

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
ASHLY NIKOLE SHEY,)
a/k/a COURTNEY SHERWOOD,)
a/k/a ALEXA LYNFORD,) CASE NO. BK98-82439
) A99-8027
)
DEBTOR(S))
)
ASHLY NIKOLE SHEY,)
a/k/a COURTNEY SHERWOOD,)
a/k/a ALEXA LYNFORD,) CH. 7
)
Plaintiff(s))
vs.)
)
NEBRASKA STUDENT LOAN)
PROGRAM, INC.,)
)
Defendant(s))

MEMORANDUM

Hearing was held on May 3, 2000. Appearances: Marion Pruss for the plaintiff/debtor and Gary Young for the defendant. 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).

Background and Decision

The debtor brought this adversary proceeding requesting a hardship discharge of her student loan obligation. The bankruptcy case was filed in September of 1998 and the statute in effect at the time of filing the bankruptcy petition was 11 U.S.C. § 523(a)(8)(B) which states, in summary, that a student loan shall not be discharged unless "excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents." I find that excepting this student loan obligation from discharge will impose an undue hardship on the debtor and, therefore, judgment will be entered in favor of the debtor and against the defendant and the debtor's student loan obligation shall be discharged.

Law

Although undue hardship is not defined by the Bankruptcy Code, the Eighth Circuit has adopted the "totality of the circumstances" test for undue hardship. Cline v. Illinois Student Loan Assistance Assoc. (In re Cline), 248 B.R. 347 (8th Cir. BAP 2000). In applying the "totality of the circumstances" test, particular attention should be focused on the "debtor's current and future financial resources, necessary reasonable living expenses for the debtor and the debtor's dependents, and any other facts unique to the particular bankruptcy case." In re Cline, 248 B.R. at 349 (citing Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews), 661 F.2d 702 (8th Cir. 1981); Andresen v. Nebraska Student Loan Program, Inc. (In re Andresen), 232 B.R. 127, 139-40 (8th Cir. BAP 1999)).

Facts

1. The debtor obtained student loans for higher education during the 1980s and 1990s. In December of 1995, plaintiff contracted for a consolidation loan note in a sufficient amount to consolidate six student loans. That consolidation note is now held by defendant, Nebraska Student Loan Program, Inc., ("NSLP").

2. The debtor has applied for and received payment deferment because of her low income.

3. On the day of trial, the balance on the student loan obligation was \$55,898.86. Interest accrues at the rate of 9% per year or \$8.70 per day.

4. If the debtor would attempt to pay the student loan over 120 months or ten years, such monthly payments would be in the amount of \$708.62.

5. The debtor, now forty-one years old, received a Bachelor's Degree in paralegal studies from the College of St. Mary in Omaha, Nebraska, in 1995. She has been employed since that time at various jobs, sometimes including paralegal positions. However, since the middle of February, 1999, she has been unemployed and unemployable because of constant physical pain.

6. She has been awarded Social Security disability payments of \$532.00 per month, is on Medicaid and food stamps. She has difficulty walking, standing, sitting and has constant back, stomach, leg and arm pains.

7. She has participated in vocational rehabilitation. However, vocational rehabilitation organizations have informed her there is no job that she is capable of doing in her current physical condition.

8. She has no worldly goods, except her clothing and a computer. She cannot drive and depends upon a friend or friends to provide her transportation and housing. She rents a bedroom from a friend for \$100.00 per month.

9. At the end of the month, after paying medical and dental expenses that are not covered by insurance or Medicaid, paying her rent and food and transportation costs, she has net disposable income of less than \$30.00 per month.

10. Her disability, the existence of which is supported by her medical records, has persisted from at least February of 1999 and it appears that neither the medication that she takes on a daily basis, nor physical therapy have effected either a temporary or permanent improvement in her condition.

11. Considering the longevity of her physical impairment, her monthly income since the incurrence of the disability, the likelihood of continuing disability, and the amount necessary to pay the student loan even over a ten-year period, I must conclude as a fact that she is now, and will be in the future, unable to make the payment. To leave this obligation hanging over her, with the possibility of future litigation, will definitely impose an undue hardship on the debtor.

Conclusion

Judgment shall be entered in favor of the debtor and the student loan obligation is discharged.

DATED: June 14, 2000

BY THE COURT:

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

Copies faxed by the Court to:

85 PRUSS, MARION

67 YOUNG, GARY

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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Plaintiff)
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)
NEBRASKA STUDENT LOAN)
PROGRAM, INC.,)
)
Defendant)

JUDGMENT

Judgment is entered in favor of the plaintiff and against the defendant. The student loan in question is discharged. See Memorandum entered this date.

DATED: June 14, 2000

BY THE COURT:

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

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