UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In Re	:	**Case No. 98-4868-DH**
BRIAN KEITH QUICK,	:	**Chapter 7**
Debtor.	:	
LORI JEAN QUICK, and M. LEANNE TYLER,	:	**Adv. No. 99-99022**
Plaintiffs,	:	
v.	:	
BRIAN KEITH QUICK,	:	
Defendant.	:	

ORDER— COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT; OBJECTION TO EXEMPTION AND OBJECTION THERETO

This matter came on for trial on May 8, 2001, the parties appearing in person and with their attorneys of record. James C. Wherry represented plaintiffs Laura Quick and M. Leanne Tyler. Tonya S. Tappa represented defendant Brian K. Quick. At the conclusion of the hearing, the court took the matter under advisement. Post-trial briefs have been received, and the court considers the matter fully submitted.

The court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157(b)(1) & 1334 and order of the United States District Court for the Southern District of Iowa. This is a core proceeding pursuant to 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. On November 4, 1998, defendant Brian Keith Quick filed a petition for chapter 7 relief with the United States Bankruptcy Court, Southern District of Iowa.

2. Plaintiff Lori Quick is the former spouse of the debtor. Plaintiff M. Leanne Tyler represented Lori Quick in her dissolution of marriage proceeding.

3. Brian and Lori were married on June 5, 1982. They had four children during their marriage. Andrew was born on March 17, 1983. Amanda was born on February 9, 1985. Matthew and Michael were born on March 25, 1987.

4. During the first 11 years of their marriage, they lived in a house located at 2412 Howell Street, Davenport, Iowa. In 1994, they built and moved into to a house located at 27217 208th Avenue, Eldridge, IA 52748. They refer to this property as the "log home."

5. Brian and Lori's marriage apparently had difficulties from the outset, and eventually the parties separated. On February 5, 1997, Lori filed a petition to dissolve the marriage.

6. On August 17, 1998, Brian and Lori sold the log home for $237,500.00. Hours before the sale closed, Lori petitioned the state court for a temporary injunction to prevent the sale proceeds from being disbursed. By order of the Iowa District Court for Scott County dated August 17, 1998, the proceeds from the sale were to be deposited into an interest-bearing, restricted account at Quad Cities Bank and Trust. No withdrawals were allowed without an order from the court, or mutual written consent of the parties. The sale yielded $70,210.89 cash to Brian and Lori.

7. On September 15, 1998, Findings of Fact, Conclusions of Law, and Decree were filed in the dissolution of marriage case.

8. The Iowa District Court for Scott County (hereinafter the state court) made the following provisions in its decree:

(a) Lori and Brian were awarded joint custody of the children with Lori receiving sole physical care. Brian was ordered to pay child support in the amount of $75.00 per child per week or $1200.00 per month in child support. Brian was also ordered to maintain medical insurance on the children through his employer. The parties were to each pay one half of any medical expense of the children not covered by insurance.

(b) Brian was ordered to pay Lori rehabilitative alimony in the amount of $400.00 per month for a period of three years beginning on September 25, 1998. The stated purpose of the alimony was to provide Lori with the opportunity to "return to school to receive an education in order that she find gainful employment to help support herself and the minor children…." The payments were to continue for the full period unless Lori remarried or either Brian or Lori died before the termination date.

(c) Brian was awarded his interest in the BFI 401(k) and the BFI pension plans, and "in return therefore," Lori was awarded all the parties' interest in the real estate at 2412 N. Howell Street in Davenport, Iowa. The parties were awarded all personal property, household fixtures, and furnishings in his or her possession. Each received a vehicle subject to the balance owed; Lori received the Ford van, and Brian received the Olds Bravada. Lori received the children's furniture and fixtures.

(d) The following debts were identified of the parties:

Norwest LOC (line of credit)…..……...$848.97
AT&T credit card…….4,842.40
Meyers Tree Farm……...166.60
Kimberly Crest Veterinary……..783.56
Dr. Bausch…….2,700.00
Dr. Paul Hauck…….1,207.00
J. C. Penney…...……...1,178.18
Younkers…….315.00
Target……..550.52
Dr. Kerry Doyle……72.00
Lake Huntington Home Owners Association…….870.00
Sears.…….69.41
Quality Heating……...…238.64
National Propane…….857.55
Parkview Back and Neck…….2,500.00
Norwest Visa……6,137.00
Chase Advantage Credit.…….6,312.00
Fisher Price credit card……4,316.00
Griggs Music……...1,823.53
Kohl's credit card……739.61
Koestner, McGivern, & Associates……250.00
Attorney Jim Tappa…….……800.00
Attorney John Donohue……...1,250.00
Accent Insurance Recovery……229.50
Wards credit card……956.95
J. C. Penney……..1,800.00
Target……..836.72
Fisher Price Visa……..6,632.00
Kohl's……..739.61
Providian Bu-Corp Visa……...1,579.03
GTE Mobilnet…….783.16
Lerner New York……...…….429.21
The Limited…….160.60
Sound and Spirit……...3,155.00
Dr. Troxell……...103.00
Fingerhut……...61.98
Avon……228.00
Choice Visa……...41.11
Psychology Associates……235.00

The state court determined that the above debts totaled $56,799.36, and ordered that they be paid from the proceeds of the sale of the log home. This court notes that the list contains two entries

of identical amounts payable to Kohls. The list also contains two entries for different amounts payable to J. C. Penney, Fisher Price credit cards, and Target.

(e) The following debts were additionally identified as being owed to Attorney Douglas Wells, $3,047.50; AOL Visa $6,518.17; Doug Scovil, $3,162.50; Bank of America Visa, $5,933.20; and Goodyear $361.98. Brian was ordered to personally pay Goodyear. Brian claimed that he and Lori owed his parents $23,822.00, however, they did not sign a promissory note for the amount. The state court was uncertain if his parents loaned or gifted the funds. The state court stated that it did not address debts to Quad Cities Dental Association, Wallace's Garden, and Genesis Medical Center because Brian stated that he had already paid those bills.

(f) Partial payment in the following amounts was ordered to: AOL Visa, $2,000.00; Bank of America Visa, $2,000.00; Mr. and Mrs. Quick, $2,000.00; and Douglas Wells, $1,000.00. Lori was awarded $5,000.00 to be used in connection with the expenses of the divorce, and Brian was awarded $1,200.64 to be used in connection with payment of other bills and expenses. These payments total $13,200.64.

(g) The total distribution of the proceeds of the sale of the log home, was ordered in the amount of $70,000.00. The proceeds from the sale of the log home were to be drawn to the order of Lori's attorney at the time, Leanne Tyler. Ms. Tyler was to use the funds in accordance with the directions set forth in the decision.

(h) Judgment was entered "against the respondent [Brian] for attorney fees and psychiatric expenses incurred by the petitioner [Lori] in the sum of $11,243.60."

9. Brian did not appeal the state court's order in the dissolution; instead, he filed for bankruptcy protection two months later.

10. Included on Schedule A – Real Property, Brian scheduled property identified as "27217 – 208th Avenue, Eldridge, IA, 52748," the log home. The schedule indicates that the property was sold on August 17, 1998. However, the purchasers filed suit to have the sale rescinded, revoked, or modified. Brian valued his interest in the property at $237,000.00. He indicated that the property secured a claim in the amount of $144,927.56.

11. On Schedule C – Property Claimed as Exempt, Brian scheduled "Proceeds from Sale of Homestead at 27217 – 208th Avenue, Eldridge, IA 52748" exempt under Iowa Code § 561.16. He valued the proceeds at $70,445.31.

12. In his bankruptcy, Brian scheduled all the debts identified in the dissolution decree except for Target, $836.72; Providian Bu Corp Visa, $1,579.03; Lerner New York, $429.22; Sound & Spirit, $3,155.00; Fingerhut $61.98; Avon, $228.00; AOL Visa, $6,518.17; Bank of America Visa, $5,933.20; J. C. Penney, $1,800.00; and Fisher Price Visa, $6,632.46. Brian scheduled one debt to Kohls for $739.61, one debt to J.C. Penney debt for $1,178.18, and one debt to Fisher Price for $4,316.00.

13. Brian scheduled Lori as an unsecured creditor with a claim for $5,000.00 as a result of the property settlement in the dissolution of their marriage. He also scheduled Leanne Tyler as an unsecured creditor with a claim for $11,243.60 based on the court order in the dissolution proceeding.

14. Brian scheduled additional claims, actual and potential, incurred in conjunction with the log home. He also scheduled potential claims from an automobile accident and for tuition expense to Holy Family Parish School.

15. Brain named Lori as co-debtor on most of the debts that also appeared in the dissolution decree. He also named her co-debtor on the expenses concerning the log home and its sale.

16. Brian's Schedule I – Current Income of Individual Debtor shows gross income of $4,600.00 per month. After payroll deductions, he is left with monthly income of $3,248.00. In 1996, he earned $50,000.00 from his employment; in 1997, he earned $55,000.00; and in 1998, he earned $49,751.00 up to October 30, 1998.

17. Brian's Schedule J – Current Expenses of Individual Debtor shows total monthly expenses of $4,502.00. Of this amount, $1,560.00 is for rent or home mortgage payment including real estate taxes and property insurance. Brian also shows a monthly payment of $1,700.00 for alimony, maintenance, and support paid to others.

18. Brian scheduled the following personal property: financial accounts with a value of $105.00; household goods and furnishings valued at $1,000.00; wearing apparel valued at $150.00; watch and jewelry valued at $125.00; 401k plan valued at $15,500.00; 4 shares of stock valued at $138.00; ½ interest in tax refunds valued at $2,775.00; a 1994 Olds Bravada automobile valued at $9,000.00; and a John Deere lawn tractor valued at $350.00.

19. At the hearing, Brian did not offer evidence of Lori's monthly income and expenses, current as of the time that he filed his bankruptcy petition or shortly thereafter. He provided evidence in the form of the dissolution decree that he was required to pay Lori monthly alimony and child support payments of $1,600.00. He also provided documentation of support payments that he had paid.

20. Brian is in reasonably good health. Several years ago, he was involved in a serious automobile accident that nearly ended his life. He recovered physically from the accident, but not emotionally. The record contains evidence that he is bothered by depression and irritability. However, his condition does not appear to affect his ability to secure and retain gainful employment.

21. Lori is in good health. She has little post-secondary education. At the time of Brian's bankruptcy she was employed part-time in a real estate office.

22. Lori and Leanne Tyler jointly filed an objection to Brian's claim of exemption for the log home and the proceeds of its sale.

23. The chapter 7 trustee, A. Fred Berger also filed an objection to Brian's claim of exemption for the log home and the proceeds of its sale.

24. On February 18, 1999, Lori and Leanne Tyler commenced this adversary proceeding to determine the dischargeability of debts connected with the dissolution of marriage decree.

25. On October 1, 1999, Lori and Leanne Tyler filed a motion for summary judgment. After notice and a hearing, the court partially granted and partially denied the motion. The court determined that summary judgment was appropriate as to the issue of rehabilitative alimony and child support and accordingly these obligations were excepted from discharge pursuant to 11 U.S.C. § 523(a)(5). It further determined that attorney Tyler could not claim a lien in the proceeds from the sale of the log home pursuant to Iowa Code § 602.10116. The court further determined that there were genuine issues of material fact as to whether certain obligations were

intended by the parties and the state court to function as maintenance and support or as a division of property and debt.

26. On February 22, 1999, a discharge was entered in Brian's chapter 7 case.

DISCUSSION

Lori Quick and her divorce attorney, M. Leanne Tyler, commenced this adversary proceeding seeking a determination that certain debts in connection with Brian and Lori's dissolution decree should be excepted from discharge. In five counts, their complaint alleges that various marital debts, alimony award, child support determination, order to pay attorney fees, and obligation to pay one half of a tax refund are nondischargeable under 11 U.S.C. § 523(a)(5) or (a)(15). Lori and Ms. Tyler also filed an objection to Brian's claim of homestead exemption for proceeds from the sale of the log home, Lori and Brian's former marital home. The chapter 7 trustee, A. Fred Berger, also filed an objection to claim of exemption. The parties agreed that the court should consider the exemption issue in conjunction with the adversary proceeding.

The court previously ruled on a plaintiffs' motion for summary judgment. In its order entered on July 10, 2000, the court determined that Brian's obligation to make alimony and child support payments according to the schedule set forth in the dissolution decree constituted non dischargeable debts under 11 U.S.C. § 523(a)(5). The court noted that the parties had resolved the tax refund issue. The court also determined that attorney Tyler did not have an attorney lien on the log home proceeds pursuant to Iowa Code § 602.10116.

At the trial held on May 8, 2001, the parties presented testimony and other evidence on the remaining issues before the court. The plaintiffs contend that Brian should not be allowed to

discharge his obligation to pay the debts identified in the dissolution decree, and that Brian could not exempt the log home proceeds under Iowa Code § 561. Attorney Tyler renewed her claim of a lien against the log home proceeds, in this instance, pursuant to Iowa Code § 598.

Brian vigorously defends his claim of exemption stating that it was always his intention to sell the log home and use the bulk of the proceeds to buy a new homestead near the children's schools. He also argues that the allocation of debt to be paid by him personally and from the log home proceeds was not intended to function as alimony, maintenance, or support for Lori or their children. Rather, it was a division of property and debt. He argues that he does not have the ability to pay the debts, and the benefit to him of discharging his liability would outweigh any real detriment to Lori.

CLAIM OF HOMESTEAD EXEMPTION AND OBJECTIONS

Prior to their separation and dissolution of marriage, Brian and Lori lived in the log home located at 27217 208th Avenue, Eldridge, IA 52748, and it is undisputed that the property served as their homestead. In the summer of 1998, Brian moved out of the log home and began living with Joann Grunwald, his future ex-spouse. On August 17, 1998, Brian and Lori sold the log home to James and Polly Brownson, and pursuant to a state court order, the proceeds from the sale were placed into a restricted account that prevented any funds from being withdrawn without court approval or the consent of both Brian and Lori. In the dissolution of marriage proceeding, the state court ordered the entire amount of the proceeds to be dispersed among their creditors with provision of some funds going to Brian and Lori for specific purposes.

Brian acknowledges that the state court could order the homestead sold and require the proceeds to be dispersed among marital creditors. However, he contends that once he filed for

bankruptcy protection, federal law provides him with a homestead exemption, and a state court cannot deprive him of that exemption. Brian argues the proceeds from the sale of the log home continue to be exempt because he intended to use the funds to purchase a new homestead and was prevented from doing so by the state court's injunction. He believes that he may properly exempt the proceeds from the sale of the log home.

Brian misapprehends the interplay between the Bankruptcy Code and state exemption law. The filing of a bankruptcy petition creates an estate comprised of all "legal and equitable interests of the debtor in property…" 11 U.S.C. § 541(a)(1). Congress intended the scope of 11 U.S.C. § 541(a) to be broad. United States v. Whiting Pools, Inc., 462 U.S. 198, 204 (1983); N.S. Garrott & Sons v. Union Planters Nat. Bank of Memphis, (In re N.S. Garrott & Sons), 772 F.2d 462, 466 (8th Cir. 1985).

From this estate, a debtor is permitted to exempt certain property, 11 U.S.C. § 522(b), and § 522(d) provides a list of exemptions available under the Bankruptcy Code. However, 11 U.S.C. § 522(b)(1) permits the states to "opt out" of the federal exemption scheme and require the debtor to use the exemptions provided by state law. Iowa has chosen to opt out of the federal exemptions. Iowa Code § 627.10. Accordingly, Iowa law, not federal law, will govern the scope of Brian's exemptions, and Iowa need not provide him with any exemption at all. Owen v. Owen, 500 U.S. 305, 308 (1991); In re Norkus, 256 B.R. 298, 301-302 (Bankr. S.D. Iowa 2000).

As to the homestead, in Iowa, it embraces "the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead." Iowa

Code § 561.1. "The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." Iowa Code § 561.16. However, persons who live together as a "single household unit" may claim only one homestead exempt. Id. "Household unit" means all persons, regardless of age and familial relationship, who habitually reside together in the same household as a group. Id. "A single person may claim only one homestead to be exempt from judicial sale." Id.

When a new homestead is acquired with proceeds from an old homestead, the new is exempt in the amount and to the extent that the old homestead was exempt from sale. Iowa Code § 561.20. Further, the proceeds from the sale of a homestead may remain exempt for a reasonable length of time, if the owner intends to use the proceeds to buy another homestead. Braunger v. Karrer, 563 N.W.2d 1, 3-4 (Iowa 1997); Millsap v. Faulkes, 20 N.W.2d 40, 41 (Iowa 1945).

Iowa courts "generally hold that to secure the benevolent purposes of the homestead laws they should be broadly and liberally construed in favor of the beneficiaries of the legislation." Millsap v. Faulkes, 20 N.W.2d at 42. "Regard should be had to the spirit of the law rather than its strict letter." Id. The courts recognize that the state receives social benefits and public welfare "by having families secure in their homes." Matter of Property Seized from Bly, 456 N.W.2d 195, 199 (Iowa 1990). Consequently, the "loss of homestead exemption is not favored." Schaffer v. Campbell, 199 N.W. 334, 338 (Iowa 1924).

Finally, Iowa courts have long recognized that the statute providing for division and disposition of marital property in dissolution cases, now Iowa Code § 598.21 constitutes a "special declaration of statute to the contrary" of the homestead exemption. Daniels v. Morris, 6

N.W. 532 (Iowa 1880). A state court presiding over a dissolution of marriage may enter an appropriate order disposing of the homestead. The homestead exemption statute has no application in a dissolution proceeding. Id. at 533; see also, Marriage of Belz, 541 N.W.2d 894, 895 (1995).

In this case, Brian may not claim an exemption for the proceeds from the sale of the log home, and accordingly, the objections to exemption will be sustained. The court concludes that he did not intend to use the proceeds from the former homestead to purchase a new one, and does not give much weight to his testimony to the contrary. The court does not find Brian to be credible, and does not believe he actively engaged in a search for a house to occupy as a homestead. Rather, the court finds that he intended to use the sale proceeds to repay certain debts, not the least being the sizable obligation to his parents. Further, Brian intended to purchase houses to improve and resell for a profit, not to occupy as a homestead.

The court's determination is bolstered by the fact that Brian moved from the marital home directly into a residence with Joanne Grunwald, whom he subsequently married. Joanne's name appears as the realtor on several of the home search documents that Brian offered as evidence. However, Joanne testified that she did not produce the documents. She testified that Brian had access to the equipment and information required to produce the documents through his employment in a real estate office.

Further, it is clear from the dissolution decree that the state court did not intend to preserve the homestead characteristic of the proceeds from the sale of the log home. Its disposition of the proceeds is inconsistent with Brian's stated intent to use the funds to purchase

a new homestead. The record is devoid of any attempt by Brian to alter or appeal the state court judgment.

Brian concedes that a state court in a dissolution proceeding is not constrained by the homestead exemption; however, he argues that it is constrained in its remedies. Brian apparently believes that state court is limited to awarding one party the homestead and giving the other party a lien on the property to secure payment of property settlement debt. Brian contends that because the property was sold before the state court entered its dissolution decree, it could not dispose of the proceeds in a fashion that would deprive him the ability to claim the proceeds exempt in his bankruptcy. The court is not persuaded.

There is abundant authority that a state court can fashion appropriate distributions of marital property. In addition to awarding the homestead to one party and giving the other party a lien on the property to effectuate a property settlement, Kobringer v. Winter, 263 N.W.2d 892, 894 (Iowa 1978), Luedecke v. Luedecke, 192 N.W. 515, 516 (1923), state courts have ordered the property sold and divided the proceeds, Marriage of Hoffman, 493 N.W.2d 84, 88 (Iowa 1992), granted one party the right to occupy the homestead pending the sale of the property and subsequent division of the proceeds, In re Morrison, No. 88-608-CH slip op. at 2 (Bankr. S. D. Iowa, January 9,1999)(Judge Hill #69)(quoting the Iowa District Court for Jasper County's order in the debtor's dissolution of marriage); and ordered that one party would have sole use and occupancy of the property for approximately five years or until she remarried, would be required to rent out the spare rooms and split the rental fee, and would receive a cash payment from the ex-spouse upon termination of her occupancy. Guisinger v. Guisinger, 205 N.W. 752 (Iowa

1925) (reversing the lower court's denial of application for rehearing and vacation of a modification order).

This court does not perceive an appreciable difference between a case where a state court orders a homestead sold and disperses the proceeds and a case where a state court disperses the proceeds when the parties prior to the entry of the dissolution decree sell the homestead. In either case, it is the state court's order pursuant to the dissolution decree that prevents the property from being claimed exempt. In re Reinders, 138 B.R. 937, 942 (Bankr. N.D. Iowa 1992); see also Marriage of Belz, 541 N.W.2d at 859 (a party to a dissolution may not frustrate the power of the court to make an equitable distribution of property).

For all the foregoing reasons, the court finds that Brian may not claim the proceeds from the sale of the log home exempt under Iowa Code §§ 561.16 and 561.20. The objections to exemption shall be sustained.

VALIDITY OF ATTORNEY LIEN CLAIMED BY M. LEANNE TYLER

The court previously ruled as a matter of law that M. Leanne Tyler did not have a lien on the proceeds from the sale of the log home pursuant to Iowa Code § 602.10116. Attorney Tyler renews her claim citing Iowa Code § 598 in support of her position. At trial, she relied on Iowa Code § 598.5 and stated that case law existed to support her position. In the post-trial brief, she did not cite any case authority.

Section 598.5 sets forth the required contents for a petition for dissolution. Included in the required information is any application for attorneys' fees and suit money without the enumerated amount. Id. Accordingly, the petitioner must set forth a request for attorney fees at

the outset, but nothing in the paragraph grants an attorney a lien on property of either party in a divorce before or after the property division takes place.

Other provisions in the chapter address the payment of attorney's fees. For instance Iowa Code § 598.11 provides that the state court may enter a temporary order requiring a party to pay funds to the clerk to allow the other party to prosecute or defend the action; Iowa Code § 598.36 provides for an award of attorney fees to the prevailing party in a proceeding to modify an order or decree, and in a case where the court requires an attorney for a minor child, Iowa Code § 598.12(3) provides that "the court shall enter an order in favor of the attorney or an appropriate agency for fees and disbursements, and the amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for costs is indigent, in which event the fees shall be borne by the county." However, none of these paragraphs apply to the issue at hand.

In this case, the dissolution decree provided that "judgment is entered against the respondent [Brian] for attorney fees and psychiatric expenses by the petitioner in the sum of $11,243.60." The order makes no mention of a lien placed on any property. Further, this court interprets the order as being made against respondent and in favor of the petitioner. Hence, Lori is awarded judgment in the stated amount. Accordingly, the court finds that attorney Tyler does not hold a lien on the proceeds from the sale of the log home, statutory, possessory, or by order of the state court.

NONDISCHARGEABILITY UNDER 11 U.S.C. § 523(a)(5)

The Bankruptcy Code provides that a debt to a spouse, former spouse, or child of the debtor for alimony, maintenance, or support in not dischargeable. 11 U.S.C. § 523(a)(5). "[T]he question of whether a particular debt constitutes alimony, maintenance, or support or rather constitutes a property settlement is a question of federal bankruptcy law not of state law." Id. at 55, citing Tatge v, Tatge (In re Tatge), 212 B.R. 604, 608 (B.A.P. 8th Cir. 1997) (citing Williams v. Williams (In re Williams), 703 F.2d 1055,1056 (8th Cir. 1983) (quoting H.R. REP. NO. 95-595, 95th Cong. 2nd Sess. at p. 364, 1978 U.S. Code Cong. & Ad. News at p. 6319 (1977)). The bankruptcy court is not bound by the state court definitions of alimony, maintenance, and support, nor is it bound by a dissolution decree's characterization of the awards. In re Williams, 703 F.2d at 1057. The label given to an award is unimportant; it is the actual nature of the debt that determines is dischargeability. Scholl v. McLain (In re McLain), 241 B.R. 415, 419 (B.A.P. 8th Cir. 1999).

Relative financial situations, intent, and circumstances at the 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). "The crucial issue in making this determination is the intent of the parties and the function the award was intended to serve at the time of the divorce." In re Moeder, 220 B.R. 52 at 55. The court must discern not only the intent of the parties, but also the intent of the state court. In re McLain, 241 B.R. at 419-20.

The standard of proof under § 523 is a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 286-287 (1991). "It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate." Smith v. United States, 557 F. Supp. 42, 51 (W.D. Ark. 1982) aff'd, 726 F.2d 428 (8th Cir.1984). The party with the burden of proof must provide evidence to prove his or her position is reasonably probable, not merely possible. Sherman v. Lawless, 298 F.2d 899, 902 (8th Cir. 1962). If the proven facts equally support each party's position, "the judgment must go against the party upon whom rests the burden of proof." Id.

Brian is correct that courts have used the following factors in an effort to divine the intent of the parties and the state court as to the real nature of the obligations connected with dissolution decrees.

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 level 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. D. Md. 1985) (and citations contained in footnote 6 at p. 674). When the intent of the parties and the state court is not clear, the court may use the factors to help in its determination.

Concerning Brian's obligation to pay Lori's attorney fees from the dissolution proceeding, the state court's intent is clear. In Iowa, the allowance of attorney fees is not a matter of right. Marriage of Liebich, 547 N.W.2d 844, 851 (Iowa App. 1996). It lies within the broad discretion of the state court. Marriage of Goodwin, 606 N.W.2d 315, 324 (Iowa 2000). The state court must assess the parties' financial position, the needs of the party requesting an allowance of fees and the ability of the other party to pay the fees. See Marriage of Liebich, 547 N.W.2d at 851 (including the additional factor of whether the requesting party was required to defend on appeal when requesting appellate attorney fees).

The state court considered the evidence, and determined that Lori's financial situation required the allowance of attorney fees. Likewise, it determined that Brian had the ability to pay those fees. Further, the state court included the fees for psychology testing in its allowance as a cost of prosecuting the action. Therefore, this court concludes that the allowance of attorney fees was in the nature of maintenance and support, and the obligation is excepted from discharge by 11 U.S.C. § 523(a)(5). See Holliday v. Kline (In re Kline), 65 F.3d 749, 751 (8th Cir. 1995) and Williams v. Williams (In re Williams), 703 F.2d 1055, 1057 (8th Cir. 1983).

As to the remaining obligations identified by Lori, those dealing with the children's chiropractic, dental, and band related bills, this court determines that the state court and the parties intended them to be disposed of in the property and debt division of the dissolution of marriage. Of the Coffman factors, the court notes that Lori was specifically awarded alimony, her attorney fees, and support for the children. Brian was required to maintain health insurance on the children and

pay half of their uncovered medical expenses. His obligation to pay the remaining debts in question would not terminate on Lori's remarriage or the children reaching the age of majority. Further, the state court did not deal with the debts separately or in conjunction with child support. Rather, the debts were included with those bills to be paid from the log home proceeds. Therefore, while noting that at various times health-related expenses and education expenses have been deemed support, see Boyle v. Donovan (In re Boyle), 724 F.2d 681 (8th Cir. 1984) and Draper v. Draper (In re Draper), 790 F.2d 52 (8th Cir. 1986), the court concludes that based solely on the facts of this case, the obligations for chiropractic services, the dental services, and the band expenses are not excepted from discharge pursuant to 11 U.S.C. § 523(a)(5).

NONDISCHARGEABILITY UNDER 11 U.S.C. § 523(a)(15)

Lori argues that all the debts for which Brian is responsible under the terms of their dissolution decree, are nondischargeable pursuant to 11 U.S.C. § 523 (a)(15). Brian argues that he is unable to pay this debt, or, alternatively, that discharging this debt would result in a benefit to himself that outweighs the detrimental consequences to Lori.

Section 11 U.S.C. § 523(a)(15) provides:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor for any debt --
>
> (15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless --
>
> (A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or
>
> (B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

11 U.S.C. §523(a)(15) is meant to cover debts arising out of a divorce or separation decree that are not in the nature of alimony, maintenance or support. The legislative history indicates that this section is aimed at those property settlement agreements in divorce or separation proceedings whereby a spouse agreed to reduced support in return for a larger property settlement. 140 Cong. Rec. H10752, H10770 (daily ed. Oct. 4, 1994). However, as §523(a)(15) is written, it covers all property settlement provisions arising out of a divorce or separation proceeding.

Together, 11 U.S.C. §§ 523(a)(5) and (a)(15) make virtually all debts owed to a child or former spouse that arose in divorce proceedings nondischargeable. Rush v. Rush (In re Rush), 237 B.R. 473, 475 (B.A.P. 8th Cir. 1999). Debts for alimony, maintenance, and support are nondischargeable at the outset. 11 U.S.C. § 523(a)(5). However, the Code requires a creditor spouse to actively protect a right to payment of a debt arising in divorce proceedings that is not alimony, maintenance, or support. The creditor spouse must request the court to except the debt from discharge. 11 U.S.C. §523(c)(1). The request must be made within sixty (60) days from the first date set for the meeting of the creditors. Fed. R. Bankr. P. 4007(c). If no such request is made within the allotted time, the debt is discharged. 11 U.S.C. § 523(c)(1).

If a timely request is made, the Code provides that the debt is nondischargeable unless the debtor meets one of the two exceptions provided in 11 U.S.C. § 523(a)(15). The section is written in the disjunctive. The debtor need only meet the requirements of one of the two exceptions for the debt to be discharged. Moeder v. Moeder (In re Moeder), 220 B.R. 52, 54, 55 (B.A.P. 8th Cir. 1998).

In a nondischargeability action under 11 U.S.C. § 523(a)(15), the creditor spouse must first establish that the debt at issue was incurred from a separation agreement, dissolution decree, or other court order, other than one for alimony, maintenance, or support. The burden then shifts to the debtor to prove dischargeability under either subsection (A) or (B). Ginter v. Crosswhite (In re Crosswhite), 148 F.3d 879, 884-85 (7th Cir. 1998); Gamble v. Gamble (In re Gamble), 143 F.3d 223, 226 (5th Cir. 1998); In re Rush, 237 B.R. at 475; In re Moeder, 220 B.R. at 56; Jodoin v. Samayoa (In re Jodoin), 209 B.R. 132, 139-40 (B.A.P. 9th Cir. 1997).

Federal law ultimately determines whether a debt is or is not dischargeable under 11 U.S.C. § 523(a)(15); however, applicable nonbankruptcy law must be analyzed to determine whether the debt was incurred from a separation or dissolution decree. Gibson v. Gibson (In re Gibson), 219 B.R. 195, 203 (B.A.P. 6th Cir. 1998). "As the Supreme Court stated in Grogan, 498 U.S. at 283-84, 'the validity of a creditor's claim is determined by rules of state law[,]' and 0[w]e use the term 'state law' expansively herein to refer to all nonbankruptcy law that creates substantive claims.'" Id.; see also Carlisle v. Carlisle (In re Carlisle), 205 B.R. 812, 816 (Bankr. W.D. La. 1997) ("the creation and enforceability of obligations in a divorce settlement are governed by state law").

Iowa Code § 598.21 provides court authority to dispose of marital property and award custody of minor children in a divorce proceeding. In former incarnations, the statute provided that the state court "may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be right," Marriage of Romig, 207 N.W.2d 780, 783 (Iowa 1973) (quoting Iowa Code § 598.14 (1966)), and "make such order in relation to the children,

property, and the parties as shall be justified. Subsequent changes may be made by the court in these respects when circumstances render them expedient." Id. (quoting Iowa Code § 598.21 (1971)). In 1980, the legislature expanded the section from its former two paragraphs to almost one and one half pages. See In re Knoll, 124 B.R. 548, 549 (Bankr. N.D. Iowa 1991).

Currently, Iowa Code § 598.21 provides in relevant part:

> 1. Upon every judgment of annulment, dissolution, or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly, including ordering the parties to execute a quitclaim deed or ordering a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located….The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties….

The current version of the statute provides a great deal more direction to the state court in the disposition of property. The section states unambiguously that the state court is to divide the property between the parties. Along with the disposition of property, the "allocation of marital debt inheres in the property division." In re the Marriage of Johnson, 299 N.W. 2d 466, 467 (Iowa 1980).

As to parties in a dissolution of marriage action, debt allocated subject to the property division is incurred in connection with the dissolution decree. For 11 U.S.C. § 523(a)(15) purposes, no express "hold harmless" language need be included in the dissolution decree if that effect is clearly implied in the order. See In re Gibson, 219 B.R. at 202; see also Johnston v. Henson (In re Henson), 197 B.R. 299, 302-03 (Bankr. E.D. Ark. 1996) ("although there is no 'hold harmless' language in the decree or complaint, under Arkansas law, the debtor incurred a debt to [his former spouse] in connection with the divorce proceeding") and King v. Speaks (In re Speaks), 193 B.R. 436, 441 (Bankr. E.D. Va. 1995) ("Indeed even in the absence of an explicit

agreement, the law will imply an obligation to indemnify where one party incurs a debt for his own benefit which creates liability on the part of another").

In this case, the dissolution decree provided for the disposition of marital property and debt as follows. Each party was awarded the personal property in his or her possession. Lori received a 1993 Ford van, and Brian received the 1994 Bravada; each subject to any debt owed against the vehicle. Brian received his interest in the BFI 401(k) and the BFI pension plans. Lori received the house at 2412 N. Howell Street subject to the mortgage. Lori received certain baskets, and Brian received tools that were located at the house on Howell Street. Finally, the dissolution decree provided that the proceeds from the sale of the log home would be used to pay certain marital debts. Included in the payments, $5,000.00 is earmarked for Lori in exchange for appliances that Brian removed from the log home.

It is well settled that when a dissolution decree is construed, "'[e]ffect must be given to that which is clearly implied as well as that which is expressed.'" Marriage of Lawson, 409 N.W. 2d 181, 182 (Iowa 1987) quoting Cooper v. Cooper, 158 N.W.2d 712, 713 (Iowa 1968). As stated above, the current version of the statute states that the property shall be divided between the parties. Therefore, the court construes the dissolution decree to award the proceeds from the sale of the log home along with the liability to pay the enumerated debts to Brian, notwithstanding the fact that the state court required attorney Tyler to actually disperse the funds. It further construes the decree to imply that Brian will hold Lori harmless from liability on those debts. The court determines that Brian's obligation to pay these debts arose in connection with the dissolution of marriage.

Accordingly, the court finds that Lori has established that the debts at issue were incurred from the dissolution decree and are not for alimony, maintenance, or support. The burden then shifts to Brian to prove dischargeability under either subsection (A) or (B).

The Code provides for an all-or-nothing discharge of the non-support debt at issue. The prefatory language in § 523(a)(15) does not provide for fragmentation of the debt into dischargeable and nondischargeable components based on the debtor's ability to pay or on a cost-benefit analysis. See 11 U.S.C. §§ 523(a)(15)(A), (a)(15)(B); See also In re Hill, 184 B.R. 750 (Bankr. N.D. Ill. 1995); In re Silvers, 187 B.R. 648 (Bankr. W.D. Mo. 1995).

Some courts have analyzed dischargeability under § 523(a)(15) as of the date the adversary complaint is filed. See In re Hill, 184 B.R. at 754. Other courts believe the proper date is the time of the trial. In re Jodoin, 209 B.R. at 142. These courts appear to be concerned that other dates would provide a "rear view mirror" analysis of the debtor's financial situation which would be inaccurate, and antithetical to congressional intent. Id. This court respectfully disagrees.

If 11 U.S.C. § 523(a)(15) were analyzed as of the filing of the adversary complaint or subsequent trial, the debtor's financial status would be a moving financial target for the plaintiff. Post-petition, a debtor could undertake substantial new debt or dramatically alter living arrangements for the purpose of directly impacting the outcome of an 11 U.S.C. § 523 (a)(15) analysis. In contrast, the order for relief provides a date certain from which the debtor seeks a fresh start and a current depiction of the debtor's finances. As previously stated, the Code requires that an adversary pursuant to 11 U.S.C. § 523(a)(15) be filed no later than sixty (60) days after the first scheduled meeting of the creditors. Fed. R. Bankr. P. 4007(c). The first

meeting of creditors must be held no fewer that twenty (20) days and no more than forty (40) after the order for relief. Fed. R. Bankr. P. 2003(a). Therefore, an 11 U.S.C. § 523(a)(15) adversary proceeding should be commenced no later than 100 days after the order for relief. This starting point provides a disincentive to creditor spouses from prolonging the time to trial in hopes that the debtor will make good use of the fresh start to improve his or her financial condition.

For the foregoing reasons, this court uses the date of the order for relief as the starting point for determining both the debtor's current and future potential ability to pay on the debt. In this respect, the court maintains consistency within the district. See In re Jordan, 95-1312-CJ, Adv. 95-95108 (Bankr. S.D. Iowa April 17, 1996) (J. Jackwig Decision #194).

Debtor's ability to pay under 11 U.S.C. § 523(a)(15)(A)

The Code provides that a property settlement debt may be discharged if the debtor does not have the ability to pay the debt from income or property not necessary for the support or maintenance of the debtor or the debtor's dependents. 11 U.S.C. § 523(a)(15). The section directs the court to determine whether the stated expenditures are "reasonably necessary" for the maintenance and support of the debtor or the debtor's dependents. 11 U.S.C. § 523(a)(15)(A). As the language is almost identical to that of 11 U.S.C. § 1325(b), the "disposable income test" is a good starting point for the analysis. In re Jodoin, 209 B.R. at 142; Shea v. Shea (In re Shea), 221 B.R. 491, 499 (Bankr. D. Minn. 1998); In re Hill, 184 B.R. at 755. However, the scope of the court's inquiry must necessarily be broad in order to determine the debtor's actual ability to pay. While the court need not construct a budget, its inquiry must encompass the totality of the debtor's financial circumstances, including the extent to which the debtor can manipulate his or

her income and expenses. In re Shea, 221 B.R. at 499. Cleveland v. Cleveland (In re Cleveland), 198 B.R. 394, 398 (Bankr. N.D. Ga. 1996). Also included in the inquiry are the debtor's future earning capabilities. Hastings v. Konick (In re Konick), 236 B.R. 524, 529 (B.A.P. 1st Cir. 1999). "'A court may look to a debtor's prior employment, future employment opportunities, and health status to determine the future earning potential of the [d]ebtor.'" Id. quoting, Brasslett v. Brasslett (In re Brasslett), 233 B.R. 177, 183 (Bankr. D. Me. 1999) quoting, Hart v. Molino (In re Molino), 225 B.R. 904, 908 (B.A.P. 6th Cir. 1998).

The court should also consider the "debt-absorbing" impact of the income of a new spouse or live-in companion in order to achieve certainty in determining exactly how much of the debtor's income and property is truly necessary for maintenance and support. Id. But see, Carter v. Carter (In re Carter), 189 B.R. 521, 522 (Bankr. M.D. Fla. 1995) ("The language of 523(a)(15)(A) restricts the determination of the ability to pay solely to the income of the debtor. It is not enhanced by inquiring into the financial circumstances of the defendant's current spouse.") and Willey v. Willey (In re Willey), 198 B.R. 1007, 1015 (Bankr. S.D. Fla. 1996) (considering the income of debtor's girlfriend "could lead to a chilling effect on the courtship and re-marriage of divorced partners"). However, if the debtor and live-in companion adhere to an agreement for the management of the household and allocation of expenses, that agreement will set the parameters for the court's inquiry into the companion's financial affairs. Halper v. Halper (In re Halper), 213 B.R. 279, 284 (Bankr. D.N.J. 1997).

In this case, Brian filed a petition for chapter 7 protection on May 27, 1997. The commencement of his voluntary bankruptcy case constituted an order for relief. 11 U.S.C. § 301. On his statement of financial affairs, Brian indicated that he was employed by Browning

Ferris Industries as a salesman earning $4,600.00 per month. After deductions of $1,352.00, his net monthly income was $3,248.00. The court notes that for the tax year 1997, Brian and Lori received a federal income tax refund of $4,083.00 and a state tax refund of $1,343.00. The parties divided the refunds, one half to each.

Brian scheduled monthly expenses of $4,502.00, leaving him with a monthly deficit of $1,254.00. The two largest expenses are $1,700.00 for alimony, maintenance, and support and $1,560.00 for rent or home mortgage payment including real estate taxes and property insurance.

While the $1,700.00 monthly payment is significant, it will not continue indefinitely. The $400.00 per month for rehabilitative alimony is to last only three years. It may terminate sooner if Lori remarries. Likewise the support payments are of limited duration. On the filing date of the petition, the children were age fifteen, thirteen, and eleven-year-old twins. Therefore, although the decree does not set forth a specific timetable, within the relatively near future, Brian's child support obligations will begin to decrease, ultimately terminating upon the twins' completion of education.

As to the $1,560.00 per month, the record is unclear whether the funds are for rent or a mortgage payment. The statement of expenses indicates that the amount includes taxes and insurance. It also contains a separate item of $80.00 per month for homeowners insurance. Brian's address on his petition is listed as 5420 Taylor St., Davenport, Iowa. He did not schedule ownership of real property at that address. He did not schedule any interest in the Howell St. property because Lori was awarded it in the dissolution decree. There is no provision in the decree that he make mortgage payments on the Howell St. property, and he did not

schedule a claim secured by that property. Joanne testified that at the time Brian filed for bankruptcy protection he was living with her.

Brian scheduled an ownership interest in the log home, and he scheduled a creditor holding a claim secured by the property. However, at the time that he filed, the property had been sold, and the net proceeds were under attorney Tyler's control. Brian purportedly scheduled the property out of an abundance of caution because the sale was the subject of an action to rescind or modify the transaction.

The court is under the impression that Brian likewise scheduled his former house payment as a current expense. Regardless, the court does not find $1,560.00 per month as a reasonable rent expense for a single person who does not have primary physical care of any dependents. Also, the court does not find $80.00 per month for homeowner's insurance to be a reasonable expense for debtor who owns no home.

Further, the court notes that Brian did not include any provision for Joanne's contribution to their joint living expenses. That Joanne contributed is apparent from her testimony and the exhibits showing funds paid to him from her personal account.

Accordingly, the court finds that Brian's income and expense statements do not accurately reflect his true financial situation at the time of his bankruptcy filing. Add to this finding that Brian is in relatively good health, is an experienced salesman, and the proceeds from the sale of the log home are available for distribution in the bankruptcy. Therefore, the court determines that Brian has the ability to pay Lori as ordered by the decree and hold her harmless from liability for any of the marital debts.

Equitable Balancing Under 11 U.S.C. § 523(a)(15)(B)

Section 523(a)(15)(B) requires the court to determine whether the benefit to Brian of discharging the debt outweighs the detrimental consequences to Lori. In making such a determination, the Bankruptcy Code provides no set formula, and there is no analogous section to assist the court in making such a determination. The court must view the totality of the circumstances and make a decision on a case-by-case basis. In re Crosswhite, 148 F.3d at 889; In re Gamble, 143 F.3d at 226; In re Hill, 184 B.R. at 756.

In weighing equities, the court finds that the detriment to Lori outweighs the benefit of the discharge to Brian. In the short term, Brian's financial condition is vastly superior. He is an experienced salesman capable of earning a good salary. He is a young man and in relatively good health. He has the benefit of the BFI pension plans for retirement or other purposes as he may choose. It is true that he must make the alimony and child support payments, however, as the court previously noted, these obligations will begin terminating in the relatively near future.

Lori's financial situation is much worse. At the time of the bankruptcy filing, she worked part-time earning $7.50 per hour. She has the use of the Howell St. property, but she also has its expenses. She also provides primary physical care for the four children. Lori is financially dependent in large part on the alimony and support payments. If she is to complete her education as envisioned by the state court, she will incur added expenses. Finally, although she is still young, she has no retirement funds.

Accordingly, the court finds that Brian's obligations under the property settlement portion of the dissolution decree are excepted from discharge. In sum, Brian may not discharge his obligation to pay Lori $5,000.00 to offset the appliances that he removed from the marital

residence. Further, he may not discharge his obligation to hold Lori harmless for the marital debts in the event that a creditor attempts to collect such debts from her.

TURNOVER OF ESTATE PROPERTY

As noted previously, the chapter 7 trustee, A. Fred Berger, filed an objection to Brian's claim of exemption, and the parties agreed that the matter would be heard along with this adversary proceeding. Because the court sustained the objections to exemption and construed the dissolution decree to award Brian all the proceeds from the sale of the log home along with all the liability for payment of the enumerated debts, the proceeds from the sale are property of Brian's bankruptcy estate. Attorney M. Leanne Tyler will be directed to turnover the funds to the chapter 7 trustee, and the court will enter an order accordingly.

The court finds this determination to be the most equitable under the circumstances and most closely comport with the state court's intent. Absent bringing all the funds into the estate, attorney Tyler would still be under the state court order directing her to pay debts that would also be treated in the bankruptcy. Some would receive full payment while others received pro rata. The potential for double payment would be possible. In bankruptcy, the trustee can treat all the claims fairly according to the Code. Attorney Tyler will be relieved of the work and expense of distributing the funds. Further, none of the parties will receive a windfall of cash that the state court did not intend. In construing liability for the debts to be placed on Brian, he will discharge any deficiency after distribution. Brian will receive a fresh start and Lori will be relieved of liability for the marital debts as well.

CONCLUSION

The court sustains the objections to Brian's claim of exemption. The court determines that the state court awarded Brian the proceeds from the sale of the log home along with liability for payment of the enumerated debts. M. Leanne Tyler will turnover all the proceeds from the sale of the log home to the chapter 7 trustee A. Fred Berger.

Brian's obligation to pay Lori $5,000.00, and his obligation to hold her harmless from the enumerated debts are excepted from discharge.

The court determines that M. Leanne Tyler does not have a lien on the proceeds from the sale of the log home. Brian's obligation to pay Lori's attorney fees from the dissolution proceeding is excepted from discharge pursuant to 11 U.S.C. § 523(a)(5).

The court notes that the dissolution decree addresses Attorney Douglas Wells' fees and states that he claims an attorney lien. Attorney Wells was Lori's former attorney in the dissolution. To the extent that the state court ordered Brian to pay his fees, the debt would be nondischargeable under the analysis used in determining that the allowance of attorney Tyler's fees is nondischargeable. The court expresses no opinion as to the claim of lien because the question is not properly before the court.

ORDER

IT IS THEREFORE ORDERED, as follows:

(1) Lori Jean Quick and M. Leanne Tyler's Objection to Claim of Exemption is SUSTAINED.

(2) Trustee A. Fred Berger's Objection to Claim of Exemption is SUSTAINED.

(3) Plaintiff M. Leanne Tyler's request for a determination that she possesses a lien on the proceeds from the sale of the residence located at 27217 208th Avenue, Eldridge, IA 52748 is DENIED.

(4) Defendant Brian Keith Quick's obligation to pay Plaintiff Lori Jean Quick's attorney fees as allowed by the Iowa District Court for Scott County in their dissolution marriage is excepted from discharge pursuant to 11 U.S.C. § 523(a)(5).

(5) Defendant Brian Keith Quick's obligation to pay Plaintiff Lori Jean Quick $5,000.00 as property settlement as provided by the Iowa District Court of Scott County in their dissolution of marriage is excepted from discharge pursuant to 11 U.S.C. § 523(a)(15).

(6) Defendant Brian Keith Quick's obligation to hold Plaintiff Lori Jean Quick harmless from creditors for marital debts is excepted from discharge pursuant to 11 U.S.C. § 523(a)(15).

(7) Plaintiff M. Leanne Tyler shall turn over the proceeds from the sale of the residence located at 27217 208th Avenue, Eldridge, IA 52748, a.k.a. the log home to chapter 7 trustee A. Fred Berger within 15 days of the entry of this order.

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