

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

SAMUEL W. THORNDIKE,

Case No. 86-1699-D

Debtor,

Adv.Pro.No. 86-0183

ANITA THORNDIKE,

Plaintiff,

v.

SAMUEL W. THORNDIKE,

Defendant.

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

A pretrial conference on plaintiff's complaint to determine dischargeability of debts was held before this court on January 15, 1987 in Davenport, Iowa. At that time the court considered the plaintiff's motion for summary judgment filed January 9, 1987 and defendant's resistance and cross-motion for summary judgment formally filed January 16, 1987. Arthur L. Buzzell appeared on behalf of the plaintiff and Michael K. Bush appeared on behalf of the defendant. Having the benefit of legal briefs filed by both parties the court now enters the following decision and order on motions for summary judgment.

The plaintiff and defendant were married on August 22, 1964. A decree of dissolution was entered in the Iowa District Court in and for Scott County, Iowa on February 4, 1986. The defendant filed a Chapter 7 petition in bankruptcy on June 9, 1986. In her complaint to determine dischargeability of debts filed August 11, 1986, the plaintiff asserts that various obligations arising out of the decree of dissolution are in the nature of maintenance or support and are nondischargeable under 11 U.S.C. section 523 (a) (5). Under the terms of the decree the defendant was ordered to pay child support in the amount of \$35 per week per child, to pay alimony for Anita Thorndike in the amount of \$80 every two weeks, to pay the debts to Dr. Barudin, First Federal Savings and Loan Association, Montgomery Wards, Sears, Roebuck and Co., Ace Muffler, Oscar Mayer Credit Union, the City of Davenport, Discount Tools and Mercy Hospital, and to pay \$750 of the attorney's fees for Anita Thorndike.

In her motion for summary judgment, the plaintiff asserts that there are no genuine issues of material facts. The plaintiff sets forth the provisions of the dissolution decree detailed above and contends that the defendant's obligations are actually in the nature of support. In his resistance to plaintiff's motion for summary judgment, the defendant asserts that the debts in question are actually in the nature of a property settlement and thus are dischargeable. The defendant then cross-motions for summary judgment in his favor.

Bankruptcy Rule 7056 provides that Federal Rule of Civil Procedure 56 which governs summary judgments applies in bankruptcy adversary proceedings. The Eighth Circuit Court of Appeals has set forth the following standard:

Summary judgment is appropriate only when the moving party satisfies its burden of showing the absence of a genuine issue as to any material fact and that it is entitled to judgment as a matter of law. In reviewing a motion for summary judgment, the court must view the facts in the light most favorable to the opposing party and must give that party the benefit of all reasonable inferences to be drawn from the facts. This Court often has noted that summary judgment is "an extreme and treacherous remedy," and should not be entered "unless the movant has established its right to a judgment with such clarity as to leave no room for controversy and unless the other party is not entitled to recover under any discernible circumstances."

Foster v. Johns-Manville Sales Corp., 787 F.2d 390, 391-92 (8th Cir. 1986) (citations omitted). Applying this standard to the case at hand reveals that an award of summary judgment to either party is inappropriate.

Section 523(a)(5) of the Bankruptcy Code excepts from the operation of a discharge, payments "to a spouse, former spouse or child of the debtor for alimony to, maintenance for, or support of both spouse or child." To determine whether a particular obligation is in the nature of alimony, maintenance, or support rather than a property settlement, the court must examine the underlying purpose of the obligation.

In re Williams, 703 F.2d 1055, 1057 (8th Cir. 1983). In doing so the court is not bound by state law or even the labels used in a divorce decree to characterize an item as maintenance or property settlement. Id.; In re Voss, 20 B.R. 598, 601 (Bankr. N.D. Iowa 1982). Rather, what constitutes alimony, maintenance or support in each case is a question of fact to be determined under federal bankruptcy law. In re Neely, 59 B.R. 189, 193 (Bankr. S.D. 1986); H.R. Rep. No. 595, 95th Cong., 2nd Sess. 364, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 5963, 6320; S. Rep. No. 989, 95th Cong., 2nd Sess. 79, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 5787, 5865.

In both the motion and cross-motion for summary judgment, the parties rely solely on the provisions of the dissolution decree. The parties strongly disagree, however, in the interpretation of those provisions. In order to uncover the real nature of the obligations the court must consider a variety of factors in addition to the terms used in the decree. See In re Coffman, 52 B.R. 667, 674-75 (Bankr. Md. 1985). Those factors are not contained in the record at this time.

WHEREFORE, based on the foregoing analysis, the undersigned finds that an issue of material fact exists in this case.

THEREFORE, the plaintiff's motion for summary judgment filed January 9, 1987 and defendant's cross-motion for summary judgment filed January 16, 1987 are hereby denied.

Signed and filed this 30th day of March, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE