

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
ROBERT HASSLER,)
)
Debtor(s).) CASE NO. BK03-81714
A03-8061
DEBORAH HASSLER,)
)
Plaintiff,) CH. 7
)
vs.)
)
ROBERT HASSLER,)
)
Defendant.)

MEMORANDUM

Trial was held in Omaha, Nebraska, on March 19, 2004, on the plaintiff's complaint to determine dischargeability of certain debts. Michael Lustgarten appeared for the plaintiff, and the debtor appeared on his own behalf. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

The parties were formerly married to each other. As part of the dissolution decree, certain marital debts were allocated between the parties. These included education-related loans and credit card obligations. The division of property was clarified on appeal, and an order was entered in that regard on May 6, 2003. The debtor filed his Chapter 7 petition on May 30, 2003.

Ms. Hassler filed this adversary proceeding to prevent the debtor from discharging his portion of those marital debts. She asserts that the detriment to her caused by such a discharge will outweigh the benefit to the debtor, pursuant to 11 U.S.C. § 523(a)(15)(B).

"Section 523(a)(15) excepts from discharge those debts

arising out of marital dissolution proceedings that do not constitute nondischargeable alimony, maintenance or support under § 523(a)(5); i.e. property settlement awards." Moeder v. Moeder (In re Moeder), 220 B.R. 52, 54 (B.A.P. 8th Cir. 1998). In determining whether a non-support debt incurred in the course of a divorce is dischargeable, the first step is to determine that it is in fact a division of property rather than alimony, maintenance, or support. The non-debtor spouse bears the burden of establishing this. Upon such a showing, the debtor may prove that he does not have the ability to pay the debt, or, if he has the ability to pay, the benefit to him of a discharge is greater than the detriment to his former wife. Fellner v. Fellner (In re Fellner), 256 B.R. 898, 902-03 (B.A.P. 8th Cir. 2001) (citing Rush v. Rush (In re Rush), 237 B.R. 473 (B.A.P. 8th Cir. 1999)).

In this case, the debts at issue clearly arise from the division of property and not as maintenance or support. In addition, the debtor does not contest his ability to pay. He simply argues that Ms. Hassler is in a better financial position to pay those debts.

In balancing benefit and detriment, the court compares the relative living standards of the parties, and if the debtor's standard of living is greater than or equal to the creditor's, then discharge of the debt is not warranted. Whitlach v. Allgor (In re Allgor), 276 B.R. 221, 225 (Bankr. N.D. Iowa 2002). This requires a comparison of each party's income and expenses, Brown v. Brown (In re Brown), 302 B.R. 637, 645 (Bankr. N.D. Iowa 2003), and not simply a comparison of the parties' net worth. Grunwald v. Beck (In re Beck), 298 B.R. 616, 625 (Bankr. W.D. Mo. 2003).

Here, Ms. Hassler testified that she is a hospital administrator in Washington state, earning \$120,000 annually. The parties' 15-year-old daughter lives with her. Ms. Hassler is also paying part of their older daughter's college tuition and expenses. Mr. Hassler was ordered to pay \$465 in child support each month, but has not paid it since August 2003. Ms. Hassler's monthly net income is approximately \$6,933. Her monthly expenses, including debt service on some of the debts assigned to Mr. Hassler in the divorce decree, are \$6,347. This leaves \$586 in disposable income.

Mr. Hassler holds master's degrees in history and anthropology, and teaches at two local community colleges. His gross 2003 income was \$56,038.40. He testified that his 2004

income will be less because he will be teaching fewer classes this year. Mr. Hassler did not provide any evidence of his current monthly expenses, but his Schedule J lists \$6,625 in monthly expenditures at the date of filing. However, that amount includes expenses such as attorney fees and credit card payments which have now been discharged. He testified that he has not paid his state and federal income tax liability and his student loan installments since filing bankruptcy.

Both parties appear to have a negative net worth.

In the Allgor case, supra, the debtor failed to pay certain joint credit-card debt assigned to her in the divorce decree, so her former husband paid off the balance to protect his credit rating. He then sought to have the debt excepted from discharge in the bankruptcy case. In performing the § 523(a)(15)(B) analysis, the court found that the debtor had the ability to pay the debt, and would not suffer a decrease in her standard of living materially below that of her former husband if she were required to pay the debt. 276 B.R. at 226. The court specifically noted that the property settlement agreement contained a "hold harmless" clause to protect each party from a default by the other. This tilted the balance in favor of a finding of non-dischargeability in Allgor. Id.

In this case, there is no evidence of a "hold harmless" clause in the decree. However, the debtor has not met his burden of proof establishing that the benefit to him is greater than the burden to his former wife. The Chapter 7 discharge has freed him from a significant amount of debt, making available funds with which he can pay non-dischargeable debts. Moreover, the debts at issue in this case were incurred so the debtor could further his education. The plaintiff did co-sign for those loans, but requiring her to pay those debts while the debtor, now and in the future, reaps the benefits of that education while bearing little or none of the burden of paying for it clearly is a undue detriment to her and her family. She has been forced to assume those joint debts which were assigned to the debtor as part of the divorce, which contravenes the intention of the property award in the divorce decree and places a disproportionate burden on the plaintiff. The debtor's financial difficulties have already deprived her of several child support payments; granting a discharge of these joint debts would cause an even more significant detrimental impact on her current and future standard of living. The debts are not discharged.

Separate judgment will be entered in favor of the plaintiff.

DATED: April 7, 2004

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Michael Lustgarten
Robert Hassler
U.S. Trustee

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

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JUDGMENT

Trial was held in Omaha, Nebraska, on March 19, 2004, on the plaintiff's complaint to determine dischargeability of certain debts. Michael Lustgarten appeared for the plaintiff, and the debtor appeared on his own behalf.

IT IS ORDERED: Judgment is hereby entered in favor of the plaintiff. The debts at issue are excepted from discharge under 11 U.S.C. § 523(a)(15)(B). See Order entered this date.

DATED: April 7, 2004

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
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