

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
)  
BYRON EDWIN STEELE, ) CASE NO. BK96-80104  
)  
DEBTOR ) A96-8053  
\_\_\_\_\_)  
CAROL M. STEELE, )  
) CH. 7  
Plaintiff )  
vs. )  
)  
BYRON EDWIN STEELE, )  
)  
Defendant )

MEMORANDUM

Hearing was held on April 14, 1997. Appearances: Leonard Tabor for the debtor/defendant and George Sommer for the plaintiff. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

**Background**

The plaintiff, Carol M. Steele, filed this adversary proceeding on May 14, 1996 to determine the dischargeability of a debt which the debtor, pursuant to a property settlement agreement incorporated in a dissolution of marriage decree, was to pay and hold her harmless on.

The parties have two children. The custody of the elder child was given to the debtor, but that child had reached the age of majority by the time the debtor filed his petition. Custody of the younger child was given to the plaintiff. That child is currently 15 years old. The debtor was ordered to pay \$118.80 per month in child support, but that amount increased to \$362.00 per month upon the elder child reaching the age of majority. The debtor was in arrears in child support as of the filing of the petition.

The plaintiff is currently employed by Sagir Inc. and earns a salary plus commission. The debtor is currently employed by Clean Harbors Environmental Services Inc. and earns a salary and overtime.

The property settlement agreement provided that the debtor would be obligated to pay and hold the plaintiff harmless as to the indebtedness of the parties to the Nations Bank Visa, the First Bankcard Center Mastercard, a student loan due to Union Bank, the Discover Card, the National Westminster Bank Visa, and an anticipated Federal Income Tax liability. The total amount of the indebtedness at the time of the petition is \$13,617.99, according to the debtor's schedules.

The plaintiff provided evidence that her monthly net income is \$1,567.00, including child support, and her monthly expenses are \$1,744.00. The debtor's net monthly income is somewhat in question, as he has provided numerous and varied figures. In his original Schedule I, he listed his net monthly income as \$1,877.52. He then filed an amendment to that schedule which listed his net monthly income as \$1,350.91. In an affidavit admitted into evidence at the hearing on this matter, he listed his net income including overtime as \$1,573.02. His 1996 W-2 Wage and Tax Statement admitted into evidence at the hearing indicates that his net income, including deductions for insurance, an IRA, and a deferred compensation plan, is \$2,283.38. This amount is corroborated by his last paycheck at Clean Harbors for 1996. The debtor's monthly expenses are listed as \$1,677.30.

### **Decision**

The debtor's obligations to the plaintiff from the property settlement and dissolution decree entered by the Scotts Bluff County District Court on December 15, 1994 are nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

### **Discussion**

The debtor has asserted an inability to pay the debt obligation to the plaintiff and that the benefit to him in discharging the debt outweighs any detriment to the plaintiff. Section 523(a)(15) provides in part:

(a) A discharge under section 727 . . . of this title does not discharge an individual debtor from 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 or territorial law by a governmental unit 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 . . .

(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).

The plaintiff bears the burden of proving that "§ 523(a)(15) is applicable due to the existence of a debt which (i) is not of the type under § 523(a)(5), and (ii) was incurred in the course of a divorce or separation . . ." In re Scigo, \_\_\_ B.R. \_\_\_, 1997 WL 235113, Neb. Bkr. 97:97, 101 (Bankr. D. Neb. Mar. 10, 1997) (quoting Stone v. Stone (In re Stone), 199 B.R. 753, 783 (Bankr. N.D. Ala. 1996)). See, Williams v. Williams (In re Williams), Neb. Bkr. 97:\_\_\_ (Bankr. D. Neb. 1997). The debtor, correspondingly, bears the burden of establishing either the inability to pay standard of 11 U.S.C. § 523(a)(15)(A) or the detriment standard of 11 U.S.C. § 523(a)(15)(B). Scigo at 97:101; Williams at 97:\_\_\_.

This court has, in a prior order, determined that the debt owed the plaintiff by the terms of the dissolution decree is of a type covered by 11 U.S.C. § 523(a)(15), and thus the plaintiff has met her burden of proof. In order to receive a discharge, the debtor must prove by a preponderance of the evidence that he lacks the ability to pay the debt or that

receiving a discharge will result in a benefit to him that outweighs any detriment to the plaintiff.

The parties have provided the following budgets:

Plaintiff's Monthly Earnings

Gross Monthly Income: \$1,882.00  
Net Income : \$1,567.00

Plaintiff's Monthly Expenses

Electric and heat : \$ 250.00  
Sanitation : \$ 22.00  
Telephone : \$ 75.00  
Food : \$ 300.00  
Clothing : \$ 120.00  
Medical and Dental : \$ 140.00  
Car Insurance : \$ 120.00  
Gasoline : \$ 125.00  
Car maintenance : \$ 50.00  
Fashion Bug debt : \$ 30.00  
First Bank Card : \$ 100.00  
J.C. Penney's : \$ 50.00  
VISA Gold : \$ 150.00  
Mass Mutual : \$ 150.00  
Principal : \$ 12.00  
Miscellaneous : \$ 50.00  
  
TOTAL : \$1,744.00

**Plaintiff's Net Monthly Earnings : \$1,567.00**  
**Plaintiff's Monthly Expenses : \$1,744.00**  
**Plaintiff's Grand Total : (\$ 177.00)**

Debtor's Monthly Earnings

Gross Income : \$3,365.63  
Net Income : \$2,283.38

Debtor's Monthly Expenses

Rent	:	\$	300.00
Utilities	:	\$	120.00
Telephone	:	\$	30.00
Cable	:	\$	35.00
Pickup payment	:	\$	166.69
Car payment	:	\$	176.61
Gas	:	\$	170.00
Vehicle Insurance	:	\$	136.00
Vehicle Taxes	:	\$	18.00
Groceries	:	\$	150.00
IRS Payment	:	\$	225.00
College Loan	:	\$	40.00
Car repairs	:	\$	100.00
Total	:		\$1,677.30

<b>Debtor's Net Monthly Earnings</b>	<b>:</b>	<b>\$2,283.38</b>
<b>Debtor's Monthly Expenses</b>	<b>:</b>	<b><u>\$1,677.30</u></b>
<b>Debtor's Grand Total</b>	<b>:</b>	<b>\$ 606.08</b>

The plaintiff's expenses appear to be somewhat inflated in that she has budgeted certain amounts for credit cards which may be used to pay for other expenses listed. However, even if her expenses were reduced by \$100, it still appears that she is barely able to meet her expenses as they become due, and then only when she receives current child support payments, which does not always occur.

The debtor's expenses are both understated and overstated. The expenses do not factor in his monthly child support payment. However, his expenses include two vehicles. While a debtor is certainly permitted to have two vehicles, there is no evidence concerning why he needs two vehicles, and it is certainly not appropriate for the debtor to have two vehicles to the detriment of his former spouse. Elimination of one vehicle payment would lower his expenses for vehicle insurance, taxes, and maintenance, as well as eliminating the monthly vehicle loan payment.

In addition, the evidence shows he has deductions from gross income for a deferred compensation plan and an Individual Retirement Account. Such deductions, or investments, are not appropriate when the debtor is requesting a discharge of a property settlement debt supposedly because he can't afford to pay the debt.

Even if the debtor's expenses were raised by \$100 to account for the difference between the child support and the two vehicles, the debtor would still have a surplus of over \$500 per month. The debtor thus clearly has the ability to pay the debts required by the dissolution decree, and has not met his burden pursuant to 11 U.S.C. § 523(a)(15)(A).

As for the benefit to the debtor as compared to the detriment to the plaintiff, discharging the debtor's obligations under the dissolution decree would not result in a benefit to the debtor that outweighs the detrimental consequences to the plaintiff. The discharge of this obligation would "simply provide [the] Debtor with additional disposable income to 'use at his discretion.'" This is not the type of benefit that section 523(a)(15)(B) sought to protect." Carroll v. Carroll (In re Carroll), 187 B.R. 197, 201 (Bankr. S.D. Ohio 1995).

Accordingly, the debtor has not met his burden under 11 U.S.C. § 523(a)(15)(B), and his obligations to the plaintiff pursuant to their dissolution decree are nondischargeable obligations.

Separate journal entry to be filed.

DATED: June 3, 1997

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

TABOR, LEONARD 308-436-4690

Copies mailed by the Court to:

George Sommer, 801 Ferdinand Plaza, Scottsbluff, NE  
60361  
United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	
BYRON EDWIN STEELE,	)	CASE NO. BK96-80104
	)	A96-8053
<u>DEBTOR(S)</u>	)	
	)	CH. 7
CAROL M. STEELE,	)	Filing No.
Plaintiff(s)	)	
vs.	)	<u>JOURNAL ENTRY</u>
BYRON EDWIN STEELE,	)	
	)	DATE: June 3, 1997
<u>Defendant(s)</u>	)	HEARING DATE: April 14, 1997

Before a United States Bankruptcy Judge for the District of Nebraska regarding Adversary Complaint.

APPEARANCES

Leonard Tabor, Attorney for debtor  
George Sommer, Attorney for plaintiff

IT IS ORDERED:

The debtor's obligations to the plaintiff from the property settlement and dissolution decree entered by the Scotts Bluff County District Court on December 15, 1994 are nondischargeable pursuant to 11 U.S.C. § 523(a)(15). See memorandum entered this date.

BY THE COURT:

/s/ Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

TABOR, LEONARD 308-436-4690

Copies mailed by the Court to:

George Sommer, 801 Ferdinand Plaza, Scottsbluff, NE  
60361

United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.