

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
MICHAEL L. YOCUM,) CASE NO. BK98-82409
) A98-8107
DEBTOR(S).)
_____) CH. 7
PAMELA S. PETERSON,)
)
Plaintiff(s),)
vs.)
)
MICHAEL L. YOCUM,)
)
Defendant(s).)

MEMORANDUM

Hearing was held on August 30, 1999, on the Adversary Complaint. Appearances: Timothy Brouillette for the debtor/defendant and James Nisley for the plaintiff. 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)(I).

Findings of Fact

The plaintiff, Ms. Peterson, and the defendant, Mr. Yocum, were married for approximately twenty years and the marriage ended by a Decree of Dissolution entered on December 13, 1996. As part of the Decree, Ms. Peterson was awarded the home of the parties subject to all indebtedness. Mr. Yocum was awarded a 1992 Honda Civic. The Decree specifically stated that no alimony would be awarded from either party to the other.

The Decree further provided that, to equalize the property division, Ms. Peterson was required to pay Mr. Yocum \$10,000.00 in cash or certified funds within thirty days of the Decree being entered. Ms. Peterson borrowed \$10,000.00 from her parents and made the required payment of \$10,000.00 to Mr. Yocum. She still owes her parents the \$10,000.00 and it is secured by a mortgage on her house. In return for the \$10,000 payment, Mr. Yocum was required to assume and agree to pay indebtedness on specific credit cards and hold Ms. Peterson harmless from such claims.

Although he received the \$10,000.00 payment from Ms. Peterson, he did not use any of it to pay the credit card obligations. Instead, he used some of it for setting up a new household, which was required because he had to move out of the marital home upon the entry of the Dissolution of Marriage Decree.

Following the entry of the Decree of Dissolution, Mr. Yocum attempted to make a few payments on the credit card obligations. However, because he chose to make payments on new debts and expenses he incurred after the entry of the Dissolution of Marriage Decree, the bulk of the credit card debts were not paid by him. At the time the bankruptcy case was filed, September 17, 1998, Mr. Yocum had failed to pay the credit card obligations assigned to him pursuant to the divorce decree. Those obligations included \$3,231.00 to Tyndall Federal Credit Union and \$4,220.35 to USAA Federal Savings Bank. He listed those obligations on his bankruptcy schedules.

Subsequently, the credit card companies contacted Ms. Peterson with regard to collection. Apparently she was a joint obligor on the credit card debt and they had a right to attempt to collect the debt from her, even though the debt had been assigned pursuant to the Decree of Dissolution of Marriage, to Mr. Yocum.

At the time that the Dissolution of Marriage Decree was entered, Ms. Peterson, who had worked as a registered nurse during the marriage, was suffering from an incapacitating illness and was unable to work full time. She had been hospitalized on and off in the year preceding the entry of the Decree and, since the entry of the Decree, she has been unable to maintain regular paying employment because of her incapacitation. She has been awarded a Social Security disability pension which provides her approximately \$700.00 per month.

As a result of her inability to work due to her debilitating illness, she was unable to pay the credit card debt from her monthly cash flow and the constant collection efforts caused her extreme stress. Therefore, she employed the services of an attorney to negotiate with the credit card companies in an attempt to settle with them on a lump-sum basis. Her attorney was successful in arranging a settlement and she borrowed the funds from her parents to pay off the negotiated lump-sum amount. The amount she paid the credit card companies is \$6,334.57. She still owes that amount to

her parents and it is included in a note which is secured by a mortgage on her residence.

The only child of the parties has reached majority age by the time of the trial of this adversary proceeding and neither party currently pays child support.

Ms. Peterson brought this adversary proceeding requesting the court to find that Mr. Yocum's obligations with regard to the credit card debt were nondischargeable.

Mr. Yocum has a Master's Degree in counseling and is employed as a therapist. His gross income at the time of the bankruptcy filing was \$2,500 per month. However, it fluctuates based on client load. His net income when the case was filed was \$1,840.00, but in August, 1999, his net income was \$1,400.00 after taxes, health insurance and dental insurance.

The bankruptcy petition was filed on September 17, 1998. Mr. Yocum remarried on September 18, 1998, and he and his new wife and stepdaughter share a mobile home which he purchased, on credit, after the entry of the Decree of Dissolution.

Mr. Yocum submitted Exhibit 5 which shows his monthly expenses at \$2,417.00. However, Exhibit 5 expenses include \$50.00 per month for boarding a horse for his child, which he no longer pays. It also lists health insurance premiums of \$250.00 per month as an expense. However, when he filed this case, he showed, on Schedule I, that insurance was deducted from his monthly gross income in the amount of \$200.00. Exhibit 5 also includes a monthly truck payment of \$335.00, plus vehicle insurance of \$150.00 per month. The truck payment is for a 1997 Dodge Ram which, at the time of the bankruptcy filing, was scheduled at a market value of \$19,000.00. Shortly after the bankruptcy filing, Mr. Yocum reaffirmed that obligation in the amount of \$17,000.00.

Finally, Exhibit 5 includes a payment of \$312.00 per month for an automobile. The automobile payment is for a 1995 Dodge Stratus for which he co-signed a note with his wife in 1998. The bankruptcy file does not indicate that he reaffirmed his obligation on the car note, and, therefore, he has no personal obligation after the Chapter 7 discharge has been entered.

The debtor testified that his wife works part time and nets about \$300.00 per month. There is nothing on Exhibit 5

which indicates that any of the household expenses are reduced by the application of her net income.

Mr. Yocum scheduled \$33,988.51 in unsecured debts. Approximately \$27,000.00 of such debt was incurred after the parties separated in early 1996 and much of it after the Decree was entered in December, 1996. The only debts he was required to pay which resulted from the marriage were to the two credit card companies for approximately \$7,500.00.

If one were to take Mr. Yocum's asserted expenses at face value, one could conclude that he spends half his net income on two vehicles and vehicle insurance. However, when considering a debtor's ability to pay property settlement obligations, a court may consider the real reason that the debtor appears unable to pay the obligations. In this case, the real reason is that Mr. Yocum has chosen to incur post-divorce debts rather than use his post-divorce assets or income to pay the divorce obligations.

Mr. Yocum has equity in the truck of over \$2,000.00. He does not need a 1997 Dodge Ram, payable at the rate of \$335.00 per month, to enable him to perform his counseling services. He is not obligated to pay \$312.00 per month on his wife's car payment. He does not now pay \$50.00 per month for boarding the child's horse. He does not get to deduct health insurance premiums from his gross income and then include an equivalent amount as a monthly expense.

At a minimum, for purposes of this adversary proceeding, his "legitimate" monthly expenses must be reduced by the total of \$562.00 per month, reflecting those expenses for which he is no longer responsible, and adjusting for the doubling up of the health insurance premiums.

Conclusions of Law and Discussion

The Bankruptcy Code, at 11 U.S.C. § 523(a)(15), provides that financial obligations incurred by a debtor in a dissolution of marriage action are not dischargeable in a Chapter 7 bankruptcy case unless the debtor is unable to make the payments or the benefit to the debtor of the discharge of the obligation is greater than the detriment to the former spouse. 11 U.S.C. § 523(a)(15)(A) and (B).

A. Mr. Yocum has the financial ability, if he were to exercise some financial discipline, including reducing his

excessive vehicle payments, to make some payment to Ms. Peterson on the credit card obligations each month.

B. Ms. Peterson continues to receive medical care for her illness and, because she is unable to work regularly, she is not always able to pay all of her living expenses and must rely upon her parents for help. This financial and medical situation will continue for a significant period of time.

If the credit card obligations, now due from Mr. Yocum to Ms. Peterson, are discharged, the harm to Ms. Peterson will be greater than the benefit to Mr. Yocum. Mr. Yocum's benefit includes the ability to walk away from \$33,000.00 in total debt and to continue to drive a 1997 Dodge Ram pickup, which is not needed to enable him to practice his profession. The harm to Ms. Peterson is clear. She had no money at the time of the Dissolution of Marriage and she had no ability to make money. Her parents had the ability and the willingness to help her out in her time of distress. She is unable to repay her parents the money they provided to her to enable her to pay Mr. Yocum's credit card bills. She will continue to live with the stress of a mortgage on her home and an obligation to her parents which she should not have been required to incur.

Weighing the factors, the benefit of a discharge of these obligations is not greater than the harm to Ms. Peterson.

Judgment

After a consideration of both prongs of the statute, it is concluded that the obligations of the debtor with regard to the credit card debt are not dischargeable.

Separate journal entry to be filed.

DATED: September 16, 1999

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

BROUILLETTE, TIMOTHY 308-532-6200

NISLEY, JAMES 93

Copies mailed by the Court to:

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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) CH. 7
PAMELA S. PETERSON,) Filing No.
Plaintiff(s))
vs.) JOURNAL ENTRY
)
MICHAEL L. YOCUM,)
) DATE: September 16, 1999
Defendant(s)) HEARING DATE: August 30, 1999

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Adversary Complaint.

APPEARANCES

Timothy Brouillette for debtor/defendant
James Nisley for plaintiff

IT IS ORDERED:

The obligation of the debtor to Ms. Peterson in the
amount of \$6,334.57 is not dischargeable under 11 U.S.C. §
523(a)(15). See Memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

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