

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In the Matter of	:	Case No. 95 - 02146 - CH
	:	
RAY D. SMITH,	:	Chapter 7
	:	
Debtor.	:	
-----	:	
	:	Adv. No. 95 - 95144
CAROL J. WALL,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
	:	
	:	
RAY D. SMITH,	:	
	:	
Defendant.	:	

ORDER--COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

On July 2, 1996, trial was held on the Complaint to Determine Dischargeability of Debt. Debtor Ray D. Smith was represented by attorney Gary R. Hassel; Creditor Carol J. Wall was represented by attorney Lois J. Vroom. At the conclusion of the trial, the Court took the matter under advisement upon a briefing schedule. Post-trial briefs have been filed and the Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I). The Court, upon review of the briefs, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Debtor, Ray D. Smith (“Ray” or “Debtor”), and Creditor Carol J. Wall (“Carol” or “Plaintiff”) were married November 6, 1981. Divorce proceedings were initiated in Jasper County, Iowa, on May 2, 1994. The parties agreed to all matters at issue in the dissolution proceeding. A Dissolution Decree signed by both parties was submitted to the court. The Decree of Dissolution of Marriage was granted to the parties in the Iowa District Court for Jasper County on November 3, 1994. In the Dissolution Decree Carol is referred to as “Petitioner” and Ray as “Respondent.”

2. At the time of the dissolution, the parties had two children in common: Jeremy Ray Smith, DOB May 7, 1982, and Natalie Renee Smith, DOB January 3, 1987. In the dissolution, the parties were granted joint legal custody, with Carol having primary physical care and custody, subject to Ray’s reasonable and liberal visitation rights.

3. At the time of the dissolution, Ray was employed as an electrician and had net monthly net income of \$2,981.00. Carol’s net monthly income as a sales clerk was approximately \$832.00 and her monthly expenses were \$1,283.00, exclusive of any payment on the debt at issue.

4. At the time of the dissolution, Ray worked two jobs. Based on income from both jobs, Ray’s child support obligation under the Iowa Child Support Guidelines should have been \$936.00 per month. When figured on Ray’s income from his full-time job only, his support obligation should have been \$828.33 per month.

5. In the Dissolution Decree, findings of the Iowa District Court for Jasper County include:

7. That the parties have come to an agreement about the distribution of the property and debt of the marriage that is disproportionately in favor of Petitioner. The child support in this case is a compromise amount arrived at by the parties

based upon the large amount of debt being assumed by the Respondent under the terms of this Decree. The parties stipulate and agree that a future modification of child support may be based solely upon a showing that the child support amount deviates by more than 10% from the then existing Iowa Child Support Guidelines. This supports a finding that the child support obligation from Respondent to Petitioner while there are two minor children in the home should be \$700/month, reduced to \$500/month when there is but one minor child who qualifies for support. Further this support is substantially in compliance with the Child Support Guidelines in light of the property settlement, incomes and liabilities of the parties.

6. The order of the Jasper County Court, in the Dissolution Decree, included the following provisions:

IT IS FURTHER ORDERED AND DECREED that the parties shall retain all right, title and interest in all vehicles, bank accounts, household goods, furnishings and personal property that they have previously equitably divided and which are titled or held in their own names. Specifically, the 1988 Dodge Shadow automobile is awarded to Petitioner subject to the outstanding indebtedness, which she alone is liable to pay. The 1993 Ford Bronco and the 1990 Excel Trailer is awarded to Respondent subject to outstanding indebtedness which he shall assume.

Petitioner is responsible for payment of the MasterCard obligation in her own name, the loan at Transamerical Financial, and various outstanding medical bills relating to treatment of Petitioner and/or the children.

Respondent is responsible for payment of the balance of the tax related indebtedness and debts owed by the parties on joint credit accounts except the mortgage and taxes on the real property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall pay any unsecured debt incurred in his or her own name, and each party shall hold each other harmless for any debt incurred by a party since their separation in April of 1994.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner is awarded a 25% interest in Respondent's pension at Brown Brothers that has accumulated during the years she was married to Respondent, determined as of October 7, 1994, and a Qualified Domestic Relations Order shall be entered so that Petitioner receives her share at the time the pension is distributed.

...

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that for the support of the children, Respondent shall pay to Petitioner, through the Clerk of Court, Jasper County Courthouse, Newton, Iowa, on or before the 6th day of each month, in continuity with the temporary order of this case, the sum of \$700/month, payable on a bi-weekly basis, so long as each child survives and has not attained

majority, has not completed high school education or has not become self-supporting.. When only one child is eligible for support, then Respondent shall pay Petitioner the sum of \$500/month for child support.

7. The joint debts that Ray assumed under terms of the Dissolution Decree include debts to the Internal Revenue Service, Iowa Department of Revenue and Finance, American General Finance, Goodyear Credit Plan, Younkers, two Mastercards (Bank of New York and Mercantile Card Services), and Discover Card.

8. On July 25, 1995, less than nine months after the dissolution, Ray D. Smith filed a voluntary petition for protection under Chapter 7 of the Bankruptcy Code.

9. On October 19, 1995, Carol filed an Adversary Complaint to determine the dischargeability of debt under 11 U.S.C. §§ 523 (a)(5) or 523 (a)(15). On February 26, 1996, Plaintiff filed an Amended Complaint, limiting her objection to dischargeability of debt to the provisions of 11 U.S.C. § 523(a)(5).

10. Post-petition, Carol has been contacted by one or more of the creditors whose debts are at issue. Carol has paid on at least one of the debts.

DISCUSSION

Creditor, Carol J. Wall, asserts that certain debts that Debtor, Ray D. Smith, is responsible for under terms of their Dissolution Decree are in the nature of alimony, maintenance or support and are nondischargeable pursuant to 11 U.S.C. § 523 (a)(5). Specifically, Carol argues that debts to the following creditors are nondischargeable: American General Finance, Bank of New York, Goodyear Credit Plan, Internal Revenue Service, Mercantile Card Services, and Younkers. Debtor argues that none of the debts at issue are in the nature of support and are therefore

dischargeable. Debtor further urges this Court to consider the current financial situations of the parties in determining whether the assumed debts are in the nature of support.

The issue before this Court is limited to whether the debts at issue fall within the exception to discharge in 11 U.S.C. § 523 (a)(5). The focus of whether these debts are nondischargeable is properly on whether or not they were in the nature of support, maintenance, or alimony support at the time they were assumed pursuant to the parties' Dissolution Decree. Relative financial situations, intent, and circumstances at time the dissolution agreement was entered into are relevant for determining what function the award was intended to serve. Post-dissolution financial circumstances do not factor into determining whether the debts at issue were in the nature of support at the time of the dissolution. See Draper v. Draper, 790 F.2d 52, 54 (8th Cir. 1986)(expressly rejecting a “needs” test in § 523 (a)(5) determinations); Boyle v. Donovan, 724 F.2d 681, 683 (8th Cir. 1984). Current ability to pay and/or balancing of relative hardships if the debts were discharged are considered only when determining dischargeability of non-support debts under 11 U.S.C. § 523 (a)(15). Congress has chosen to treat non-support debt separate from support debt, subject to different statutory language and a requirement that a non-dischargeability complaint be brought. See 11 U.S.C. §§ 523 (a)(5), 523 (a)(15), 523 (c)(1) . In this § 523 (a)(5) determination, we do not reach the exceptions to the exception language found in § 523 (a)(15).

Debtor argues that evidence as to whether Plaintiff could seek a modification of the Dissolution Decree based on changed circumstances should have been allowed in this Adversary Proceeding. Carol and Ray both approved the Dissolution Decree as to form and content as evidenced by their signatures. Counsel for each party approved it as to form. A modification of the Dissolution Decree is outside the scope of this Adversary Proceeding and the jurisdiction of

this Court. See Ankenbrandt v. Richards, 504 U.S. 689, 693-704 (1992)(exception to federal jurisdiction for domestic relations cases). While leaving state courts to decide if a legal obligation to pay child support should arise or be modified, this Court's focus is on whether the already existing obligation is in the nature of support and thereby nondischargeable.

The portion of 11 U.S.C. § 523 (a)(5) that is central to the issue properly before the Court states:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

...

(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 a 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

The standard of proof under § 523 is a preponderance of the evidence. See Grogan v. Garner, 498 U.S. 279, 286-87 (1991).

Whether an obligation constitutes maintenance or support for dischargeability purposes is a factual determination made according to federal bankruptcy laws. See In re Williams, 703 F.2d 1055, 1056-57 (8th Cir. 1983). Debts payable to third persons can be viewed as maintenance or support obligations. Id. at 1057. The bankruptcy court must determine, in light of all the facts and circumstances, what function the award was intended to serve and on that basis determine dischargeability. Id. The determination is not controlled by the labels of the state court or the parties involved. Id.

The debts at issue are unsecured consumer debts on joint credit accounts. Under the terms of the parties' Dissolution Decree, Ray assumed responsibility for paying them. Less than nine months after the dissolution was entered, Ray filed bankruptcy and now seeks to have his personal liability on these debts discharged. Use of the Bankruptcy Code to effect a modification

of the state court decree entered less than nine months earlier could raise an issue of substantial abuse.

The Dissolution Decree expressly states that the parties agreed to a disproportionate distribution of marital debt and property and that “[t]he child support in this case is a compromise amount arrived at by the parties based upon the large amount of debt being assumed by the Respondent under the terms of this Decree.” The clear language of the Dissolution Decree, supported by testimony at trial and correspondence in evidence, shows the parties’ intent clearly was to compromise the amount of child support that would have been required under the Iowa Child Support Guidelines because of Ray’s assumption of a disproportionate amount of the joint unsecured debt.

At trial, Carol testified that she originally sought \$915.00 per month, based on the Iowa Child Support Guidelines, and that the \$700.00 in child support that was ordered was the result of negotiations over time. She agreed to less child support so that Ray would pay off the unsecured debts, which are shown on the Affidavit of Financial Status to total \$12,600.00 in May 1994. Debtor testified that the \$700.00 figure for child support came from what Carol could fit in her budget. Debtor also testified that the amount Carol got from his pension fund was reduced from one-half to one-fourth because of the debt he assumed.

Evidence in the record shows that issues of child support, unsecured indebtedness, and the division of Ray’s pension plan were bargained for prior to approval and submission of the Dissolution Decree to the state court. The evidence shows that as negotiations progressed, the amount Carol sought in monthly child support changed from \$915.00, to \$936.00, to \$828.33, and finally to \$700.00. At the same time, Carol’s rights in Ray’s pension was reduced from one-half to one-fourth of the pension’s value on a date certain. During this same time frame of

negotiations, the amount of unsecured debt to be assumed by Ray did not change. In his letter of July 21, 1994, Carol's counsel sought \$936.00 per month and stated that "[a]s to the property and debt division proposed herein, we believe it is appropriate for Ray to assume the greater debt burden based upon an earning ability which is nearly four (4) times higher than Carol's" and "the Court determined that Ray's child support obligation should be \$936.00 per month." In the letter of September 16, 1994, Carol's counsel proposed reducing the child support to \$828.33, and states that "[e]ven when that support payment is subtracted from his monthly net income, Ray has significantly more money available to him to service the debt which exists than does Carol." The decree language stating the support is a compromise based on the large debt assumed by Ray is taken verbatim from the letter of October 18, 1994.

At the time of the dissolution, Jeremy, the older child, was 12 years and 5 months old. By the time Jeremy is no longer a minor, Ray will have paid child support for over five years and six months. In that time, by paying child support of \$236 per month less than he was obligated, Ray will have paid \$15,576.00 less than that required under the Iowa Child Support Guidelines. The total of the unsecured debt assumed under the terms of the Dissolution Decree was approximately \$12,600.00. These simple calculations indicate Ray assumed a majority of the joint unsecured debt in lieu of paying the amount of child support required under the Guidelines.

In light of all the relevant facts and circumstances, this Court finds that Debtor's assumption of unsecured joint debt under the terms of the parties' Dissolution Decree was intended to be in the nature of support. Pursuant to 11 U.S.C. § 523 (a)(5), debts to the following creditors are nondischargeable to the extent they were assumed pursuant to the terms of the parties' Dissolution Decree: Internal Revenue Service, Iowa Department of Revenue and Finance, American General Finance, Goodyear Credit Plan, Younkers, two Mastercards (Bank of

New York and Mercantile Card Services), and Discover Card. No determination is made regarding the (non)dischargeability of any debts to these creditors that may have been incurred post-dissolution.

Debtor urges the Court to consider whether Plaintiff would be unjustly enriched by a determination that all the debts at issue are nondischargeable in Debtor's bankruptcy. He argues that his liability should be limited to contribution in the amount of any post-bankruptcy collection actions brought by the creditors against Carol. Carol is not unjustly enriched when Ray is held responsible for payment of debts that are in the nature of support incurred pursuant to a stipulated state court Dissolution Decree.

ORDER

IT IS THEREFORE ORDERED that the following obligations as provided in the parties' Dissolution Decree are in the nature of alimony, maintenance or support and are nondischargeable pursuant to 11 U.S.C. § 523 (a)(5): Internal Revenue Service, Iowa Department of Revenue and Finance, American General Finance, Goodyear Credit Plan, Younkers, two Mastercards (Bank of New York and Mercantile Card Services), and Discover Card.

IT IS FURTHER ORDERED that Debtor shall pay to Plaintiff any amounts she paid post-petition on these nondischargeable debts.

Dated this _____ day of March, 1997.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT