

# In the United States Bankruptcy Court

## for the Southern District of Iowa

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KARLA KAY HARDIN  
*Debtor(s).*

Bankruptcy No. 05-09029-lmj7  
Chapter 7

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PINSON A. HARDIN  
*Plaintiff(s)*

Adversary No. 06-30037-pjk

vs.

KARLA KAY HARDIN  
*Defendant(s)*

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### ORDER RE: DETERMINATION OF DISCHARGEABILITY OF DEBT

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This matter came before the undersigned on August 1, 2006 for trial on the Complaint to Determine Dischargeability of Debt. Bruce Buckrop appeared for Plaintiff Pinson A. Hardin. Thomas Yeggy appeared for Debtor/Defendant Karla Kay Hardin. 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 Court determination that certain debts owed by Debtor are excepted from discharge pursuant to 11 U.S.C. §523(a)(15). Plaintiff asserts a nondischargeable claim arising from the parties' Decree of Dissolution. Debtor/Defendant denies that the debt should be excepted from discharge.

### FINDINGS OF FACT

Debtor is 35 years old and in good health. During their marriage, Debtor and Plaintiff moved to the Illinois Quad Cities so that Debtor could attend Palmer College of Chiropractic in Davenport, Iowa and eventually become a chiropractor. To finance the move, Plaintiff sold a number of his assets, including real estate and automobiles. Ms. Hardin began her studies at Palmer in March 1998.

Mr. Hardin filed for dissolution of marriage in 1998. The dissolution was finalized in June 2000. As part of the dissolution decree, Debtor signed a promissory note in favor of Plaintiff in the principal amount of \$29,188.50, bearing 9% interest, effective as of August 5, 1999. She agreed to execute the promissory note to repay Mr. Hardin for debts for which she was responsible under the decree but that had been paid for by Plaintiff on her behalf. Debtor was to begin repaying this debt to Plaintiff after she graduated from Palmer College of Chiropractic.

Debtor graduated from Palmer College in October 2004. At that time, she had not yet passed any of the exams required to become licensed as a chiropractor. She has since passed one exam. She needs to pass another four exams in order to obtain her license. Ms. Hardin estimates that she will complete her licensing requirements and be able to practice in 2008 at the earliest. Since graduation, Debtor has been working full-time as a receptionist. She also has a part-time, ad hoc teaching job at Brown Mackie College. Ms. Hardin earns approximately \$25,700 per year as a receptionist. Her earnings at Brown Mackie College can vary year-to-year, but she has earned \$3,276 in the first half of 2006.

Debtor's income is likely to remain stable for the next couple of years while she finishes her licensing exams. As a

licensed chiropractor, she can anticipate a higher income in the coming years. According to U.S. Department of Labor statistics, the annual earnings for chiropractors at the 10th percentile are approximately \$25,000. (Pl. Ex. 4.) The annual mean wage (50th percentile) is approximately \$53,000. (*Id.*) Although Ms. Hardin can expect that she may begin her career at the low end of the wage scale, experience and longevity in the profession are likely to allow her income to rise to the level of or even above the annual mean wage for chiropractors. However, she will also face a significant debt load. Her outstanding student loans total in excess of \$210,000. Once Ms. Hardin has completed her licensing exams and is ready to practice, she is likely to incur still further debt. In order to enter the chiropractic profession, she will likely need to borrow an additional \$50,000 to \$80,000 for office start-up costs or to buy into an existing practice.

Plaintiff testified that he will have income of approximately \$76,000 this year. Mr. Hardin receives more than \$3,600 per year from Debtor for child support. In contrast to Debtor's financial outlook, Plaintiff is doing fairly well financially. While Mr. Hardin filled out a hypothetical Schedule I and J which showed he was breaking even, he underestimated his financial success. (Debtor's Ex. J.) He appears to overstate the amount of his tax obligations. While he claimed that his payroll taxes and social security expenses were \$1,102.21 per month, his tax records indicate otherwise. He reports that his monthly gross incomes is \$4,963.31, which would annualize to \$59,559.72, and stands in contrast to his testimony stating he will have \$76,000 in income this year.

Depending on which number is accurate, Mr. Hardin's FICA withholding should be between \$379.69 and \$484.50. His federal tax burden in the previous two years has been quite low. In 2004, Plaintiff had zero tax liability on his earnings and only paid \$749 for taxes related to IRA or other pension distributions. In 2005, he had a tax liability of \$2,254 on an adjusted gross income of \$73,063. Even if the court assumes that his tax liability were to grow to \$3,000 this year, his monthly federal tax burden would only be \$250 per month. For his state liability, Mr. Hardin owed \$1,631 in taxes last year. Assuming that his liability were to increase to \$1,800 this year, Plaintiff would owe \$150 per month for state tax liability. Thus, Plaintiff's tax liability is, at most, \$884.50 per month and most likely closer to \$800 per month.

Plaintiff is also self-employed in other ventures. His business ventures include an eBay business, which he states is no longer in operation. There is also a car-related business named Extreme Dream Machines. The record does not provide a detailed accounting of how much profit these businesses produce. Mr. Hardin provided conflicting testimony regarding, for instance, the profitability of his eBay business. At one point, he claimed that it made \$1,400 in profit. At another point, he said the eBay business only made \$1,400 in profit in combination with the other business.

The record shows that the eBay checking account paid for thousands of dollars in what appear to be Mr. Hardin's personal expenses, including June, July, and October rent payments of \$650 each, June automobile loan payment of \$743.85, grocery purchases, restaurant charges, hotel charges, and ATM cash withdrawals, among others. (Debtor's Ex. P.) Since Mr. Hardin's wage and child support payments are deposited to a separate, personal account at a different bank, Mr. Hardin's net profit from his business ventures would be significantly higher than his testimony amount if he were to calculate those profits without deducting expenses of a personal nature. See 26 U.S.C. §262(a).

Further, Mr. Hardin's personal account shows an impressive amount of deposits for a family with approximately \$64,622 (\$73,063 minus FICA, federal and state taxes) in after-tax income in 2005. Mr. Hardin's personal checking account shows deposits totaling \$106,849.77 for the period of January 8, 2005 through January 9, 2006, representing 165% of his IRS-reported annual after-tax income. While these deposits do not necessarily represent income, the significant amount of deposits indicates that Mr. Hardin has substantial financial resources.

## **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).

It is the conclusion of this Court that Ms. Hardin does not have the ability to pay her debt. Debtor's ability to pay is measured in terms of the amount she can pay within a reasonable time. Brown, 302 B.R. at 644. Reasonable time is not confined to the 36- or 60-month time frame required for Chapter 13 plans. Id. In Debtor's case, she is barely surviving on a salary as a receptionist while facing current repayment obligations on student loans in excess of \$210,000. Ms. Hardin will not enter the chiropractic profession for at least two years while she completes four remaining licensing exams. When she sets up her initial practice, she will be at least 37 or 38 years of age. In order to enter the profession, she will need to go still deeper into debt. Once she enters the practice, she can not expect to make the median wage for chiropractors of \$53,000 for several years, perhaps a decade or more. At the same time, whatever she does earn will be needed to service the enormous student loan debts she has accumulated. Meanwhile, the dissolution debt will continue to rise at the rate of 9% per year. Even looking seven to ten years into the future, Debtor will not have the ability to pay this debt. Thus, Debtor has met her burden of proof in establishing an inability to pay her debt to Plaintiff.

### BENEFIT VERSUS DETRIMENT

Although Debtor has met her burden on a lack of ability to pay the debt in question, she may also be granted a discharge of the debt by proving that the discharge of the debt will benefit her more than the harm incurred by Plaintiff. A debtor will be relieved of paying § 523(a)(15) debt if he or she can establish 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, this 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).

It is the conclusion of this Court that discharging the §523(a)(15) debt is also more beneficial to Debtor than detrimental

to Plaintiff. As discussed previously, Debtor earns a modest living as a receptionist and will not begin earning a more significant income until or if she becomes licensed as a chiropractor. She faces an enormous debt burden that will grow larger when she enters practice. By contrast, Plaintiff enjoys a substantial income and appears to have a solid asset base as well. While the detriment to her of discharging the loan is small, the benefit to Debtor will be substantial. Debtor has also met her burden of establishing that the benefit to her of discharging this debt outweighs the detriment that would be shouldered by Plaintiff.

### **CONCLUSION**

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

**WHEREFORE**, Plaintiff's Complaint to Determine Specific Nondischargeability of a Debt is DENIED.

**FURTHER**, Debtor's dissolution debt is not excepted from discharge under §523(a)(15).

DATED AND ENTERED: August 21, 2006

Paul J. Kilburg  
Chief Bankruptcy Judge