In the United States Bankruptcy Court

for the Northern District of Iowa

ROBERT O. WALTHER *Debtor(s).*	Bankruptcy No. 99-01768-W Chapter 7
LORI WALTHER; ENGELBRECHT, ACKERMAN& HASSMAN *Plaintiff(s)* vs. ROBERT O. WALTHER *Defendant(s)*	Adversary No. 99-9172-W

FINAL RULING RE DISCHARGEABILITY

This matter came before the undersigned on September 1, 2000 for telephonic hearing pursuant to assignment. Attorney Gaylen Hassman represented Plaintiffs Lori Walther and Engelbrecht, Ackerman & Hassman. Attorney Gerald Carney represented Debtor Robert O. Walther. At the hearing, the parties requested the Court determine the matter based on stipulated facts without further trial. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).

FINDINGS OF FACT

On August 28, 2000, the parties filed a Joint Statement of Facts which the Court adopts as its finding of facts. The marriage between Debtor and Plaintiff Lori Walther was dissolved by decree entered June 3, 1999 in Iowa District Court. The dissolution court ordered Debtor to pay $1,000 toward attorney fees Ms. Walther incurred with Attorney Gaylen Hassman. Plaintiffs seek a determination that the $1,000 attorney fee award is excepted from discharge under §523(a)(5).

Debtor and Ms. Walther were married for approximately 10 years. No children were born during the parties' marriage. Ms. Walther has four daughters from prior marriages. Both parties were employed throughout the course of the dissolution proceeding.

The dissolution court, upon an Application for Orders filed by Ms. Walther, ruled in March 1998 that neither of the parties shall pay temporary support to the other. The final dissolution decree does not mention support of any kind. The decree splits the parties' debts and personal property and further orders Debtor to pay Ms. Walther $10,000 as property settlement. Debtor paid the $10,000 debt, but has failed to pay Ms. Walther's $1,000 in attorney fees as ordered.

Ms. Walther argues the $1,000 award of attorney fees is in the nature of support. She asserts she could not and cannot pay these fees herself, without jeopardizing her ability to support herself and her children. Debtor asserts the fees are not in the nature of support. He points out the parties had no

children, both are and were employed, and the dissolution court rejected requests for temporary support and did not order either party to pay support in the final decree.

CONCLUSIONS OF LAW

A debt to a former spouse for alimony, maintenance or support of the spouse or a child 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. In re Krein, 230 B.R. 379, 382-83 (Bankr. N.D. Iowa 1999). The court applies 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).

> 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, 525 U.S. 1068 (1999); Krein, 230 B.R. at 383. Attorney fees awarded in connection with a dissolution proceeding, even if payable to a third party, are excepted from discharge under §523(a)(5) if they are in the nature of maintenance or support of a former spouse or child. In re Kline, 65 F.3d 749, 751 (8th Cir. 1995).

Based on the parties' Joint Statement of Facts, the Court concludes that the second and third elements of §523(a)(5) are met. Attorney fees of $1,000 were awarded in connection with the parties' dissolution proceeding and are payable on behalf of Debtor's former spouse. The first element constitutes the main issue in this case, i.e. whether the $1,000 attorney fee award is in the nature of alimony, maintenance or support.

In In re Williams, 703 F.2d 1055, 1057-58 (8th Cir. 1983), the Eighth Circuit states:

> 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.

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, 508 U.S. 943 (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, and not examine the present situation or needs of the parties. Boyle, 724 F.2d at 683.

Many factors have been found to be indicative of intent in this context. In re Voss, 20 B.R. 598, 602 (Bankr. N.D. Iowa 1982). Some of the factors considered by the courts in making this determination include: the relative financial conditions of the parties at the time of the divorce; the respective employment histories and prospects for financial support; the fact that one party or another receives

the marital property; the periodic nature of the payments; and, whether it would be difficult for the former spouse and children to subsist without the payments. In re Tatge, 212 B.R. 604, 608 (B.A.P. 8th Cir. 1997).

A state law or divorce decree that characterizes a debt as a support obligation is not binding upon bankruptcy courts. See Adams, 963 F.2d at 199. Conversely, the fact that a divorce decree or stipulation does not call an obligation alimony, support, or maintenance does not prevent a bankruptcy court from finding it to be so. In re McLain, 241 B.R. 415, 419 (B.A.P. 8th Cir. 1999).

Plaintiffs have the burden of proving the $1,000 attorney fee award is in the nature of support. The parties' relative financial conditions at the time of the dissolution appear were similar. The stipulated facts indicate both Debtor and Ms. Walther were employed. The dissolution decree reveals that neither party had high income or extensive assets. Debtor was awarded the parties' real estate. Ms. Walther was awarded property settlement of $10,000 paid by Debtor. The $1,000 attorney fee award was not ordered in periodic payments. The dissolution court did not label the $1,000 award support and did not order any support to be paid by either party.

Based on the foregoing, the Court concludes Plaintiffs have failed to prove the $1,000 attorney fee award is in the nature of alimony, maintenance or support. The record does not support a finding that it is more likely the award was support than property settlement. Therefore, Plaintiffs' claim of $1,000 is dischargeable.

WHEREFORE, Plaintiffs' Complaint for Determination That Debt is Non-Dischargeable is DENIED.

FURTHER, the $1,000 awarded against Debtor for attorney fees in the parties' dissolution proceeding is DISCHARGED.

FURTHER, judgment shall enter accordingly.

SO ORDERED this 7th day of September, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge