

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
EARL WILLIAM ALBERS, : Case No. 90-3295-C H  
Debtor. : Chapter 7  
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BETTY ALBERS, : Adv. No. 91-91054  
Plaintiff, :  
v. :  
EARL WILLIAM ALBERS, :  
Defendant. :  
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**ORDER--DISCHARGEABILITY OF MARITAL DEBT**

The trial on the complaint to determine dischargeability of debt occurred on February 11, 1992. Leslie Babich appeared for the Plaintiff, Betty Albers; and Donald F. Neiman appeared for the Defendant, Earl W. Albers. At the conclusion of the trial, the Court took the matter under advisement and considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The Court now enters its findings of fact and conclusions pursuant to Fed.R.Bankr.P. 7052.

**FINDINGS**

1. Earl William Albers filed for relief under Chapter 7 of the Bankruptcy Code on December 28, 1990.
2. Betty Albers was scheduled as an unsecured creditor on Debtor's Schedule A-3 for a "property settlement" in the

amount of \$64,000.00.

3. Earl and Betty were married on July 30, 1966, and two children were born to the marriage: Kimberly Dawn, born November 5, 1969 and Angela Marie, born November 28, 1970. Throughout the marriage Betty was the primary caretaker of the children and home. She worked off and on for a telephone company, occasionally cared for other people's children and worked at Armour Dial for a short time.

4. Their marriage was dissolved by decree filed April 18, 1989.

5. At the time of their divorce, Betty worked at J.C. Penneys for \$3.50 per hour and attended Southwestern Community College full-time to become a computer application specialist.

6. The divorce court's findings of fact and conclusions of law awarded alimony to Betty Albers in the amount of \$500.00 per month commencing May 1, 1989 for a period of forty-eight months with the alimony to terminate earlier only if either Earl or Betty should die or Betty would remarry.

7. The divorce court also ordered child support in the amount of \$30 per week towards Kimberly Alber's support until such time as she became self-supporting or until further order of the court. The court also ordered Earl Albers to continue to contribute \$250 per month for child support for Angela Albers as long as she continued her education in college. As long as support was required to be paid, Earl Albers was

required to maintain health insurance coverage for the two daughters and to be responsible for 75% of all reasonable medical, dental, optical, and prescription expenses incurred and not covered by insurance.

8. The court further decreed that each party would be responsible for their own attorney fees.

9. The court fixed the value of Albers Insurance Agency at \$160,000 and determined that an appropriate sum to be paid by Earl to Betty as an equitable division of the value of the insurance agency is \$64,000. The amount was to be paid in semi-annual installments of \$3,200 each for a total of \$6,400 per year for ten years. The first installment payable August 1, 1989 and the second installment payable February 1, 1989 and payable on each of said dates in future years until paid.

The balance would be interest free until alimony would cease. After the alimony would cease, the balance would carry interest as provided by law.

10. Since February 1991, daughter Kimberly, who is disabled, has resided with Earl Albers and looks to him for her sole support.

11. Prior to Debtor's bankruptcy filing, Debtor incurred a debt of \$600, which represents attorney fees Earl was ordered to pay on Betty's behalf as a result of contempt proceedings brought against him for failure to make his installments on the payment of the \$64,000.

## DISCUSSION

In the case at hand the Court is asked to decide whether the debt of \$64,000 as an equitable division of the insurance agency owed by the Debtor to his former spouse is in the nature of alimony, maintenance, or support. This Court has addressed the dischargeability of marital debts under Bankruptcy Code § 523(a)(5) most recently in Fricke v. Ross (In re Ross), Case No. 90-1649-DH, Adv. No. 90-171 (Bankr. S.D. Iowa 1991) (#204 in Judge Hill's decision book). The Court will rely on the principles and law discussed in Ross. Ross cites a list of eighteen factors to consider in determining whether a divorce decree debt is dischargeable.

A few circumstances might indicate the debt is in the nature of alimony, maintenance, or support but these circumstances do not overcome the countervailing factors. The duration of the marriage and the age, work skills, and educational level of Betty could be considered factors indicating the state court intended that Earl provide her support. The state court did in fact award her alimony and since the children are now independent, or in the case of Kimberly, under Earl's care, Betty is free to pursue work or to develop work skills in order to support herself independent of Earl. Ross cites whether an obligation is enforceable by contempt as a factor in determining whether a debt is in the nature of alimony, maintenance, or support. Here, the \$64,000

debt was enforceable by a contempt order. Under Iowa law, however, both property settlements and alimony decrees may be enforced by means of a contempt proceeding. In re Marriage of Lenger, 336 N.W.2d 191 (Iowa 1983) (recognizing split in other jurisdictions but holding contempt proceeding may be brought to enforce divorce property settlement). Thus, in Iowa, whether a property settlement may be enforced by a contempt order is not indicative of whether a debt is in the nature of alimony, maintenance, or support.

On balance, the Court finds the \$64,000 property settlement was not in the nature of alimony, maintenance, and support; and therefore will hold the debt is dischargeable. First, the state court characterized the debt as "an equitable division of property." While this Court is not bound by the state court's characterization, it does find the characterization to be evidence of the parties' intentions in this case. Second, the divorce decree did provide separately for alimony to be paid to Betty Albers for a period of forty-eight months with earlier termination only if either Earl or Betty should die or if Betty should remarry. Thus, support of Betty by Earl was contemplated and provided for. This alimony debt is nondischargeable pursuant to § 523(a)(5). The \$64,000 debt has no provision for termination of the obligation upon death or remarriage. This weighs in favor of finding that the debt was not in the nature of alimony, maintenance, or

support.

As indicated in Ross a dissolution decree property settlement is generally not subject to modification in state court, while alimony generally is. The Bankruptcy Court is not the proper forum for modification of support awards. Thus, Plaintiff may wish to consider pursuing her remedy in the state courts for a modification of her alimony award if it is inadequate due to changed circumstances. See Iowa Code § 598.21(8); In re Marriage of Lande, 1991 WL 108554 (Iowa Ct. App. April 2, 1991); In re Marriage of Sjulín, 431 N.W.2d 773 (Iowa 1988).

#### **ORDER**

WHEREFORE, based on the above application of the principles and law addressed in Fricke v. Ross (In re Ross), Case No. 90-1649-DH, Adv. No. 90-171 (Bankr. S.D. Iowa Nov. 2, 1991) (#204), the Court concludes Defendant's obligation, pursuant to a dissolution decree, to pay Betty Albers \$64,000 as an equitable division of property is not in the nature of alimony, maintenance, or support under 11 U.S.C. § 523(a)(5).

Furthermore, the \$600.00 obligation to pay attorney fees for Betty Alber's efforts to collect the property settlement is not in the nature of alimony, maintenance, or support.

IT IS ACCORDINGLY ORDERED that Earl Alber's obligation to pay \$64,000 pursuant to the dissolution decree is not in the

nature of alimony, maintenance, or support under 11 U.S.C. § 523(a)(5); and therefore the debt is dischargeable.

IT IS FURTHER ORDERED that the obligation to pay Betty Albers \$600.00 toward attorney fees for her efforts to collect the property settlement are not in the nature of alimony, maintenance, or support under § 523(a)(5) and therefore is dischargeable.

Dated this 14th day of July, 1992.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE