

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
DARREN & BRENDA CHRISTENSEN) CASE NO. BK96-82376
) A98-8088
DEBTORS.)
_____) CH. 7
DARREN & BRENDA CHRISTENSEN,)
Plaintiff(s))
vs.)
)
NEBRASKA STUDENT LOAN)
PROGRAM, INC.)

MEMORANDUM

Hearing was held on the adversary complaint on August 25, 1999. Appearances: James D. Carson for the debtor and Gary L Young for the defendant. 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).

The Case

This adversary proceeding concerns the dischargeability under Section 523 (a)(8)(B) of student loans owed by plaintiff Brenda E. Christensen ("Christensen") to defendant Nebraska Student Loan Program, Inc., ("NSLP").

Facts

In September of 1988, and in March and June of 1989, Christensen obtained three student loans from qualified lenders in the amounts of \$2625, \$2625 and \$1693 respectively. The loans were acquired for educational expenses accumulated while Christensen attended Nebraska College of Business. She intended to, and did receive, an Administrative Assistant degree in December of 1989. Currently, the student loan debt including unpaid principal, interest, and collection costs totals \$23,555.67.

Christensen filed a petition for Chapter 13 relief in 1990. The 1990 filing was the result of a divorce, accumulating medical bills, and living expenses incurred while in school. Although the debtor attempted to make payments under the Chapter 13 plan, she was unable to do so and the

case was later converted to a Chapter 7 case in which she received a discharge. Due to miscommunication with her former attorney, Christensen was under the mistaken belief that her student loan debt had been discharged as a result of the 1990 bankruptcy. However, the prior Chapter 7 discharge did not eliminate her student loan debt.

Subsequent to completion of the degree program, Christensen obtained employment which required significant typing or word processing. She was then diagnosed with carpal tunnel syndrome ("CTS"), which is apparently a disability that causes serious pain in the wrist area and which strikes people that must perform repetitive actions like word processing. Although she received medical and surgical treatment for this disability, she is unable to type or do any sort of repetitive motion utilizing her hands due to the CTS.

Because of the CTS, Christensen took a job as an office receptionist four years ago. This position requires no typing and does not aggravate her CTS. She has remained in this position and is currently earning \$12.00 per hour. She obtained the current hourly rate only recently and will not receive another raise for at least a year to a year and a half.

In addition to CTS, she suffers from a heart ailment, requiring medical attention, medicine, and a special diet.

Christensen is involved in a dissolution of marriage action with her second husband ("Darren"). She now has custody of their three-year old son who experiences frequent medical problems and her health insurance does not cover all the child's medical costs. Darren had provided child care for their child until the dissolution action commenced. She has now placed her son in day care three times a week at a rate of \$65.00 per week. On the remaining days of the week, Christensen takes her son to her mother's home which is a considerable distance from her own home.

A child support agreement was entered into whereby Darren agreed to pay \$200.00 per month for support of the child. However, Christensen has not received any support from him yet. Darren has not worked in over a year. His only asset is a 1987 pickup truck of negligible value.

In addition to having the right to receive child support, Christensen pays child support of \$110.00 per month for a

fifteen-year old daughter from a prior marriage. The daughter lives with Christensen during the summer and on weekends.

Christensen is a thirty-eight-year old about-to-be single parent who currently earns \$12.00 per hour. Little or no overtime is available. Her gross income is \$2,080.00 per month. Her employer owns the apartment building where she lives. Rent of \$565.00 per month, cable television of \$24.00 per month, child support of \$110.00 per month and health insurance of \$240.00 per month are taken out of each paycheck. Mandatory deductions, including taxes, total \$340.00 per month. Therefore, Christensen is left with approximately \$540.00 a month.

Utilizing this \$540.00, she buys groceries and other necessary household items for \$300.00 per month, if she has that much available after making the required payments. Her other monthly bills include: a car payment of \$184.00, car insurance of \$83.66, day care of \$260.00, telephone of \$30.00, utilities of \$65.00 and gas for her vehicle of \$80.00. These payments, if she could make them, leave her at a deficit of \$464.00 per month, before paying for clothing or any out-of-pocket medical expenses.

Christensen is in poor health and has not been able to provide Christmas or Birthday gifts for her children. She has been on welfare previously and is struggling to stay off it currently. She has held down a job for four years, trying the best she can to provide for herself and her dependents in spite of her health conditions. Christensen could not afford her own attorney for this matter and had to borrow the money from her parents upon whom she depends for help with the expenses of day-to-day life.

Discussion and Conclusions of Law

In *In re Andresen*, 232 B.R. 127, (8th Cir. B.A.P 1999), the 8th Circuit Bankruptcy Appellate Panel held that the proper test to be applied in determining the undue hardship exception to student loan discharge in the Eighth Circuit is that adopted in *In re Andrews*, 661 F.2d 702, (8th Cir.1981). The *Andrews* test requires an examination of (1) the debtors past, present and reasonably reliable future financial resources; (2) calculation of the debtor's and his dependants' reasonably necessary living expenses; and (3) any other relevant facts and circumstances surrounding a particular bankruptcy case. *Andrews*, 661 F.2d at 704.

The debtor's past, present and likely future financial resources do not lead to a finding that she will be able to pay the student loan and retain a minimal standard of living for herself and her dependents. See *In re Rose*, 227 B.R. 518, (W.D.Mo. 1998), (applying the *Andrews* test). Christensen's health is not getting any better. In addition to the CTS, she has now been diagnosed with heart problems derived from stress. Her son remains in need of medical attention and it is unclear whether and what percentage of medical costs her health insurance will cover. Christensen's earning potential for the time being is stagnant. She has been informed that she will receive no more raises for her employer for some time. Comparing her current and future income to her current expenses, there is no reasonable likelihood that in the future her financial condition will improve to such an extent that she will be able to pay her student loan.

NSLP argues that Darren, Christensen's soon-to-be ex-spouse, should be paying more than \$200.00 a month in child support. It is alleged that if he would pay her the full amount authorized by the Nebraska Child Support Guidelines, there would be funds left over for paying the student loans. According to NSLP's calculations, Darren should be paying \$288.00, thus providing an extra \$88.00. However, as shown above, this \$88.00 would hardly be deemed extra. Rather, it would go to provide necessities such as clothing. Additionally, Darren has not worked for over a year and is not currently employed. He has no job, no money, and no assets from which she can collect even the agreed upon child support amount. Due to his work history, it is unlikely that Christensen will ever be able to collect the \$200.00, much less an additional \$88.00.

Her expenses are reasonable for a single parent with custody of a three-year old and joint custody of a fifteen-year old. Christensen's only entertainment expense is a cable bill of \$24.00 a month. She stated that once in awhile she may order a pizza. Christensen further limits expenses by refraining from buying all but the bare necessities. She does not purchase clothes besides those required to keep her job nor does she buy Christmas or Birthday gifts for her children. Her car payment of \$184.00 per month is reasonable considering the distance she must travel between home, work, day care and her mothers house. Her rent payment is cheaper than she might find elsewhere due to the fact that she works for her landlord. Additionally, it is not unreasonable to spend \$300.00 per month on groceries when feeding one adult, a three

year old, and a fifteen year old on weekends. Christensen's health insurance is a necessity considering the medical expenses she has incurred for herself, her son and her daughter. Finally, due to the divorce Christensen must put her son in day care. She attempts to minimize this expense by utilizing her mother for child care twice a week. This is a reasonable attempt to minimize what otherwise could be a tremendous expense. Considering all the above factors, Christensen's expenses are reasonable for herself and her dependants.

Additional circumstances exist that lead to a finding of dischargeability. Christensen's health problems are worsening. She has been diagnosed with a heart condition caused by stress. She testified that it is unclear how long she will be able to continue working. Additionally, her salary is frozen for the next year to year and a half. When she received her raise she was informed that she will no longer be eligible for overtime. Finally, because of her CTS the purpose for which she received her student loans has been frustrated. She is not able to perform any of the tasks for which she was trained such as typing, dictation or the like. Therefore, additional circumstances lead to the conclusion that Christensen's student loans should be discharged.

Christensen's fact situations when analyzed under *Andrews* leads to the conclusion that to require her to repay the student loans would cause an undue hardship to herself and her dependents.

Conclusion

The student loans are discharged. A separate judgment shall be entered.

DATED: September 2, 1999

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

GARY YOUNG (67)
JAMES CARSON 498-8336

Copies mailed by the Court to:

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.

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)
Defendant.)

JUDGMENT

Judgment is entered in favor of plaintiff and against defendant. The student loans which are the subject of this adversary proceeding are discharged under 11 U.S.C. § 523(a)(8) because excepting them from discharge will impose an undue hardship on debtor and debtor's dependents.

DATED: September 2, 1999

BY THE COURT:

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