

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
KEVIN & SHERYL HAAS,) CASE NO. BK01-41071
)
Debtors.) A01-4034
_____)
SHERYL HAAS,)
) CH. 7
Plaintiff,)
vs.)
)
U. S. DEPARTMENT OF EDUCATION,)
)
Defendant.)

MEMORANDUM

Hearing was held in Lincoln, Nebraska, on April 5, 2002, on the adversary complaint. Kevin Ruser, Michele Lewon, and Paula Lyon appeared for the plaintiff debtor, and Ellyn Grant appeared for United States. This memorandum contains findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

Facts

The plaintiff filed this adversary proceeding to obtain discharge of student loan obligations owed to the United States Department of Education. The plaintiff, Sheryl Haas, is a forty-three year old female, mother of five children, two of whom are minors living with her and her husband in a rented farm house near Waverly, Nebraska. She obtained a Bachelor's Degree in Consumer Science and Community Service from the University of Nebraska, Lincoln, in 1990. To finance her education, she incurred \$10,000.00 in student loans which are now held by the United States Department of Education.

During her time in college and for several years thereafter, her financial circumstances were such that she qualified for Aid to Dependent Children and food stamps.

Immediately after college, she attempted to obtain employment in her field but was unable to obtain a regular paying job because, even though she had a Bachelor's Degree in her field, she had no experience. Therefore, she worked for the

Lincoln Action Program as a VISTA volunteer for a year and a half and was provided a stipend of a few hundred dollars per month.

Her reliance on ADC benefits and food stamps terminated in March of 1993, as did her volunteer service.

In April of 1993, she gave birth to her youngest child, Blake. Her husband was employed at that time and their family financial circumstances enabled them to get along without the government aid.

In August 1993, she was hired by Lincoln Action as a permanent employee, and she continues to work there. She supervises the distribution of food baskets to needy people and oversees a number of other projects initiated by her employer. When she was first employed, her hourly rate was between \$6 and \$7 per hour. Now, it is \$11.28 per hour. Historically, she has received a 1 to 2% raise per year and a cost-of-living increase of approximately 1% per year. In the future, she anticipates continuing to receive the cost-of-living increase, but, because there is a cap on pay grades, she soon will earn the top amount in her pay scale and will receive no further raises.

Although she does have a Bachelor's Degree, she does not have either the skills or the education to move into management at her place of employment. Because of that, she will not receive promotions which would permit her to move into another pay grade and, once again, receive annual raises.

As of the trial date, the family income includes the pay of Sheryl Haas at \$11.28 per hour for forty hours per week, or a gross annual income of \$23,462.40. Mr. Haas receives Social Security disability payments in the amount of \$1,075.00 per month or \$12,900.00 per year. The family unit receives \$569.00 per month from the Social Security Administration for their son, because of his dependent status as a child of Mr. Haas. The child's portion of the disability payments equals \$6,828.00 per year.

The total family revenue, on an annual basis, is \$43,190.40.

Mrs. Haas has net income of \$480.00 per pay period and she gets paid twenty-six times per year, for a total net income of \$12,480.00. The deductions from her gross income include all state and federal taxes and health insurance, including dental. Adding her net income to the Social Security disability payments

received by her husband and her son leaves a net family income of \$32,208.00 per year, or \$2,684.00 per month.

The monthly family expenses as shown on Government Exhibit 54, Answers to Interrogatories, including all expenses listed in the Answer to Interrogatory Number 6, but excluding the health and dental expenses, total \$2,857.00 per month. Obviously, such amount exceeds the monthly net income of the family unit.

The oldest child living in the home is now fifteen and she will shortly turn sixteen and obtain her driver's license. The car insurance monthly payments will undoubtedly increase from the \$80.00 currently being paid. The children, now nine and almost sixteen, will continue to have school and extra-curricular activity expenses, clothing expenses, and food expenses, all of which will increase during the next few years.

It is apparently the position of the defendant Department that some of the listed expenses are inaccurate or excessive. However, no specific itemized expense for a family of four appears outrageous, egregious, or even out of line. As mentioned above, the expenses will not decrease as the children get older, and car insurance costs, health insurance costs and other non-controllable expenses will most likely increase on an annual basis.

Prior to the bankruptcy being filed, the Department was garnishing the wages of Mrs. Haas and, since 1995, has received more than \$9,000.00 from such garnishments. The bankruptcy was filed because the family unit could not meet all of its monthly obligations and the garnishments added to the financial distress.

The Department seems to take the position that because Mrs. Haas has never requested forbearance through the administrative process available to student loan borrowers, she should not be given the opportunity to discharge the student loan debt in bankruptcy. Instead, it apparently is the position of the Department that she should now be sent back to the Department to request forbearance and a possible discharge on an administrative basis.

The amount that a debtor voluntarily or involuntarily pays on a student loan, and the administrative status of the loan, whether forbearance has been requested or not, are factual matters that the court is required to consider when determining whether a requirement of payment of some or all of a student loan will put an undue hardship upon a debtor or a debtor's

dependents. In this case, consideration of both of those factors accrues to the benefit of the debtor, rather than to the Department. The actual student loan debt, when it first became due and payable, was \$10,000.00. The principal of the student loan debt now, as shown by Government Exhibit 51, is \$10,987.00. In other words, the Department, or its assignors, have received more than \$9,000.00 from the debtor, an amount almost equal to the principal amount of the original notes, and yet the debtor still owes the full amount of the principal and more than \$2,000.00 in interest, for a total of \$13,645.13. She obviously has made significant payments, albeit involuntarily.

With regard to her failure to request administrative relief, the debtor testified that she had insufficient income from the very beginning of this process to enable her to make regular payments on a student loan, no matter how low the payments were made by some type of administrative relief. Therefore, requesting such relief seemed to be a fruitless exercise.

The history of her financial circumstances supports her position. She graduated from college and was unable to obtain a job without spending a year and a half in a volunteer, government-supported, position. She then obtained employment for which she was trained, but at a relatively low hourly rate. She has always worked and supported the family unit. She has two children at home and a disabled husband. The family unit receives government assistance through the Social Security Administration in addition to her regular monthly earnings. Tax returns are in evidence and they do not indicate any excessive withholding resulting in an annual bonanza with regard to tax refunds. She has no money in the bank, in savings or checking, at the end of the month. Not all of the bills get paid on a monthly basis. In other words, no matter how hard this family unit tries, and how much work it does, and how much money the government provides to the household unit in the form of Social Security payments, the family unit cannot afford to pay any more on the student loans than the family unit has already been required to pay, without putting an undue hardship on the debtor and the debtor's dependents.

Law

A debtor seeking discharge of an educational loan debt bears the burden of proving that repayment of those loans would impose an undue hardship on her and her dependents. Maschka v. Nebraska Higher Educ. Loan Programs (In re Maschka), 89 B.R. 816, 818 (Bankr. D. Neb. 1988).

"Undue hardship" is not defined in the Bankruptcy Code, so courts have devised their own methods of determining whether an undue hardship exists. In the Eighth Circuit, the "totality of the circumstances" test is used. Andresen v. Nebraska Student Loan Program, Inc. (In re Andresen), 232 B.R. 127, 139 (B.A.P. 8th Cir. 1999) (citing Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews), 661 F.2d 702 (8th Cir. 1981)). Andrews requires "a totality of the circumstances inquiry with special attention to the debtor's current and future financial resources, the debtor's necessary reasonable living expenses for the debtor and the debtor's dependents, and any other circumstances unique to the particular bankruptcy case." Andresen, 232 B.R. at 140.

No one factor alone is dispositive of the undue hardship question, but each applicable factor should be considered as part of the totality of the circumstances. Relevant factors include:

- (1) Total incapacity now and in the future to pay one's debts for reasons not within the control of the debtor.
- (2) Whether the debtor has made a good-faith effort to negotiate a deferment or forbearance of payment.
- (3) Whether the hardship will be long-term.
- (4) Whether the debtor has made payments on the student loan.
- (5) Whether there is permanent or long-term disability of the debtor.
- (6) The ability of the debtor to obtain gainful employment in the area of study.
- (7) Whether the debtor has made a good-faith effort to maximize income and minimize expenses.
- (8) Whether the dominant purpose of the bankruptcy petition was to discharge the student loan.
- (9) The ratio of the student loan to the total indebtedness.

Morgan v. United States (In re Morgan), 247 B.R. 776, 782

(Bankr. E.D. Ark. 2000) (quoting D'Ettore v. DeVry Inst. of Tech. (In re D'Ettore), 106 B.R. 715, 718 (Bankr. M.D. Fla. 1989) (citations omitted)).

Decision

Excepting the student loan obligations from discharge will result in an undue hardship to the debtor and debtor's dependents. The student loan debts are discharged. A separate judgment shall be entered in favor of the debtor/plaintiff and against the United States Department of Education.

DATED: April 9, 2002

BY THE COURT:

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

Notice given by the Court to:

United States Trustee

Kevin Ruser, Atty., Civil Clinical Law Program, University
of Nebraska College of Law, Lincoln, NE 68583-0902

Ellyn Grant, Asst. U.S. Attorney, 487 Federal Building, 100
Centennial Mall North, Lincoln, NE 68508

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

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
KEVIN & SHERYL HAAS,) CASE NO. BK01-41071
)
Debtors.) A01-4034
_____)
SHERYL HAAS,)
) CH. 7
Plaintiff,)
vs.)
)
U.S. DEPT. OF EDUCATION,)
)
Defendant.)

JUDGMENT

Judgment is entered in favor of the plaintiff and against the defendant. The student loans at issue are discharged. See Memorandum entered this date.

DATED: April 9, 2002.

BY THE COURT:

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

Notice given by the Court to:

United States Trustee
Kevin Ruser, Atty., Civil Clinical Law Program, University
of Nebraska College of Law, Lincoln, NE 68583-0902
Ellyn Grant, Asst. U.S. Attorney, 487 Federal Building, 100
Centennial Mall North, Lincoln, NE 68508

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