

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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CARRIE A. RIDGEWAY

*Debtor(s).*

Bankruptcy No. 05-04969

Chapter 7

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RANDY R. RIDGEWAY

*Plaintiff(s)*

Adversary No. 05-30202

vs.

CARRIE A. RIDGEWAY

*Defendant(s)*

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### ORDER RE DETERMINATION OF DISCHARGEABILITY PURSUANT TO 11 U.S.C. § 523(a)(15)

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This matter came before the undersigned on August 1, 2006 for trial on the Complaint to Determine Dischargeability Pursuant to 11 U.S.C. §523(a)(15). Steven Balk appeared for Plaintiff Randy Ridgeway. Barbara Maness appeared for Debtor/Defendant Carrie A. Ridgeway. 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 Randy Ridgeway asserts that debt owed by Debtor to his mother is excepted from discharge pursuant to 11 U.S.C. §523(a)(15). He claims this is a nondischargeable claim arising from the parties' Decree of Dissolution. Debtor denies that the debt should be excepted from discharge.

#### FINDINGS OF FACT

Plaintiff and Debtor purchased a home together in 1997 as single persons. They were married in 1998. Mr. Ridgeway's mother loaned the couple part of the funds used to purchase the home. When the couple divorced in 2002, the couple still owed Plaintiff's mother \$8,500. As part of the dissolution decree, each party assumed an obligation of \$4,250 to Plaintiff's mother.

Debtor testified that she has \$2,260 in net monthly income from her job at John Deere, plus an additional \$130 per month from a part-time job at Red Lobster and \$622 per month in child support. Her total net income is approximately \$3,012 per month. According to Debtor's Schedule J (Current Expenditures of Individual Debtor), she has \$2,959 in expenses. Her single largest expense is \$1,293 for her mortgage payments. Debtor testified that the house provides the best environment for her children. She testified that her first mortgage payments would go down by \$300 per month in November 2006, but then \$300 monthly payments on a second mortgage would begin. Ms. Ridgeway further testified that she had student loans currently in forbearance which become due starting in January 2007. Her total student loan debt is between \$20,000 and \$25,000. When payments become due in January 2007, they will be in the \$300-\$350 range.

Ms. Ridgeway testified that she did not know the value of her home, but also testified that she had no equity in the home. The record contains no tax records for either party for the 2005 tax year. Mr. Ridgeway's testimony regarding his income was ambiguous and sometimes contradictory. It appears that he earns a gross income of approximately \$26,000 per year, of which he pays \$7,464 per year to Debtor for child support. Debtor alleged that Plaintiff was in arrears in child support as of the time of the hearing. However, the record does not support a clear finding that he is in arrears. Mr. Ridgeway testified that he was current on his payments and not directly in charge of sending the checks to the Child Support Recovery Unit. Under either circumstance, the arrearage, if any, is not large and was generated very recently. Mr. Ridgeway testified to owning a boat, paid for out of insurance proceeds from another boat. He also testified to owing his mother approximately \$20,000.

## DISCHARGE EXCEPTION FOR DIVORCE-RELATED DEBTS

Section 523(a)(15) excepts from discharge any debt

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State . . . law unless

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

11 U.S.C. § 523(a)(15).

Once the plaintiff establishes that a debt is a property settlement award arising from a divorce proceeding and thus falls within the scope of §523(a)(15), "the burden shifts to the debtor to prove either of the exceptions to nondischargeability contained in subsections (A) or (B)." In re Moeder, 220 B.R. 52, 56 (B.A.P. 8th Cir. 1998). The debtor only needs to meet the showing required for one of the two prongs of §523(a)(15). In re Silvers, 187 B.R. 648, 650 (Bankr. W.D. Mo. 1995).

Both parties agree that the debts in question are non-support obligations governed by the language of §523(a)(15). Thus, the burden shifts to Debtor to establish why the debt should be not be excepted from discharge. Debtor needs to meet her burden of proof on one of the two prongs of §523(a)(15) by a preponderance of the evidence. In re Brown, 302 B.R. 637, 643 (Bankr. N.D. Iowa 2003) (citing Grogan v. Garner, 498 U.S. 279, 286 (1991)).

## ABILITY TO PAY

A debt described in § 523(a)(15) will be discharged if "the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor." 11 U.S.C. §523(a)(15)(A).

Due to the similarity in the language of 11 U.S.C. §1325(b)(2) and §523(a)(15)(A), courts apply the Chapter 13 disposable income analysis to (a)(15)(A). In re Brown, 302 B.R. 637, 644 (Bankr. N.D. Iowa 2003). The court examines whether the debtor's expenditures are reasonable and necessary and whether the debtor has enough disposable income to pay debts within a reasonable amount of time. Courts may also consider the future financial prospects of debtors in determining whether a nonsupport marital obligation can be excepted from discharge under §523(a)(15). In re Konick, 236 B.R. 524, 529 (B.A.P. 1st Cir. 1999).

In examining Debtor's expenses for reasonableness and necessity, the large mortgage is the most significant expense. Ms. Ridgeway's reason for keeping the home is for the benefit of her children. However, the record simply does not contain facts which justify the conclusion that this is reasonable and necessary, particularly in light of Debtor's plea to the court of an inability to pay dissolution debt. Debtor has not established that a substantial portion of the mortgage is

not accumulating equity which will inure to her benefit as the homeowner. The Court cannot conclude that the portion of the mortgage which increases home equity value is a reasonable and necessary expense. Ms. Ridgeway has not met her burden of proving that her \$1,293 monthly mortgage is a necessary and reasonable expense. Consequently, Debtor has not met her burden of proving that she has an inability to pay her dissolution debt.

### **BENEFIT VERSUS DETRIMENT**

Although Ms. Ridgeway has an ability to pay the debt in question, she may still be granted a discharge of dissolution debts if she can prove that discharge of those debts will benefit her more than the harm incurred by Plaintiff. A debtor will be relieved of paying § 523(a)(15) debts by establishing that "discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor." 11 U.S.C. § 523(a)(15)(B). In comparing the potential benefit to the debtor versus the detriment to a former spouse, the Court compares the relative living standards of the parties. In re Wallander, 324 B.R. 746, 755 (Bankr. N.D. Iowa 2005). "If Debtor's standard of living is equal to or greater than Plaintiff's, then discharge of the debt is not appropriate." In re O'Shaughnessy, 301 B.R. 24, 32 (Bankr. N.D. Iowa 2003); In re Williams, 210 B.R. 344, 347 (Bankr. D. Neb. 1997).

Debtor's net income is substantially higher than Plaintiff's net income, particularly in light of the \$622 per month child support payments. Ms. Ridgeway's household expenses must support herself plus two children while Mr. Ridgeway supports only himself. The record demonstrates that both parties are in fairly similar financial circumstances relative to their household size and obligations. It is the conclusion of this Court that discharging the §523(a)(15) debts is not more beneficial to Debtor than detrimental to Plaintiff. Ms. Ridgeway has failed to meet her burden of establishing that the benefit to her of discharging the dissolution debt would outweigh the detriment that would be shouldered by Mr. Ridgeway.

### **CONCLUSION**

The Court finds that Debtor has not met her burden to establish either her inability to pay the dissolution debt or that the benefit to her would outweigh the detriment to her former spouse. Therefore, the dissolution debt is excepted from discharge pursuant to §523(a)(15).

**WHEREFORE**, Plaintiff's Complaint to Determine Dischargeability Pursuant to 11 U.S.C. §523(a)(15) is GRANTED.

**FURTHER**, Debtor's dissolution debt is excepted from discharge under §523(a)(15).

DATED AND ENTERED: August 21, 2006

Paul J. Kilburg  
U.S. Bankruptcy Judge