

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA



IN THE MATTER OF)
)
EVANGELINE JEAN MECHAM,) CASE NO. BK85-1226
)
DEBTOR) A85-320
)
EVANGELINE JEAN MECHAM,)
) Chapter 7
Plaintiff)
)
vs.)
)
STATE OF UTAH, UTAH HIGHER)
EDUCATION ASSISTANCE AUTHORITY,)
)
Defendant)

MEMORANDUM OPINION

This matter came on for status hearing upon the plaintiff/debtor's complaint for the determination of the dischargeability of a student loan as a hardship pursuant to 11 U.S.C. §523(a)(8)(B) on February 10, 1986, in Lincoln, Nebraska. The plaintiff/debtor did not appear in person, but was represented by counsel, John V. McNamara, of Omaha, Nebraska. The defendant, Utah Higher Education Assistance Authority, did not appear in person nor by its counsel, Mark E. Wainwright, Assistant Utah Attorney General, Salt Lake City, Utah. The plaintiff's attorney, Mr. McNamara, made a professional statement that he had communicated with the defendant's counsel, that the parties had agreed to submit the matter based upon the plaintiff's Answers to the defendant's Interrogatories as the factual basis, and briefs by both parties. Having reviewed these materials, the Court renders this decision in favor of the plaintiff/debtor for the reasons hereafter given.

Issue

Should this debtor who obtained an Associate of Applied Accounting Degree, a small portion of the last year of which was financed through the use of an educational loan made, insured, or guaranteed by a governmental unit or a non-profit institution, be granted a hardship discharge of the debt represented by that loan in a Chapter 7 bankruptcy case? Answer: Yes.

Decision

This debtor shall be granted a hardship discharge pursuant to 11 U.S.C. §523(a)(8)(B).

Finding of Facts

The debtor, Evangeline Jean Mecham, is a divorced mother of five children, ages 17 through 29. In response to Interrogatory No. 5 which asked for the names of any persons dependent upon her for support, debtor answered "none". However, two of the children, Troy (age 17) and Joseph (age 19), still reside with her. The debtor is not responsible for child support or alimony payments pursuant to any divorce decree.

The debtor filed her voluntary Chapter 7 petition for relief on May 30, 1985. On her schedules she listed a total indebtedness of \$3,833.19, which includes debts to 11 creditors, all of whom are unsecured. Approximately, \$1,078.64 with interest accruing at the rate of 9% was owed to the defendant as of February 28, 1986. The other two-thirds of the debts are split between medical/health-related bills and consumer debts.

The debtor is employed at Childrens Hospital in Omaha, Nebraska, as a nurse's aide. She has a gross monthly income of \$1,000 and a net monthly income of \$782.50. The plaintiff has an Associate of Applied Accounting Degree, a small portion of the last year of which was financed by the guaranteed student loan. The education so obtained is not utilized in her current employment.

The plaintiff's monthly expenditures of \$1,006 exceeds her income without a deduction for the loan payment in question by \$223.50. Mrs. Mecham has a permanent physical disability (an ileostomy) which requires expenses for medicine and medical supplies each month. Her son, Troy, has asthma and foot problems which require braces for him to walk. Plaintiff stated in response to Interrogatory No. 7 that it was unknown whether her or her son's condition had limited employability in the past year. Debtor's assets consist of no savings and a 21 year old motor vehicle.

Conclusions of Law

The general policy of the Bankruptcy Code permits the discharge of an otherwise nondischargeable educational loan only if excepting the debt from discharge would impose an undue hardship on the debtor and the debtor's dependent. 11 U.S.C. §523(a)(8)(B). The debtor has the burden of proving undue hardship. In regard to Norman, 25 B.R. 545 (S.D. Cal. 1982), In regard to Holzer, 33 B.R. 627 (S.D. N.Y. 1983), In regard to Price, 25 B.R. 256 (W.D. Mo. 1982).

The Bankruptcy Code does not define undue hardship. This Court has previously considered what constitutes undue hardship in two cases. In the Matter of Abrams, 19 B.R. 64 (Bankr. D. Nebr. 1982) the Court held:

"Section 523(a)(8)(B) requires that extraordinary circumstances exist before discharge is permitted. Undue hardship must be based on more than a present inability to pay."

Id. at 66. The Court continued by saying:

"Congress meant the extinguishment of student loans to be an available remedy to those severely disadvantaged economically as a result of unique factors which are so much a part of the bankrupt's life, present and in the foreseeable future, that the expectation of payment is virtually nonexistent unless by the effort the bankrupt strips himself of all that makes life worth living."

The Court found the debt for the student loan not discharged in that case and also in the more recent case of In regard to Springer, Case No. BK85-10 and A85-116, (Slip Op. B.C. Neb. November 21, 1985.) Here the Court reasoned:

"There is no mechanical formula which the Court may invoke in determining whether or not the requirement of repayment of a student loan will put an undue hardship on the debtor. The Court is required to examine all of the facts and circumstances surrounding the particular bankruptcy and determine whether there would be anything left from the debtor's estimated future income to enable the debtor to make some payment on the student loan. Andrews v. South Dakota Student Loan Assistance Corporation, 661 F.2d 702 at 704."

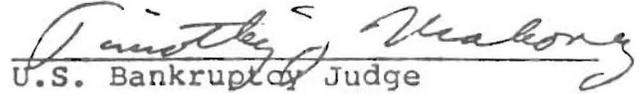
In reviewing the financial circumstances of this debtor, this Court is convinced that this is a situation where the expectation of repayment is virtually nonexistent. While information regarding the debtor's previous employment is lacking, her current job is a low entry position and her budget shows a present shortfall of funds. The presence of the debtor's existing medical condition is severe enough to constitute an extraordinary situation. Quite apart from whether or not she supports her children that live with her, this Court is convinced that debtor has a real hardship supporting just herself.

In conclusion, it is the opinion of the Court that the student loan debt of this debtor is dischargeable under 11 U.S.C. §523(a)(8)(B).

Separate Journal Entry shall be entered.

DATED: May 28, 1986.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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