

In the United States Bankruptcy Court

for the Southern District of Iowa

JOSEPH E. CALE

Debtor(s).

Bankruptcy No. 05-03912

Chapter 7

ROBIN KELLER

Plaintiff(s)

Adversary No. 05-30156

vs.

JOSEPH E. CALE

Defendant(s)

ORDER RE: MOTION FOR SUMMARY JUDGMENT

This motion was heard on February 24, 2006 pursuant to assignment. Attorney Steven L. Nelson represented Plaintiff Robin Keller. Attorney Peter W. Hansen represented Debtor Joseph Cale. After hearing arguments of counsel, the Court took this matter under advisement. The time for filing briefs has passed, and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J).

STATEMENT OF THE CASE

Plaintiff asserts that Debtor is not entitled to discharge the debt owed to Plaintiff and seeks summary judgment declaring that approximately \$6,729.12 in funeral expenses and court costs are excepted from discharge under §523(a)(5). Debtor asserts that there are genuine issues of material fact as to whether the funeral costs at issue are in the nature of alimony, maintenance, or support and asks that the Motion for Summary Judgment be denied. Debtor further asserts that Plaintiff has not complied with Local Rule 56.1(a) and asks that Plaintiff's motion be dismissed in its entirety.

FINDINGS OF FACT

Debtor and Plaintiff Robin Keller were married on August 20, 1982 in Burlington, Iowa and had three children, Todd Carter Cale, Sharon Ann Cale, and Darrin Edward Cale. They were granted a divorce on March 2, 1989 in Lewis County, Missouri. As part of the Dissolution Decree, the court found that Darrin Cale was a minor child of Debtor who required support, and Debtor was ordered to make monthly child support payments. Darrin Cale died on August 9, 2001 at the age of seventeen.

Robin Keller paid all funeral and burial expenses for Darrin Cale, totaling approximately \$13,886.25. Debtor received life insurance proceeds from a life insurance policy on Darrin. Debtor did not pay Ms. Keller for any of Darrin's funeral expenses. Plaintiff filed an action in Missouri asking for a Judgment against Debtor, and on October 7, 2003 the Associate Circuit Court of Lewis County, Missouri, ordered Debtor to pay to Ms. Keller \$6,688.12 plus court costs in the amount of \$41.00, for a total of \$6929.12.

CONCLUSIONS OF LAW

A motion for summary judgment may only be granted when there are no material facts in controversy, and the moving party is entitled to a judgment as a matter of law. Bankruptcy Rule 7056, Fed. R. Civ. P. 56(a). In considering a motion for summary judgment, the Court views the evidence in a light most favorable to the nonmoving party. In re Marlar, 267 F. 3d 749, 755 (8th Cir. 2001). The moving party has the burden of showing that there is no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Section 523(a)(5)

Section 523(a)(5) excepts from discharge any debt

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, but not to the extent that . . .

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise; or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

11 U.S.C. § 523(a)(5) (2005). Plaintiff must prove the elements of her claim under § 523(a)(5) by a preponderance of evidence. Grogan v. Garner, 498 U.S. 279, 285 (1991).

"Domestic issues related to paternity and child support are the exclusive province of state courts." In re Foss, 328 B.R. 780, 784 (B.A.P. 8th Cir. May 2005). The Court evaluates several factors when determining whether a debt is for support, including whether there is a separate provision for alimony or child support and whether the debt is conditional. In re Morel, 983 F.2d 104, 105 (8th Cir. 1992). Under Missouri law, "unless the circumstances of the child manifestly dictate otherwise and the court specifically so provides, the obligation of a parent to make child support payments shall terminate when the child: (1) Dies." Mo. Rev. Stat. § 452.340 (2003).

Bankruptcy Rule 7056

Debtor's application of the Local Rule 56.1 of the Northern District of Iowa is incorrect in this case. Bankruptcy Rule 7056 (2005) governs Motions for Summary Judgment in adversary proceedings. Rule 7056 does not require that materials be filed contemporaneously with this Court. The District Court's Local Rule 56.1 does not apply in the Bankruptcy Court.

ANALYSIS

The original Decree of Dissolution of Marriage issued on March 2, 1989 and the Decree Modifying Decree of Dissolution of Marriage issued December 18, 1996, both provided as attachments to Plaintiff's Complaint, order Debtor to pay child support to Plaintiff. Funeral expenses are not mentioned in either order. The parties agree that Debtor and Ms. Keller consented to share Darrin's funeral expenses. The parties disagree as to the intent behind the agreement. Debtor asserts that the agreement was a contract. Plaintiff asserts that the agreement was child support.

Debtor provided a copy of the Missouri Associate Circuit Court's Judgment dated October 7, 2003 as an Appendix. The Judgment states "the Court does find in favor of Plaintiff and does enter Judgment in the amount of \$6,688.12 against Defendant. Court costs of \$41.00 are taxed to Defendant." No mention of child support or a contract is made, and the Judgment "did not specifically so provide" as required under Mo. Rev. Stat. § 452.340 (2003). Further, this Court was unable to find any Missouri case that treated a minor child's funeral expenses as child support.

Under the doctrine of necessities, a parent is required to provide support for a minor child. See e.g., Rebound, Inc. v Pugh, 912 S.W.2d 660,663 (Mo. Ct. App. 1995); In re Interest of R.A.S., 826 S.W.2d 397, 401 (Mo. Ct. App. 1992). Although other jurisdictions have done so, no Missouri court has incorporated the duty to pay for a minor child's funeral services into the doctrine of necessities. Bright v. Bright, 989 S.W.2d 196 (Mo. Ct. App. 1999) .

In Bright, the Missouri Court of Appeals adopted a plain language approach to evaluating a statute.

When ascertaining the meaning of a statute, a court's primary role is to determine the intent of the General Assembly from the language used and give effect to that intent if possible. A court must give effect to a statute as written. In doing so, a court looks to the plain language of the statute.

Id. at 199. Under Missouri law a parent's obligation to pay child support ends when the child dies. Mo. Rev. Stat. § 452.340 (2003). In analyzing the plain language of the statute, this Court must conclude that Debtor's obligation to pay child support for Darrin Cale ended when Darrin died.

Plaintiff has not proven the elements § 523(a)(5) by a preponderance of the evidence and is not entitled to summary judgment as a matter of law.

CONCLUSION

WHEREFORE, Plaintiff's motion for summary judgment is DENIED.

Dated and Entered: March 28, 2006

Paul J. Kilburg
Chief Bankruptcy Judge