

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
JAMES H. KALLHOFF,)	CASE NO. BK87-447
)	
DEBTOR)	A87-139
)	
JANE R. KALLHOFF and)	
JOHN J. RESPELIERS,)	Chapter 7
)	
Plaintiff)	
)	
vs.)	
)	
JAMES H. KALLHOFF,)	
)	
Defendant)	

MEMORANDUM OPINION

Before a United States Bankruptcy Judge for the District of Nebraska regarding Dischargeability of Attorney Fees Awarded in Dissolution Decree.

APPEARANCES

James Stumpf, Attorney for Debtor/Defendant, Suite 200, 10707 Pacific Street, Omaha, NE 68114

Thomas Harmon, Attorney for Plaintiff, 6035 Binney Street, Box 4519, Omaha, NE 68104

Facts

The marriage of Plaintiff and Defendant was dissolved following a trial to the State District Court Judge. By written Decree the trial judge awarded custody of a minor child, child support, alimony, divided property and debts and awarded Plaintiff attorney fees. Debtor then filed Chapter 7 bankruptcy. The wife filed this adversary proceeding alleging the award of attorney fees was nondischargeable.

The parties stipulated to the facts and included a copy of the Decree. It does not specifically state the intent of the judge regarding the award of attorney fees. The Decree is divided

into several paragraphs with the custody, child support, alimony, division of property and debts listed in that sequence, and then the award of fees and costs.

The Decree does not set out specific findings concerning the wife's financial needs.

Conclusions of Law and Discussion

Reluctantly, this Court concludes that the attorney fee award is discharged. This Court does not have sufficient information about the income or expenses of the parties; the value of assets distributed to the parties; the amount of the debts assumed by the parties--to enable a factual finding that an award of \$500 "toward" attorney fees is in the form of support and, therefore, nondischargeable per 11 U.S.C. § 523(a)(5). In general, the award of such fees is for the purpose of supporting the spouse in litigation including the divorce. Stranathan v. Stowell, 15 B.R. 223, 226-227 (Bkrtcy. Neb. 1981). However, in each case a factual determination must be made. In re Williams, 703 F.2d 1055, 1057 (8th Cir. 1983). Here the decision of the State District Judge is ambiguous. Rule 4005 of the Bankruptcy Rules of Procedure require Plaintiff to prove the elements concerning nondischargeability. Plaintiff has not met the burden, whether it be by "clear and convincing evidence" or by a "preponderance of the evidence."

Separate Journal Entry shall be entered.

DATED: March 16, 1988.

BY THE COURT:


Chief Judge