

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

DOUGLAS ALVIN NICKOLAI,

DEBTOR

ARLYCE F. NICKOLAI,

Plaintiff

vs.

DOUGLAS ALVIN NICKOLAI,

Defendant

CASE NO. BK81-2291

A82-54

MEMORANDUM

This matter comes before the Court upon stipulation, pretrial order, and briefs submitted by counsel at pretrial hearing. The issue involved is whether certain debts granted pursuant to a property settlement agreement and divorce decree are excepted from discharge in bankruptcy pursuant to 11 U.S.C. §523(a)(5) as being in the nature of alimony and child support. The plaintiff in this adversary proceeding, Arlyce Nickolai, seeks a determination that certain debts ordered pursuant to that dissolution decree, namely, debts owed Dr. Bastani, Sears Roebuck & Co., Montgomery Ward, and St. Elizabeth's Hospital, are nondischargeable.

The facts before me reveal that a dissolution decree was entered by the Lancaster County District Court November 6, 1980, which incorporated into its terms a September 15th property settlement agreement. Pursuant to the terms of that agreement, each party retained ownership and possession of personal items such as clothing, jewelry, sporting equipment, and other personal effects free and clear of any claim of the other. The parties' 1980 Chevette automobile was to become property of Mrs. Nickolai. That division constituted the entire marital estate with the exception of certain debts incurred jointly by the parties. The debts to be paid by the debtor here, Douglas Nickolai, were in the total amount of \$3,250. The petitioner in this action was ordered by the decree to pay her portion of the joint debt totalling \$3,940. Similarly, the costs of attorney's fees for the dissolution proceeding were equally divided between the parties. The only additional debt ordered to be paid was an amount of \$125 per month designated as child support to be paid by the defendant for the benefit of the parties' minor son, an amount not at issue here.

By way of affidavit dated July 15, 1982, Ms. Nickolai abandoned her dischargeability complaint as to the debt due and owing Sears Roebuck & Co. in the amount of \$350.

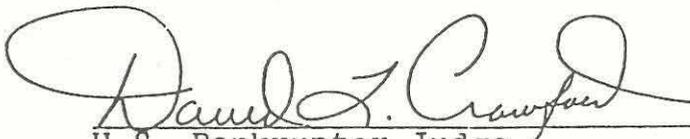
Having reviewed the briefs, pretrial order, and documents pertaining to the dissolution of marriage, I conclude the debts owed by Douglas Alvin Nickolai for benefit of the plaintiff, his former spouse, to Dr. Bastani in the amount of \$800, to Montgomery Wards in the amount of \$1,300, and to St. Elizabeth's Hospital in the amount of \$800, are dischargeable in this bankruptcy proceeding.

To be excepted from discharge under §523(a)(5) of the Bankruptcy Code, a debt owed a former spouse in connection with a divorce decree or property settlement must be "in the nature of" alimony, maintenance, or support. This Court has previously held in the case In re Stranathan, 8 B.C.D. 472, 15 B.R. 223 (D. Neb. 1981), that a finding of what is in the nature of alimony, maintenance or support be made on a case-by-case basis. This determination is made notwithstanding the fact that the division of these goods and debts was made pursuant to a document entitled "property settlement agreement." The Court will look to substance rather than form in making its determination.

While it is possible for amounts payable to third parties on debts for which spouses are jointly liable to be nondischargeable even though they are technically not payable directly to the spouse, I cannot find the debts here involved are in the nature of alimony, maintenance, or support for Mrs. Nickolai. Stranathan at B.R. 225. The evidence before me indicates that upon termination of their six-year marriage the parties voluntarily entered into an equitable division of property owned and debts to be paid. I can find no evidence that there was intent by the parties to provide payment of support, maintenance, or alimony to Ms. Nickolai. The division of debt and the allocation of owned property is as nearly equal as possible.

DATED: August 19, 1982.

BY THE COURT:

  
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U.S. Bankruptcy Judge

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