

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)
JACQUELINE K. HARTLEY)
Debtor.)
) DAVID A. HARTLEY)
Plaintiff,)
vs.)
JACQUELINE K. HARTLEY)
Defendant.)
) Chapter 7
) Bankruptcy No. 02-04094
) Adversary No. 03-9016

ORDER RE: COMPLAINT OBJECTING TO DISCHARGE

This matter came before the undersigned for trial on October 14, 2003. Plaintiff David Hartley appeared with attorney Gregory Epping. Debtor/Defendant Jacqueline Hartley did not personally appear, but was represented by Attorney Janice McCool. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

STATEMENT OF THE CASE

Plaintiff seeks to except debts from discharge under § 523(a)(15). He asserts Debtor's obligation arising from their dissolution action to hold him harmless from certain marital debts is nondischargeable.

FINDINGS OF FACT

The Complaint asserts causes of action under § 727(a) and § 523(a)(15). Plaintiff now dismisses the § 727(a) action to deny Debtor a discharge. The § 523(a)(15) action remains and is ready for adjudication.

Debtor Jacqueline Hartley did not appear at the trial. She also failed to participate in drafting the Pre-Trial Statement. Prior to trial, Debtor through her attorney filed a motion to continue. The Motion states that Attorney McCool had attempted to contact Debtor but was unable to reach her at her home or workplace or at any known telephone numbers. The Court denied the motion to continue and trial went forward in Debtor's absence. Other than filing an Answer, it appears that Debtor has not participated in her defense in this action.

At the hearing, Debtor's exhibit A was offered and received as evidence. This exhibit includes copies of a Collins Community Credit Union Note and Disclosure Statement signed by Debtor on 4-25-00 and the related certificate of title and notation of security interest for a 1996 Arctic Cat snowmobile. Debtor offered no other evidence at the trial. Plaintiff's Exhibits 1 through 3 were offered and received as evidence. These include copies of the Stipulation of Settlement, Decree of Dissolution of Marriage, and Qualified Domestic Relations Order from the parties' dissolution action in the Iowa District Court in Linn County.

The Stipulation of Settlement in the dissolution action states that Debtor is sole owner of the parties' homestead real estate. She is solely responsible to pay the first mortgage on the real estate held by Nationwide Home Mortgage. She is also solely responsible to pay a home improvement loan to Collins Community Credit Union which is secured by a 1996 Arctic Cat snowmobile.

In the Stipulation, Plaintiff was awarded the snowmobile. Debtor agreed to hold Plaintiff harmless from liability for the first mortgage to Nationwide Home Mortgage and for the home improvement loan to the Credit Union. Debtor did not list the Credit Union as a secured creditor in her bankruptcy schedules. It is listed as an unsecured creditor with a claim of \$5,000. Nationwide Home Mortgage recently received relief from the automatic stay in Debtor's bankruptcy case to foreclose its mortgage on Debtor's home.

Only Debtor signed the note to Collins Credit Union. In the note, Debtor granted the Credit Union a lien on the 1996 Arctic Cat snowmobile. The snowmobile title shows both Plaintiff and Debtor as owners. The Credit Union's lien was noted as a security interest on the title. Plaintiff testified that the Credit Union has pursued repossession of the snowmobile in Iowa District Court. Plaintiff wishes to keep the snowmobile. He testified the Credit Union wants him to pay \$5,000 to satisfy its lien. Plaintiff believes the Iowa District Court has entered an order allowing the Credit Union to repossess the snowmobile, although repossession had not yet occurred prior to the hearing herein.

Plaintiff argues that he has met his burden of proof under § 523(a) (15) to except from discharge debts incurred in connection with the parties' divorce which are in the nature of a property settlement rather than a debt for maintenance and support. He asserts that Debtor has not met her burden under § 523(a) (15) (A) or (B) to be entitled to discharge of these debts. Debtor's attorney argued at the hearing that Debtor has proved that discharging the obligation to hold Plaintiff harmless from the Credit Union loan would provide her a benefit that outweighs the detriment to Plaintiff.

Debtor's position is that there is no detriment to Plaintiff because the Credit Union cannot pursue Plaintiff for a loan to which he was not a party.

CONCLUSIONS OF LAW

Plaintiff seeks a determination that Debtor's obligation to hold him harmless is excepted from discharge under 11 U.S.C. § 523(a)(15). It is largely uncontested that the debt owed by Debtor is of the nature of that described in § 523(a)(15). The debt Plaintiff seeks to except from discharge is Debtor's obligation to hold him harmless from liability to Nationwide Home Mortgage for the first mortgage and to Collins Credit Union for Debtor's loan secured by Plaintiff's snowmobile. This is a nonsupport obligation awarded in the parties' dissolution action. Under § 523(a)(15), there is a rebuttable presumption that this type of obligation is excepted from discharge. In re Eiklenborg, 286 B.R. 718, 722 (Bankr. N.D. Iowa 2002); In re Moeder, 220 B.R. 52, 56 (B.A.P. 8th Cir. 1998). Once this presumption arises, the burden shifts to Debtor to establish either (1) she is unable to pay the debt or (2) the benefit to her of discharging the debt outweighs the detriment to Plaintiff. Moeder, 220 B.R. at 56. Debtor must prove one of these two exceptions by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 286 (1991).

ABILITY TO PAY

An inability to pay exists under § 523(a)(15)(A) if excepting a debt from discharge would reduce a debtor's income to below a level necessary for the support of the debtor and the debtor's dependents. Eiklenborg, 286 B.R. at 722. To make this determination, the Court may consider factors similar to those applied in a Chapter 13 disposable income analysis under § 1325(b)(2). Id. In calculating disposable income for purposes of Chapter 13, this Court looks at Debtor's current and future financial status, including potential earnings, and whether Debtor's expenses are reasonably necessary. In evaluating whether expenses are reasonably necessary, this Court seeks a balance between allowing a debtor a reasonable lifestyle and insuring a serious effort to pay creditors by eliminating "unnecessary and unreasonable expenses." In re Beckel, 268 B.R. 179, 183 (Bankr. N.D. Iowa 2001); In re Gleason, 267 B.R. 630, 633 (Bankr. N.D. Iowa 2001).

BENEFIT v. DETRIMENT

Given that the two exceptions to nondischargeability stated in § 523(a)(15) are disjunctive, Debtor can alternatively have the debt in question discharged by proving that the effect of a discharge will provide more benefit to her than the resulting harm to Plaintiff. When balancing benefit versus detriment under § 523(a)(15)(B), it is necessary to compare the relative living standards of the parties. Eiklenborg, 286 B.R. at 723. If Debtor's standard of living is equal to or greater than Plaintiff's, then discharge of the debt is not appropriate. In re Williams, 210 B.R. 344, 347 (Bankr. D. Neb. 1997).

ANALYSIS

It is undisputed that Debtor's obligation to hold Plaintiff harmless was a nonsupport property settlement award in connection with the dissolution action. Debtor has the burden to establish that either: 1) she is unable to pay the debt; or 2) the benefit to her of discharging the debt would outweigh the detriment to Plaintiff. Debtor's failure to appear in this matter has the effect of limiting the Court's analysis to Plaintiff's presentation at trial, Debtor's bankruptcy file and her attorney's presentation at trial. See In re Clark, 207 B.R. 651, 656 (Bankr. E.D. Mo. 1997). In these circumstances, the Court finds that Debtor has failed to meet her burden of proof to except the hold harmless obligation to Plaintiff from discharge.

Debtor's petition and schedules were filed November 18, 2002. Schedules I and J listing Debtor's income and expenses were arguably somewhat out-of-date by the time of the hearing. The Court notes that Nationwide received relief from the automatic stay on October 2, 2003 to foreclose on Debtor's residence. Debtor reaffirmed a debt secured by her 2001 Chevy Monte Carlo with payments of \$446 per month. Unsecured claims total \$98,002.57, all of which will be included in Debtor's discharge with the exception of the debt underlying this adversary action. Debtor's schedules do not disclose any dependents. At the time she filed her petition, she had a full-time job with gross income of approximately \$2,000 per month.

At the hearing, Attorney McCool noted that Plaintiff did not sign the note with the Credit Union. She argues that Plaintiff will not suffer a detriment from Debtor's failure to pay the Credit Union because Plaintiff is not personally liable for the loan. In other words, the debt is not collectible from Debtor's nondebtor former spouse. This argument, however, fails to take into account the Credit Union's lien on Plaintiff's snowmobile. Plaintiff's detriment is either losing the snowmobile to repossession or paying the Credit Union \$5,000 to satisfy its lien. Regardless of Plaintiff's personal liability under the Credit Union note, the hold harmless agreement in the dissolution action imposes liability upon Debtor for these consequences of her failure to pay. See In re Crawford, 236 B.R. 673, 678 (Bankr. E.D. Ark. 1999).

Based on the record presented, the Court finds that Debtor's obligation to indemnify Plaintiff and hold him harmless from the debts to Nationwide Home Mortgage and Collins Community Credit Union is the type of debt included in § 523(a)(15). Debtor has failed to prove she is unable to pay the debt. Furthermore, Debtor has failed to prove that the benefit to her of discharging the debt outweighs the detriment to Plaintiff. Therefore, the debt is excepted from discharge under § 523(a)(15).

WHEREFORE, Plaintiff David A. Hartley's Complaint Objecting to Dischargeability Pursuant to 11 U.S.C. § 523(a)(15) is GRANTED.

FURTHER, Plaintiff's § 727 action objecting to discharge is DISMISSED at Plaintiff's request.

FURTHER, Debtor Jacqueline K. Hartley's obligation to indemnify Plaintiff David A. Hartley and hold him harmless from the debts to Nationwide Home Mortgage and Collins Community Credit Union is excepted from discharge.

FURTHER, judgment shall enter accordingly.

SO ORDERED this 22nd day of October, 2003.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE