

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

ROBERT GORDON BAKER,

DEBTOR

)  
)  
)  
)  
)

CASE NO. BK81-2449

MEMORANDUM

This matter comes before the Court as an objection by Virginia Baker to the debtor's Robert Baker's Chapter 13 Plan. Ms. Baker, former spouse of the debtor, asserts that debts listed by Mr. Baker owed to her in the total amount of \$13,600 and the debt listed as owed her attorneys were ordered to be paid under a decree of dissolution of marriage entered December 23, 1980, and are nondischargeable under 11 U.S.C. §523(a)(5). Her objection to the plan, in essence, is that she holds a non-dischargeable claim and that the proposed payment to her of 20% is improper. Further, Ms. Baker asserts that the plan has not been proposed in good faith as required by §1325(a)(3) of the Bankruptcy Code due to the debtor's failure to report in his schedules and plan the actual amount of his income from both fulltime and parttime employment, his failure to list certain personal assets, and his lack of good faith in his apparent intent to affect divorce debts only.

The debtor responds that the \$13,000 debt owed his former wife is property settlement or property division only and was not intended to be nor is it alimony, maintenance or support. He raises a similar objection to attorneys fees directed to be paid his former spouse's counsel in the dissolution proceeding. The debtor contends that he has listed his income as best he can from parttime sources and has amended his petition as of the date of this hearing to reflect his actual income from fulltime sources, meeting good faith requirements in that regard. He directly contradicts the allegation that not all of his personal property has been listed on his schedules, having filed amended schedules to include the subject matter of Ms. Baker's objection.

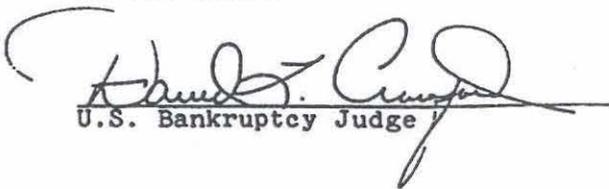
Given the facts before me, I find there to be no grounds for a good faith objection to the debtor's plan based upon his statement of income nor his scheduling of personal property as amended. A question remains regarding the disposition of the debts surrounding the Bakers' dissolution proceedings.

11 U.S.C. §523(a)(5) excepts from discharge debts owed to a former spouse for alimony, maintenance or support in connection with a separation agreement, divorce decree or property settlement. Section 523(a)(5)(B) requires that, regardless of the language of the decree, such liability must be actually "in the nature of alimony, maintenance or support." Having read the complete transcript of the dissolution proceeding from the District Court of Douglas County, Nebraska, heard on November 18, 1980, and having reviewed the divorce decree prepared by the Judge in that matter, I conclude that the original grant of \$15,000 owed to Ms. Baker the balance of which is \$13,600, is in fact a property settlement and not to be considered alimony or in the nature of support. The decree states in part, ". . . that the Respondent is granted \$15,000 to be paid by Petitioner (Mr. Baker) to the Respondent (Ms. Baker) as part of the property settlement in lieu of the actual division of things of value which have accrued to the parties hereto during their married life." The transcript shows that Mr. Baker has been awarded custody of the minor children of the marriage and retains his residence in the family home. There is further evidence that Ms. Baker has an income from her own employment of a minimum of \$12,000 per year. There is no indication in either transcript nor decree of any attempt of the parties to establish any type of support payment for Ms. Baker. Absent that intent, I find the \$13,600 debt to be dischargeable in bankruptcy because it is not in the nature of alimony, maintenance or support. See In Re Stranathan, 8 B.C.D. 472, 15 B.R. 223 (D. Neb. 1981). The 20% payment provided for in the debtor's Chapter 13 plan is not fatal to confirmation. Similarly, the obligation which Mr. Baker was required by the decree to pay to Dr. Blodig for services rendered the plaintiff I find not to be in the nature of support, maintenance and alimony and therefore dischargeable.

A different result, however, must be reached with regard to attorneys' fees directed by the divorce decree to be paid by Mr. Baker. "In general, it is commonly accepted that the award of attorneys fees is for the purpose of supporting the spouse in the litigation regarding the divorce." Stranathan at B.R. 227. Accordingly, though the property settlement amount is dischargeable the attorneys fees are considered to be support and so are non-dischargeable and must be paid in full in the plan. A separate order is entered in accordance with the foregoing.

DATED: August 10, 1982.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies to:

Kenneth E. Shreves, Attorney, 640 Grain Exchange Bldg., Omaha, Ne. 68  
Jerome Grossman, Attorney, 423 Barker Building, Omaha, Ne. 68102  
Lorin Galvin, Attorney, 5010 Dodge Street, Omaha, Ne.