERLE DUANE GREEN *Defendant(s)*	Adversary No. 99-9118-C

ORDER

Trial of this matter was held on February 23, 2000. Plaintiff Judy K. Holder was present and represented by Attorney W. J. Latham, Jr. Debtor/Defendant Merle D. Green was also present and represented by Attorney John Thompson. Evidence was presented after which the matter was taken under advisement. The time for filing briefs has expired and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).

STATEMENT OF THE CASE

Plaintiff filed this adversary proceeding to determine the dischargeability of a debt arising out of the parties' dissolution. She asserts that the debts are support and are not dischargeable pursuant to 11 U.S.C. §523(a)(5). Debtor asserts various theories in claiming that this obligation is dischargeable. He asserts that child support obligations do not draw interest; that he has paid the entire child support obligation; that any interest on the alimony or child support obligation is dischargeable; that the children are now grown and that any interest claimed does not constitute support; and that any interest accumulated on the alimony or support obligation should be discharged under a theory of hardship.

FINDINGS OF FACT

Plaintiff and Debtor were married in June of 1974. Debtor filed a dissolution proceeding in Marshall County in 1983. Subsequent to the filing, a temporary support hearing was held and Debtor was ordered to pay the sum of $500 per month for the temporary support and maintenance of Plaintiff and the parties' three minor children. The dissolution trial was held in June of 1993. Plaintiff was awarded custody of the three minor children. Debtor was ordered to pay the sum of $35 per week per child until each child became 18 or emancipated. In addition, Debtor was ordered to pay Plaintiff alimony in the amount of $25 per week for a period of 104 weeks.

Debtor was ordered to pay $300 in temporary attorney's fees at the time of the temporary support hearing in February of 1983. In the final decree, he was ordered to pay an additional $300 in attorney's fees within 120 days of the decree.

Debtor's history of paying support and alimony can best be characterized as reluctant. By the time the parties' youngest child graduated from high school in May of 1992, he was significantly in arrears in his support obligations. Shortly after the youngest child graduated from high school, Debtor filed pleadings in the Iowa District Court requesting a hearing to determine his remaining support obligation. After a hearing, the Iowa trial court determined that, as of June 22, 1992, Debtor owed $6,682.44 in support but past judgment interest brought the total to $14,114.83.

Debtor's payment record did not improve subsequent to this determination. While it is not necessary to set out in great detail the underlying facts, three separate contempt hearings were held over the next several years, each of which cited Debtor Merle Green with contempt. On October 4, 1993, Debtor was found in contempt and the amount owing as of September 27, 1993 was determined to be $15,945.45. On April 26, 1994, Debtor was again found in contempt for willful failure to pay support. As of April 25, 1994, the court determined that Debtor was in arrears in the amount of $14,115.83 and additionally, he owed $2,341.76 in accumulated and unpaid judgment interest for a total of $16,457.59.

In August of 1994, a third contempt hearing was held. Debtor was again held in contempt and incarcerated. No specific amount due and owing was determined as of that time. As a result of the various contempt proceedings, Mr. Green was assessed various amounts of attorney's fees as well as Court costs.

Debtor's employment history was often the subject of the contempt hearings. Eventually, in the mid-90's, Debtor gained employment at the Meskwaki Casino in Tama and ultimately consented to a wage assignment. From August 1995 into 1998, he had $50 per week withdrawn from his salary. During that time, he paid approximately $6,000 toward the arrearages. These payments were made to the Child Support Collection Unit. In 1998, the Collection Unit started to refund the checks. The Collection Unit bases their payment records solely on amounts owed without including interest, attorney's fees or costs. Apparently, by 1998, the Collection Unit concluded that Debtor had paid the base amount of support owing up to the time of the emancipation of the youngest child in 1992. Based upon this computation, Debtor now takes the position that he has paid all of the principal sums due of all the child support and that it is only accrued interest which remains. Debtor argues that the accrued interest is not "support" and is dischargeable in bankruptcy.

Plaintiff determined in 1998 that she would pursue the arrearages still owed by Debtor. Throughout the summer, the parties worked towards a stipulation as to a specific amount of money owed by Debtor to Plaintiff. In October of 1998, Debtor and Plaintiff executed a stipulation whereby they agreed that, subject to the approval of the Marshall County District Court, Debtor was in arrears in the amount of $17,000. The parties agreed that the settlement amount would include "all monies owed by Merle Green to Judy Holder for unpaid temporary child support, permanent child support, permanent alimony, unpaid attorney fee judgments, and accrued interest". The parties further agreed that this amount would collect 10% statutory interest from October 1, 1998 until the entire balance was paid in full. They agreed that Debtor could pay $80 per week to the Marshall County Clerk of Court under a voluntary payroll deduction toward this obligation. This stipulation was approved by the Marshall County District Court on October 13, 1998. While unclear as to the exact amount paid since that time, Debtor has an $80 per week voluntary wage assignment and payments have been made.

Debtor testified that he works banquets and has, in the past, worked substantial overtime but for various reasons this is going to terminate in the future. He testified that the withdrawal of $80 per week from his paycheck leaves him approximately $220 in take-home pay. He testified that it is a hardship if this obligation is not allowed to be discharged.

CONCLUSIONS OF LAW

A debt to a former spouse for alimony, maintenance or support of the spouse pursuant to a divorce decree or separation agreement is not dischargeable. 11 U.S.C. §523(a)(5). The party asserting the nondischargeability of a marital debt has the burden of proof. The court must apply the preponderance of the evidence standard. Grogan v. Garner, 498 U.S. 279, 283 (1991); In re Holdenried, 178 B.R. 782, 787 (Bankr. E.D. Mo. 1995); contra In re Daulton, 139 B.R. 708, 710 (Bankr. C.D. Ill. 1992) (stating debtor has burden of proving debts are dischargeable under §523(a)(5)).

> Section 523(a)(5) establishes three requirements that must be met before a marital obligation becomes nondischargeable in bankruptcy: (1) the debt must be in the nature of alimony, maintenance or support; (2) it must be owed to a former spouse or child; and (3) it must be in connection with a separation agreement, divorce, or property settlement agreement.

In re Reines, 142 F.3d 970, 972 (7th Cir. 1998), cert. denied 119S. Ct. 797 (1999); see also In re Ianke, 185 B.R. 297, 300 (Bankr. E.D. Mo. 1995).

The Court must determine whether obligations are in the nature of alimony, maintenance or support under §523(a)(5).

> 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. . . [B]ankruptcy courts are not bound . . . to accept a divorce decree's characterization of an award as maintenance or a property settlement. . . . 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.

In re Williams, 703 F.2d 1055, 1057-58 (8th Cir. 1983); see alsoIn re Tatge, 212 B.R. 604, 608 (B.A.P. 8th Cir. 1997).

In determining intent, the court must focus on the function that the obligation was intended to serve when the parties entered into the agreement. Boyle v. Donovan, 724 F.2d 681, 683 (8th Cir. 1984). Numerous factors have been found to be indicative of such intent. See In re Voss, 20 B.R. 598, 602 (Bankr. N.D. Iowa 1982). The Third Circuit has concisely set out three primary 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.

ANALYSIS

Debtor asserts numerous reasons why, in his opinion, the obligation owing to his former spouse and children should be discharged. Most are without any legal basis or authority. Nevertheless, the Court will briefly address Debtor's assertions as the Court understands them.

In his pretrial statement, Debtor states that: "Debtor will claim that stipulation and agreement at the time was entered into under duress and threat and fear from the courts and Plaintiff". Debtor is obviously alluding to the agreement entered into between himself and Plaintiff in October of 1998. This stipulation appears to be nothing more than the parties' attempt to arrive at a reasonable figure which was still due and owing by Debtor for obligations dating back as far as 1983. Because of the accumulation of interest, the additional attorney's fees, and costs from the numerous contempt hearings, the exact amount owing by Debtor was difficult to determine with precision. The reduction of this figure to a sum certain did not change the nature of the underlying obligation. Catlett v. Jackson, 58 B.R. 72 (W.D. Ky. 1986).

Debtor claims that this stipulation and agreement was entered into under duress or threats from the court and Plaintiff. However, the evidentiary record is devoid of any evidence which would convince a fact finder that Debtor was under the type of duress upon which this Court order could be set aside. The imposition of sanctions under a valid contempt order to gain compliance with previous valid court orders does not constitute duress or a threat upon which relief can be granted. Secondly, if there were the kind of conduct complained of by Debtor in executing this 1998 agreement, the appropriate forum for resolving that controversy is in State court. Under the Rooker-Feldman Doctrine, Federal trial courts do not sit as appellate courst over State actions. If Debtor has an argument, which appears doubtful under this record, the appropriate forum to which to address his complaint is the State court.

Under the present record, the October 13, 1998 order approving the parties' stipulation is a valid court order which establishes that as of that time, Debtor owed $17,000 to Plaintiff. The order indicates that this sum constitutes unpaid temporary child support, permanent child support, permanent alimony, unpaid attorney fee judgments, and accrued interest. The order does not specify the exact amounts attributed to each of these categories. This Court concludes that this order is the controlling document and it is upon this document which the Court must determine the arguments made by Debtor.

Secondly, Debtor asserts that the support obligations under Iowa law do not collect interest. This assertion is an incorrect statement of Iowa law. Under Iowa law, permanent child support is a judgment. "Each installment is in itself a judgment as it becomes due." Cullinan v. Cullinan, 226 N.W.2d 33, 35 (Iowa 1975). The same is true of temporary support orders. In re Marriage of Moffatt, 279 N.W.2d 15, 22 (Iowa 1979). Awards of alimony become judgments when due. Arnold v. Arnold, 140 N.W.2d 874 (Iowa 1966). The Iowa Supreme Court has stated that all of these judgments draw statutory interest.

> Iowa Code sec. 535.3 provides in part that interest shall be allowed on all money due on judgments and decrees of courts at the rate of 10% per year. In Iowa, fixed awards of money for child support, alimony, and property settlement draw interest at the statutory rate even though the judgment makes no reference to the matter of interest.

In re Marriage of Dunn, 455 N.W.2d 923, 925 (Iowa 1990).

Thus, it is clear from existing case law that all judgments relating to dissolution decrees are granted judgment interest at the statutory rate. Even if interest were not allowed on dissolution judgments, this court is not the appropriate forum to challenge the award of interest which has already been imposed

in State court. Again, Federal courts do not act in an appellate capacity. If the award of interest is in error, which it is not, Debtor must seek relief in State court.

Third, Debtor takes the position that he has paid the principal sums of his child support and alimony obligations. He asserts that any remaining amount is interest and that interest is dischargeable. In order to reach this conclusion, Debtor asserts that payments made are first applied toward principal and not interest. Debtor's position, however, is contrary to long-standing Iowa law. Iowa adheres to the United States rule regarding allocation of interest when payment is made toward retirement of a judgment.

> Under that rule, when partial payments are made, they are allocated first toward the interest due. Any payment which exceeds the interest due is applied toward the judgment principal. Subsequent interest is to be computed on the remaining principal.

Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261-62 (Iowa 1996); see also Gail v. Western Convenience Stores, 434 N.W.2d 862, 864 (Iowa 1989); Smith Twogood and Co. v. Coopers and Clarke, 9 Iowa 376, 387 (1859). Therefore, Debtor's basic premise that payments made by him should first be attributed to principal is erroneous. Debtor's minimal payments seldom exceeded interest and Debtor, therefore, rarely made payments large enough to be applied to principal. It is fair, therefore, to conclude that much, if not all, of the remaining balance set forth in the stipulation of 1998 constituted principal and is, therefore, nondischargeable.

Nevertheless, it is apparent that a part of the stipulated amount due constituted interest. The issue remains whether interest on nondischargeable child support or alimony payments is itself nondischargeable. While no Eighth Circuit case directly addresses this issue, there is abundant applicable case law which leaves little doubt that it is nondischargeable.

The general rule holds that when an underlying debt is nondischargeable, prepetition interest which forms an integral part of the underlying debt is also nondischargeable. In re Gosney, 205 B.R. 418, 421 (B.A.P. 9th Cir. 1996) (considering §523(a)(2)(B) nondischargeability), aff'd 161 F.3d 12 (9th Cir. 1998). It is appropriate to include in a nondischargeability award interest which may attach to the underlying indebtedness as an ancillary obligation. In re Hunter, 771 F.2d 1126, 1128 (8th Cir. 1985) (considering dischargeability under §523(a)(2)(A) for fraud).

The Bankruptcy Court in In re Kemp, 234 B.R. 461, 470 (Bankr. W.D. Mo. 1999), aff'd in part and rev'd in part, 242 B.R. 178 (B.A.P. 8th Cir. 1999), considering dischargeability of a debt for support under §523(a)(5), stated "[i]t is well accepted that interest which attaches to the underlying nondischargeable debt is also nondischargeable and is collectible from the debtor." The Bankruptcy Appellate Panel computed and awarded interest on the Missouri support judgment, from the date of the judgment, in the action to except the judgment from discharge under §523(a)(5). In re Kemp, 242 B.R. 178, 182 (B.A.P. 8th Cir. 1999). In In re Coleman, 56 B.R. 179, 180 (Bankr. N.D. Ind. 1986), the court specifically addressed the nondischargeability of prepetition interest on a support judgment which the parties had stipulated was nondischargeable under §523(a)(5). The court concluded the judgment interest was also nondischargeable. Id.

In a §523(a)(1)(A) proceeding to determine dischargeability of tax debts, prepetition interest is included in the Code's broad definition of "claim", In re Larson, 862 F.2d 112, 119 (7th Cir. 1988). Prepetition, or matured, interest is therefore found nondischargeable where the underlying liability is nondischargeable. Id. Following the reasoning of Larson, this Court has found prepetition interest on tax debt nondischargeable under §523(a)(1)(B) likewise nondischargeable. In re Pierce, 184 B.R. 338,

344 (Bankr. N.D. Iowa 1995). As other courts note, debtors would receive a windfall if interest on nondischargeable debts were discharged, and the creditors would be harmed by the significant loss of the time value of their unpaid claims. See In re Leahey, 169 B.R. 96, 99 (Bankr. D.N.J. 1994). The same analysis applies to non-tax debts determined to be nondischargeable under other subsections of §523(a). Pierce v. Pyritz, 200 B.R. 203, 206 (N.D. Ill. 1996) (ruling prepetition interest on nondischargeable embezzlement debt also nondischargeable). It is, therefore, the conclusion of this Court that the prepetition interest on Debtor's nondischargeable support obligations is also nondischargeable.

Next, Debtor seems to be claiming that the children are now grown and that any interest accumulated since their majority does not constitute support. The parties' youngest child reached 18 in 1992 and interest has accumulated on the support obligation since that time. This constitutes a component of the parties' 1998 stipulation. Again, Debtor's position is without legal support. The Court has already discussed many of the principles involving interest on judgments and there is nothing in this legal authority to indicate that Debtor's position would gather legal support.

All existing legal authority holds that prepetition interest on nondischargeability obligations is also nondischargeable. Even though the parties' children are now adults, to change the categorization of this obligation would merely be rewarding Debtor for inappropriate conduct. It would reward Debtor for no other reason than his persistence in willfully failing to pay support over a very long period of time. Legal principles should be applied to reward compliance with court orders. To accept Debtor's position would be nothing more than rewarding a persistent and an almost total lack of compliance with prior court orders. It is the conclusion of this Court that interest accumulated after the children reach majority continues to be properly characterized as support and, therefore, is nondischargeable under 11 U.S.C. §523(a)(5).

The final ground raised by Debtor is vaguely defined. Debtor talks about hardship and speaks in terms of the application of §523(a)(15). This is not a case brought under §523(a)(15). This Code section is of recent origin and was implemented to address the longstanding issue of dischargeability of property obligations arising in the context of the marital relationship. This section has nothing to do with support obligations which are addressed under §523(a)(5). Debtor testified that the issues he was raising have nothing to do with the property component of the dissolution decree but are related solely to the alimony and support obligation. Therefore, §523(a)(15) has no applicability to this case and §523(a)(15)(B) which provides for a comparative hardship test is not applicable here.

Debtor also raises the issue of hardship and testified that the inability to discharge this obligation would pose a hardship for him. Debtor has not pled any type of hardship. Even if all of the foregoing were properly before the Court, Debtor's evidence is completely lacking the weight necessary to establish that he is entitled to any type of hardship consideration. As such, this theory is without support both legally or factually.

SUMMARY

Plaintiff has established that her claims are for support under §523(a)(5). This obligation is contained within the parties' stipulation executed on October 13, 1998 and approved by the Iowa District Court on the same date. This obligation is in the amount of $17,000 and includes accrued interest from and after October 1, 1998. It includes all unpaid child support, alimony, attorney's fees, and accrued interest. As discussed in this opinion, these are all components which are properly characterized as support under §523(a)(5).

The Court has considered the various matters raised by Debtor by way of defense and for the reasons set forth in this opinion, concludes that they are without merit. As such, under 11 U.S.C. §523(a)(5), the debts owed by Debtor/Defendant to Plaintiff are in the nature of support. The obligation memorialized in the stipulation and court order of October 13, 1998 is nondischargeable in its entirety.

WHEREFORE, Plaintiff's complaint to determine dischargeability is GRANTED.

FURTHER, Debtor/Defendant Merle Duane Green's obligation to Plaintiff Judy K. Holder under the stipulated agreement of October 13, 1998 is support and, therefore, excepted from discharge under 11 U.S.C. §523(a)(5).

FURTHER, Plaintiff seeks attorney's fees as a result of this adversary. There is no authority to award a prevailing Plaintiff attorney's fees in an adversary proceeding. As such, Plaintiff's request for an award of attorney's fees is denied.

FURTHER, costs of this action are assessed against Defendant.

SO ORDERED this 14th day of March, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge