

In the United States Bankruptcy Court
for the Southern District of Iowa

SUSAN SCHOPPE
Debtor(s).

Bankruptcy No. 05-05820
Chapter 7

DEAN SCHOPPE
Plaintiff(s)

Adversary No. 05-30217

vs.
SUSAN SCHOPPE
Defendant(s)

ORDER RE: DETERMINATION OF DISCHARGEABILITY OF DEBT

This matter came before the undersigned on July 6, 2006 for trial on the Complaint to Determine Nondischargeability of a Debt. Curtis Ward appeared for Plaintiff Dean Schoppe. Barry Kaplan appeared for Debtor/Defendant Susan Schoppe. 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). He asserts a nondischargeable claim arising from the parties' Decree of Dissolution. Debtor claims that excepting the debts from discharge would constitute a hardship.

FINDINGS OF FACT

Plaintiff and Debtor were divorced in December 2004. The dissolution decree divided Plaintiff's and Debtor's assets, almost all of which were encumbered with liens. The division of the couple's net worth in the decree was actually a division of debts, leaving each party with approximately \$3,700 in net debt. Two debts from the Decree of Dissolution are at issue in this case: (1) a loan for a 2002 Salem camper and (2) a \$1,500 debt owed to Dawn Schoppe, Plaintiff's sister.

In the dissolution decree, the court awarded Debtor possession of the camper, along with responsibility for the loan payments associated with the camper. The camper initially remained at Plaintiff's residence until Debtor could make arrangements to claim the camper. Debtor made payments in excess of \$900 to bring payments on the camper current through February 2005. Between March and June 2005, Plaintiff made three monthly payments of \$167 each on the camper. Plaintiff testified that he made these payments voluntarily. During this period, Debtor and Plaintiff were attempting to reconcile, and the camper remained at Plaintiff's residence. The reconciliation attempt ultimately failed.

Debtor planned to take possession of the camper and continue making the payments. On the date she attempted to take possession of the camper at Plaintiff's residence, Debtor's ability to take possession was initially obstructed by a cinder block which she was unable to move. Debtor sought assistance from the police to move it and when she returned to Plaintiff's residence, the camper was gone. Plaintiff returned the camper to the lender, without the knowledge or consent

of Debtor. Following the repossession, Debtor did not make any additional payments on the camper loan. Plaintiff testified that the lender sold the camper for approximately \$8,000, which left a balance of \$5,939 of outstanding debt. Plaintiff testified that he has not made further payments on the camper loan, although the lender has contacted him seeking to collect on the balance.

A supplement to the dissolution decree divided a \$3,000 debt owed to Plaintiff's sister into two equal obligations of \$1,500 for each party. From the record, it appears that Debtor has made no payments on this debt and that Plaintiff has made modest payments totaling between \$100 and \$200 towards his portion of the debt in the past 18 months post-decree. Plaintiff's sister has not instituted legal action against either party and appears to allow Plaintiff to make payments when he has surplus funds.

Debtor earns approximately \$10 per hour in her job as an insurance agent's assistant. She testified that she would earn between \$18,000 and \$19,000 this year. Since Debtor was a part-time student until May of this year, she will presumably earn closer to \$21,000 per year in the future as a full-time agent's assistant. Assuming a tax burden of twenty percent, Debtor will have net earnings of \$16,800 per year, or \$1,400 per month. Adding in her \$296 per month in child support, Debtor may have approximately \$1,696 in net income to meet her and her dependents' expenses. Debtor testified that she has \$1,600 in monthly expenses.

Plaintiff is self-employed. In 2005, he had net pre-tax income of approximately \$18,900. In prior years, Plaintiff's income averaged under \$15,000 per year. His debt obligations include substantial house and truck payments.

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).

Debtor has net income of approximately \$1,696 per month and expenses of \$1,600 per month. Expenses of \$1,600 per month are reasonable and necessary for the support of Debtor and her two dependent children. Thus, Debtor has approximately \$96 per month in disposable income. Debtor's future financial prospects are likely to remain the same or improve in the coming years. She has recently completed schooling which should improve her earning ability.

It is the conclusion of this Court that Debtor has the ability to pay her debts. 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 should be able to pay off the debts within a 75-month time frame. Thus, Debtor has not met her burden of proof in establishing an inability to pay her debts.

BENEFIT VERSUS DETRIMENT

Although Debtor has an ability to pay the debts in question, she may still be granted a discharge of those debts if she can prove that the 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 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) debts is not more beneficial to Debtor than detrimental to Plaintiff. Both parties left their marriage with debt. Both parties are earning roughly equal incomes, and both have significant expenses to cover out of their respective incomes. Debtor has failed to meet her burden of establishing that the benefit to her of discharging these debts would outweigh the detriment that would be shouldered by Plaintiff.

CONCLUSION

The Court finds that Debtor has not met her burden to establish either her inability to pay the two loans or that the benefit to her would outweigh the detriment to her former spouse.

The Court notes with significant disfavor that Mr. Schoppe returned the camper to the lender without the consent of Debtor. The effect of this conduct has left Debtor without the use of the property while continuing to be responsible for the deficiency. The temptation is strong to discharge this obligation because of this conduct. However, the provisions of §523(a)(15) do not provide for this remedy. Upon due consideration, it is the conclusion of this Court that this issue is best resolved by the equitable and contempt powers available in State court. These debts are therefore excepted from discharge pursuant to §523(a)(15).

WHEREFORE, Plaintiff's Complaint to Determine Nondischargeability of a Debt is GRANTED.

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

FURTHER, Debtor's debt owed to Dawn Schoppe, Plaintiff's sister, is excepted from discharge under §523(a)(15).

DATED AND ENTERED: August 2, 2006

Paul J. Kilburg
Chief Bankruptcy Judge