UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
MARGARET PRITCHETT,	)	CASE NO. BK95-80641
	)	
DEBTOR	)	A95-8039
	)	
MARGARET PRITCHETT,	)	
	)	CH. 7
Plaintiff	)	
vs.	)	
	)	
NEBRASKA STUDENT LOAN PROGRAM, INC., et al.,	)	
	)	
Defendant	)	

MEMORANDUM

Hearing was held on February 5, 1996, on the Motion for Summary Judgment filed by plaintiff/Margaret Pritchett. Appearances: James and Maureen Monahan, Attorneys for plaintiff; Paul Peter, Attorney for Nebraska Student Loan Program, Inc. 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)(A).

Background

The debtor, Margaret L. Pritchett, filed a petition for Chapter 7 relief on April 26, 1995. On May 31, 1995, the debtor initiated this adversary proceeding to have prepetition student loans discharged because of undue hardship as authorized by 11 U.S.C. § 523(a)(8)(B). The matter before the court is the debtor's Motion for Summary Judgment which requests that the student loans be discharged as a matter of law.

The debtor is indebted to the following entities for student loans: Eduser Technologies, Inc. for $6,538.95; Nebhelp for $3,691.37; and Sally Mae for $5,409.41. The Nebraska Student Loan Program, Inc. (NSLP), which has been substituted for Nebhelp, has objected to the debtor's Motion for Summary Judgment.

Decision

The debtor's Motion for Summary Judgment is denied.

Discussion

The standard for ruling on a motion for summary judgment is:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (emphasis added)

FED. R. BANKR. P. 7056(c); FED. R. CIV. P. 56(c).

The burden is on the moving party to show that no genuine dispute exists on a material fact, City of Mt. Pleasant, Iowa v. Association Electric Corp., 838 F.2d 268, 273 (8th Cir. 1988), and once this burden is met, the non-moving party must show that there is genuine dispute over a material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548 (1986). When evaluating the motion, inferences drawn from the underlying facts are to be decided in the light most favorable to the non-moving party. United States v. Diebold, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1976).

Section 523(a)(8)(B) of the Bankruptcy Code provides that a debtor is not discharged from a student loan debt made or insured by a governmental entity, unless "excepting such debt from discharge ... will impose an undue hardship on the debtor and the debtor's dependents." 11 U.S.C. § 523(a)(8)(A). To make a determination of undue hardship, the bankruptcy 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." Springer v. Higher Education Assistance Foundation (In re Springer), 54 B.R. 910, 913 (Bankr. D. Neb. 1985) (citing Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews), 661 F.2d 702, 704 (8th Cir. 1981). Student loans are not dischargeable under Section 548(a)(8)(B) except in extraordinary circumstances. Springer, 54 B.R. at 914.

The debtor takes the position that she should be granted a discharge for "undue hardship" because she is barely meeting her living expenses. In 1986, the debtor broke her hip, and as part of her rehabilitation, she incurred student loans so she could attend community college to train in food services. The debtor alleges that she did not complete the program because she cannot work in food services due to her prior injury. The debtor also argues that she has $1,120.00 in expenses and $600.00 in net income from her

telemarketing job each month, and therefore, her parents already must assist her so she can meet her expenses.

The debtor's Motion for Summary Judgment is denied because material issues of fact still exist in this case. Although the debtor has set forth her current expenses and her current inability to meet her expenses, she has not established her future estimated income. It appears that the debtor's cost of living, while greater than her income, is very modest and that her income is only slightly above poverty. However, the court must make findings, for which there is no evidentiary support, whether the debtor's future prospects for income will improve. Springer, 54 B.R. at 914. The debtor, who is married, should also clarify how much support she provides to her husband and how much support her parents provide to her.

Finally, the debtor should explain the nature of her studies at the community college. Her outstanding loans are in excess of $15,000.00, which includes interest, but she states that the community college charged $20.00 per credit hour and that she studied cooking. It is important for the debtor to explain how these loan proceeds were applied so the court can determine that the loans were used by the debtor in good faith.

Based on the evidence presented in support of summary judgment, the court cannot find that the debtor is entitled to judgment as a matter of law because material factual issues still exist in this case. Granting a discharge of student loan for "undue hardship" under Section 548(a)(8)(B) requires intensive fact finding, and it is not likely, in any contested case, that a debtor will be entitled to summary judgment.

The clerk shall schedule an evidentiary hearing for one-half day.

Separate journal entry to be entered.

DATED: February 15, 1996

BY THE COURT:

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

Copies faxed by the Court to:
PETER, PAUL 8-402-475-8328

Copies mailed by the Court to:
James and Maureen Monahan, 623 Service Life Bldg., Omaha, NE 68102
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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IN THE MATTER OF	)	
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MARGARET PRITCHETT,	)	CASE NO. BK95-80641
	)	A95-8039
DEBTOR(S)	)	
	)	CH. 7
MARGARET PRITCHETT,	)	Filing No.
Plaintiff(s)	)	
vs.	)	JOURNAL ENTRY
	)	
NEBRASKA STUDENT LOAN	)	
PROGRAM, INC.,	)	
	)	DATE: February 15, 1996
Defendant(s)	)	HEARING DATE: February 5, 1996

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Summary Judgment filed by Margaret Pritchett.

APPEARANCES

James and Maureen Monahan, Attorneys for plaintiff
Paul Peter, Attorney for NSLP

IT IS ORDERED:

Motion for Summary Judgment denied.

BY THE COURT:

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

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