

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

ROBERT RAY BARTHOLOMEW,

Debtor.

Case No. 86-1092-C

SHIRLEY ANN BARTHOLOMEW,

Plaintiff,

Adv.Pro.No. 86-0169

v.

Chapter 7

ROBERT RAY BARTHOLOMEW,

Defendant.

MEMORANDUM OF DECISION

On May 5, 1987 a trial on complaint to determine dischargeability of debt pursuant to 11 U.S.C. section 523(a)(5) was held before this court in Des Moines, Iowa. B. Joan White appeared on behalf of the plaintiff and Jonathan M. Kimple appeared on behalf of the defendant.

This is a core proceeding pursuant to 28 U.S.C. section 157(b)(2)(I). Having reviewed the record and the briefs submitted by the parties and being fully advised in the premises, the court makes the following findings of fact and conclusions of law pursuant to R.Bankr.P. 7052.

FINDINGS OF FACT

1. The plaintiff and the defendant were married on June 14, 1957 and two children were born of the marriage.

2. A decree of dissolution was entered on October 31, 1985 in the Iowa District Court for Story County after a trial to the court.

3. At the time the decree was entered, the plaintiff was employed as a pharmacist's helper, earning \$3.35 an hour. The plaintiff's monthly expenses were fixed at \$865.00 per month. The defendant was employed at Armstrong Tire and Rubber and earned approximately \$30,000.00 per year. The defendant's monthly expenses, before payment on debts, were fixed at \$465.00.

4. The dissolution court awarded the plaintiff alimony in the sum of \$400.00 per month or two-fifths of the defendant's pension benefits when they commenced. The plaintiff and the defendant were each awarded separate real estate located in Boone County, Iowa. The defendant was ordered to pay the obligations of creditors and hold the plaintiff free and harmless on account thereof. The defendant was also ordered to pay the plaintiff the sum of \$15,000.00 within seventy-five days of the decree as a cash distribution of property. Finally the defendant was ordered to pay the sum of \$850.00 to the plaintiff's attorney for services performed in the proceedings.

5. On April 18, 1986 the defendant filed a voluntary Chapter 7 petition in bankruptcy. The defendant lists unsecured claims in the amount of \$23,215.52 comprised almost entirely of debts arising out of the dissolution

proceeding. No priority debts exist and secured debts listed are nominal.

6. On July 22, 1986 the plaintiff filed this adversary proceeding to determine dischargeability of debts. Division I of the complaint asserts that the obligation to pay attorneys fees and court costs arising out of the dissolution proceeding are nondischargeable. Division II contends that the obligation to pay alimony is also nondischargeable. The plaintiff further seeks attorney fees and expenses incurred in protecting these obligations from the debtor's discharge.

7. On August 26, 1986 former Judge Richard Stageman granted the plaintiff's oral motion for summary judgment on Divisions I and II of the complaint. The court further granted plaintiff's application for leave to amend her complaint.

8. An amended complaint to determine dischargeability of debts was filed by the plaintiff on August 26, 1986. Division III alleges that the defendant's obligation to pay \$15,000.00 was for support in connection with a divorce decree and thus nondischargeable. The plaintiff also asserts that the obligation constitutes a judicial lien which is not avoidable in bankruptcy. Division IV maintains that the obligation to pay Hilda Cunningham the sum of \$3,000.00 constitutes a debt owed by the defendant to the plaintiff for support and was a debt contracted prior to the homestead's acquisition and thus not exempt from judicial sale pursuant to Iowa Code section 561.21(1).

APPLICABLE LAW AND ANALYSIS

The parties have interchanged their arguments regarding dischargeability of the underlying debts and lien avoidance of the liens securing those debts. The court shall first address the plaintiff's assertion that the defendant's obligations to pay \$15,000.00 to her and \$3,000.00 to Hilda Cunningham are nondischargeable pursuant to 11 U.S.C. section 523 (a) (5)

Section 523(a)(5) of the Bankruptcy Code excepts from the operation of a discharge, payments:

(5) to a spouse, former spouse, or child of the debtor for alimony to, maintenance for, or support of both spouse or child, in connection with a separation agreement, divorce decree, or property settlement agreement, but not to the extent that --

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

Therefore, this court must determine whether the debts in question are merely part of a property settlement which is dischargeable or constitute alimony, maintenance or support, which are not dischargeable.

Whether a particular obligation is a support obligation or a part of a property settlement is a question of federal bankruptcy law, not state law. H.R. Rep. No. 595, 95th Cong., 2nd Sess. 364, reprinted in 1978 U.S. CODE CONG. &

ADMIN. NEWS 5963, 6320; S. Rep. No. 989, 95th Cong., 2nd Sess. 79, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 5787, 5865. A bankruptcy court is not bound by state laws that characterize an item as maintenance or property settlement. In re Williams, 703 F.2d 1055, 1057 (8th Cir. 1983). Nor is a bankruptcy court bound by the labels used in a divorce decree to identify an award as alimony or as a property settlement. Id.; In re Voss, 20 B.R. 598, 601 (Bankr. N.D. Iowa 1982). The court may look behind the decree to determine the real nature of liabilities. In re Ramey, 59 B.R. 527, 530 (Bankr. E.D. Ark. 1986). Whether an obligation in a divorce decree is in fact one for support depends upon the intent of the state court or the parties. In re Calhoun, 715 F.2d 1103, 1107 (6th Cir. 1983); Matter of Walker, 50 B.R. 523, 525 (Bankr. Del. 1985).

Courts have considered several factors in an effort to decipher the intention of the parties and the real nature of liabilities.

Those factors include:

1. Whether there was an alimony award entered by the state court.
2. Whether there was a need for support at the time of the decree; whether the support award would have been inadequate absent the obligation in question.
3. The intention of the court to provide support.
4. Whether debtor's obligation terminates upon death or remarriage of the spouse or a certain age of the children or any other contingency such as a change in circumstances.
5. The age, health, work skills, and educational levels of the parties.

6. Whether the payments are made periodically over an extended period or in a lump sum.
7. The existence of a legal or moral "obligation" to pay alimony or support.
8. The express terms of the debt characterization under state law.
9. Whether the obligation is enforceable by contempt.
10. The duration of the marriage.
11. The financial resources of each spouse, including income from employment or elsewhere.
12. Whether the payment was fashioned in order to balance disparate incomes of the parties.
13. Whether the creditor spouse relinquished rights of support in payment of the obligation in question.
14. Whether there were minor children in the care of the creditor spouse.
15. The standard of living of the parties during their marriage.
16. The circumstances contributing to the estrangement of the parties.
17. Whether the debt is for a past or future obligation, any property division, or any allocation of debt between the parties.
18. Tax treatment of the payment by the debtor spouse.

In re Coffman, 52 B.R. 667, 674-75 (Bankr. Md. 1985) (and citations contained in footnote 6 at p. 674). Furthermore, bankruptcy courts may only consider the circumstances existing at the time of dissolution and "not the present situation of the parties". Boyle v. Donovan, 726 F.2d 681, 683 (8th Cir. 1984); In re Neely, 59 B.R. 189, 193 (Bankr. S.D. 1986).

Application of the above guidelines to the debtor's obligations to pay his ex-spouse \$15,000.00 and to hold her

harmless of the obligation of \$3,000.00 due Hilda Cunningham leads the court to conclude that such obligations are dischargeable. The designation of the obligations as "distribution of property" by the state court, while not controlling, is persuasive. Moreover, review of the decree as a whole indicates no intent that these obligations be viewed as in the nature of support. Alimony, attorney fees, and separate personal and real property were awarded to the plaintiff by the state court decree. Since the real property awarded each party was obviously disparate in value, the \$15,000.00 lump sum payment awarded to the plaintiff was an effort to equalize the distribution. So too was the obligation to pay Hilda Cunningham \$3,000.00. While this court is sympathetic to the plaintiff's assertion that the state court award for support is only adequate to meet her day-to-day living expenses, the court may not recast the provisions of the decree or ignore its apparent intent. Accordingly, the defendant's obligation to pay the plaintiff \$15,000.00 and to hold her harmless for the debt to Hilda Cunningham are not in the nature of alimony, maintenance or support and therefore are dischargeable.

The plaintiff also asserts that the dissolution decree created a lien on the debtor's real property that cannot be avoided in bankruptcy. She relies on Iowa Code sections 561.16 and 598.21. See Matter of Sullivan, No. 86-2588-C, slip op. (Bankr. S.D. Iowa, February 22, 1988) (homestead

not exempt to extent of value of judicial lien stemming from dissolution decree). She further asserts that the debtor's homestead is not exempt from the obligations to Hilda Cunningham because that debt was contracted prior to the acquisition of the homestead. She bases this argument on Iowa Code section 561.21(1).

The court notes that the debtor has not moved to avoid the plaintiff's judicial liens on his property. Moreover, the plaintiff and Hilda Cunningham made the above arguments in the form of objections to exemptions filed on June 26, 1986. This court's predecessor overruled the objections to exemptions on July 28, 1986.

Before addressing the plaintiff's assertions that the debtor may not avoid a judicial lien on the debtor's property, the court must determine whether such a lien was created by the dissolution decree. The dissolution decree provided:

Respondent [debtor] shall pay as a cash distribution of property to the Petitioner [plaintiff herein] the sum of \$15,000.00 within seventy-five (75) days of the date of this Order, which amount shall be a judgment against the Respondent until paid, as reflected by the records of the Clerk of the District Court of this County.

(Emphasis added.) This language does not grant a lien on the debtor's property. Rather it provides for a personal judgment against the debtor. Even if the intent of the decree was to grant a lien on the debtor's property, no lien ever properly attached to the debtor's property.

The dissolution decree was entered by the Iowa District Court for Story County. The judgment described above was reflected by the records of the Clerk of the District Court for Story County. The properties awarded both parties, and the property claimed exempt by the debtor lie in Boone County. With respect to the creation and attachment of judgment liens, Iowa Code section 624.23 provides:

1. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

Iowa Code section 624.24 states:

When the real estate lies in the county wherein the judgment of the district court of this state or of the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the court having jurisdiction, the lien shall attach from the date of such entry of judgment, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies.

(Emphasis added.)

In the case at hand there is no evidence to indicate that the judgment from the Story County dissolution decree was ever filed in the office of the district court for Boone County. Accordingly this court finds no judicial lien arising from the dissolution decree to exist upon the

debtor's homestead property in Boone County, Iowa. Thus, the debtor has no need to seek lien avoidance.

The same conclusion is warranted with regard to the \$3,000.00 debt owed to Hilda Cunningham. There is no indication that this debt has been reduced to judgment or that any judgment lien has attached to the debtor's homestead property. Thus, at best, the amount owed Hilda Cunningham as a result of the dissolution decree is an unsecured antecedent debt.

With respect to the homestead exemption, Iowa Code section 561.16 provides:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary....

This general exemption is qualified by Iowa Code section 561.21(1) which reads:

The homestead may be sold to satisfy debts of each of the following classes:

- (1) Those contracted prior to its acquisition, but only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

This court has held that a debtor may claim a homestead exempt only to the extent it is not necessary to satisfy a deficiency with respect to an antecedent claim and, accordingly, that a debtor may not avoid any existing or "anticipated" lien to the extent an antecedent debt might not be satisfied by exhausting other property

subject to execution. Matter of Nehring, No. 87-101-C, slip op.
(Bankr. S.D. Iowa,

March 22, 1988). Then, in the case of an antecedent debt that has been reduced to judgment before the bankruptcy petition was filed, the claimholder may seek a judicial sale in state court to the extent any deficiency exists upon discharge and liquidation. However, absent blatant abuse of the statutory framework the court will not grant the unsecured claimholder relief from the automatic stay to attempt to obtain a judgment prior to the entry of a discharge.

Id .¹

In this case the unsecured \$3,000.00 debt owed Hilda Cunningham would have been subject to the discharge entered August 13, 1986 but for the filing of the complaint objecting to discharge on July 22, 1986.² The court has not found the other grounds for nondischargeability persuasive. The court would not have granted the plaintiff relief from stay to

¹ The record does not reveal on what basis Judge Stageman overruled Hilda Cunningham's objection to the homestead exemption. (The debtor's resistance emphasized that the amount owed was more in the nature of a gift than a true debt). It should be noted that Judge Stageman did find that a homestead could not be exempted as to a judgment lien on an antecedent debt but that the lien could be avoided. Matter of Mosher, 86-491-C slip op. (Bankr. S.D. Iowa, July 3, 1986), remanded, 79 B.R. 840 (S.D. Iowa 1987). In any event, the previous ruling by Judge Stageman with respect to the exemption issue is not critical to the outcome of this case given this court's distinction between judgment liens and unsecured debts upon discharge and distribution.

² Although the debtor's schedules show a \$3,000.00 debt to Hilda Cunningham and although Hilda Cunningham made her own objections to exemptions, the plaintiff's amendment to include such amount in her dischargeability complaint was allowed. The record does not indicate whether the issue of standing was raised by the defendant.

stay to obtain a judgment lien--no blatant abuse of the statutory framework would have resulted. To have done otherwise would have given Hilda Cunningham an advantage over the other unsecured creditors. Hence, the unsecured antecedent debt will be deemed discharged upon entry of this order and judgment.

Finally, the plaintiff seeks attorney fees and expenses incurred in bringing this action. The court notes that its predecessor granted the plaintiff's motion for a directed verdict with regard to Division I and II of her complaint on September 2, 1986. Incumbent upon that award was the approval of the plaintiff's request for fees and expenses involved in protecting the plaintiff's right to receive alimony and attorney fees and costs arising from the dissolution proceeding. Accordingly, the plaintiff's request for fees and expenses incurred in prosecuting Divisions I and II, in the amount of \$1,524.61 shall be approved pursuant to the motion for directed verdict.

The fees and expenses associated with Divisions III and IV, however, shall not be allowed. This court notes that such fees and expenses are not allowable under 11 U.S.C. section 523(d) nor under the circumstances of this case. See Matter of Myers, 61 B.R. 891, 895-96 (Bankr. N.D. Ga. 1986).

CONCLUSION

Based on the foregoing the court hereby concludes that:

1. Pursuant to the directed verdict entered on Septem-

ber 2, 1986 the debtor's obligations to pay alimony, and attorney fees and costs incurred in the dissolution of marriage are nondischargeable in bankruptcy. Moreover, the fees and expenses in the sum of \$1,524.61 incurred by the plaintiff in protecting these obligations from discharge are likewise nondischargeable.

2. The debtor's objections to pay the plaintiff \$15,000.00 and to pay Hilda Cunningham \$3,000.00 are not in the nature of support and are therefore dischargeable.

3. The obligations to the plaintiff and Hilda Cunningham do not constitute judicial liens on the debtor's homestead.

4. The plaintiff is not entitled to fees and expenses incurred in prosecuting Division III and IV of the amended complaint.

An order conforming with this memorandum of decision shall be issued forthwith.

Signed and filed this 31st day of March, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE