

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

DALE SAM HALE,

Debtor.

Case No. 87-2556-C  
Chapter 7

Adv. No. 87-0243

SALLY A. HUCKFELDT,

Plaintiff,

V.

DALE SAM HALE,

Defendant.

**ORDER - COMPLAINT TO DETERMINE**  
**DISCHARGEABILITY OF DEBT**

On March 1, 1988, a pretrial conference was held on plaintiff's complaint to determine dischargeability of debt.

W. J. Latham, Jr. appeared on behalf of the plaintiff and Kent L. Geffe appeared on behalf of the defendant. During the pretrial conference, counsel agreed that the proceeding could be submitted upon stipulated facts and written briefs, and the Court ordered that said facts and briefs be filed on or before March 25, 1988. On March 24, 1988, the plaintiff filed her brief. On March 25, 1988, defendant filed his brief and both parties filed a stipulation of facts. The Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I). The Court, upon review of the stipulated

facts, briefs, and arguments of counsel, now enters its findings and conclusions pursuant to F.R.Bankr. P. 7052.

FINDINGS OF FACT

1. On February 21, 1985, plaintiff filed a paternity action against defendant in Marshall County, Law No. 35886.

2. After a jury trial was held on March 17-19, 1987, defendant was found to be the father of Tyler Reid Huckfeldt, plaintiff's son, born April 11, 1985.

3. On April 13, 1987, and September 11, 1987, support hearings were held and the following judgments were rendered against defendant in favor of plaintiff: 1) \$2,503.00 for reimbursement of prenatal and postnatal care of their child; 2) \$8,250.00 for retroactive child support from the date of birth of the child up to and including the month of September 1987; 3) \$5,747.98 for plaintiff's attorney fees; and 4) \$894.50 for all court costs, including plaintiff's expert witness fee and depositions.

4. On October 14, 1987, defendant filed a voluntary Chapter 7 petition, seeking to discharge three of the judgments entered against him—prenatal and postnatal care, attorney fees, and court costs.

5. On November 16, 1987, plaintiff filed the instant complaint to determine dischargeability of debt and argued all three judgments were each in the nature of child support under 11 U.S.C. §523(a) (5) and thus were nondischargeable.

6. On December 21, 1987, defendant filed his answer and argued that all of the judgments are dischargeable except for the \$8,250.00 retroactive child support judgment which he admitted was nondischargeable.

#### DISCUSSION

Bankruptcy Code section 523(a) (5) 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 such spouse or child, in connection with the separation agreement, divorce decree or other order of a court of record, determination made in accordance with state or territorial law by a governmental unit, 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 in the nature of alimony, maintenance, or support.

11 U.S.C. §523(a)(5) (emphasis added). While this Code section does not specifically refer to debts arising out of a state court paternity action, many courts have held such debts are "in the nature of support" and thus are nondischargeable. Matter of Pierson, 47 B.R. 258, 261 (Bankr. D. Neb. 1985); In re Balthazor, 36 B.R. 656, 658-659 (Bankr. E.D. Wis. 1984); In re Cain, 29 B.R. 591, 594 (Bankr. N.D. Ind. 1983). In determining what is "in the nature of support" under section 523 (a) (5), the court must look to bankruptcy law, not state law, and must examine all

of the factors of each case in light of its particular circumstances. Balthazor, 36 B.R. at 659.

In the case at bar, four paternity suit judgments were entered against defendant pursuant to Iowa Code section 675.25 (1987): 1) \$2,503.00 for reimbursement of prenatal and postnatal care of the child; 2) \$8,250.00 for retroactive child support from date of birth; 3) \$5,747.98 for the plaintiff's attorney fees; and 4) \$894.50 for all court costs, expert witness fees, and costs of plaintiff's depositions. Defendant acknowledges the retroactive child support is not dischargeable but argues the other three are dischargeable.

Concerning the judgment for reimbursement of prenatal and postnatal care, the Balthazor court held that a debtor father's obligation for medical and hospital expenses for the birth of his child was "in the nature of support" under section 523(a) (5) and thus was nondischargeable. Id. The court determined the debtor father's obligation for the medical and hospital expenses was part of his overall support obligation and served a support function. Id.

In the case at bar, the state District Court judge noted in the decree that plaintiff had incurred \$2,503.00 in birth and prenatal expenses which were reasonable and necessary. Based on this fact and the circumstances in the case at bar, the Court agrees with the Balthazor court and concludes that plaintiff's judgment for reimbursement of

prenatal and postnatal care is "in the nature of support" and thus is a nondischargeable debt under section 523 (a) (5).

Concerning the judgment for attorney fees and court costs, the majority rule is that an obligation to pay attorney fees is so tied with the obligation of support as to be in the nature of support and excepted from discharge. Matter of Shaw, 67 B.R. 911, 912 (Bankr. N.D. Fla. 1986); In re Snider, 62 B.R. 382, 385 (Bankr. S.D. Tex. 1986); see Cain, 29 B.R. at 597 (debtor father's entire debt, including child support, attorney fees, and court costs, was in the nature of child support and was nondischargeable).

In Cain, the court stated the following concerning expenses awarded a woman in a successful prosecution of a paternity action:

This expense is so closely akin to the judgment for support that to allow its discharge would effectively prohibit an unwed mother from engaging legal counsel to pursue her rightful cause of action.

Cain, 29 B.R. at 596 (quoting In re Porter, Bankr. C. Rep. (CCH) 64, 575 (S.D. Ind. 1971)).

This Court agrees with the majority rule and concludes that plaintiff's attorney fees and court costs are in the nature of support and excepted from discharge for the following reasons. In the decree, the District Court judge noted that plaintiff incurred attorney fees of \$7,053.00 which were fair, reasonable, and necessary. The court further noted that the matter could normally have been tried

for \$1,500 but that defendant's evasiveness and refusal to cooperate and disposing of the matter promptly resulted in excess costs. Thus, defendant would be liable for \$5,747.98, the approximate difference between the actual and reasonable fees. Because of plaintiff's limited income of approximately \$600.00 a month, allowing defendant to discharge the attorney fees and court costs when his own actions led to their excessive amounts would be patently inequitable. In addition, such a decision would effectively prohibit future unwed mothers from hiring an attorney to pursue their rightful causes of action. See id. This the Court refuses to do.

**CONCLUSION AND ORDER**

WHEREFORE, based on the foregoing analysis, the Court concludes that plaintiff's state court judgments against defendant for prenatal and postnatal care, child support, attorney fees, and court costs are in the nature of support under 11 U.S.C. §523(a) (5).

IT IS ACCORDINGLY ORDERED that the debts owed by defendant to plaintiff are nondischargeable.

Dated this 9<sup>th</sup> day of June, 1988.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE

