

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

RANDALL V. HEIN,

Case No. 86-2266-D

Debtor.

Adv.Pro.No. 86-0272

LINDA A. HAGENEY,

Plaintiff,

v.

RANDALL V. HEIN,

Defendant.,

ORDER ON COMPLAINT FOR DETERMINATION
EXCEPTING DEBTS FROM DISCHARGE

On April 22, 1987 a trial on a complaint to determine dischargeability of a debt pursuant to 11 U.S.C. section 523(a)(5) was held in Davenport, Iowa. Linda A. Hageney, the plaintiff, filed this complaint on October 21, 1986. Randall V. Hein, the debtor and the defendant in this adversary proceeding, answered on November 24, 1986. James L. Tappa appeared on behalf of Mr. Hein (debtor) and Douglas C. Scovil appeared on behalf of Ms. Hageney (Hageney). The case has been submitted on a stipulation of facts and a trial memorandum submitted by the plaintiff. The debtor was given until May 22, 1987 to submit a brief in support of his arguments. To date, no brief has been filed.

This is a core proceeding pursuant to 28 U.S.C. section 157(b)(2)(I). Having reviewed the record and the briefs submitted by the parties and being fully advised in the premises, the court makes the following findings of fact and conclusions of law pursuant to R. Bankr. P. 7052.

FINDINGS OF FACT

Noting the parties' stipulation of facts, the court makes the following findings:

1. The parties were formerly husband and wife. Two children resulted from the marriage, Sean P., an adopted child, born June 18, 1972 and Heather L., born September 28, 1974.

2. Hageney and debtor were divorced pursuant to the terms of a decree of dissolution entered by the Iowa District Court for Scott County on July 16, 1985.

3. At the time the decree was entered Hageney was unemployed and attending school. The debtor was employed with the Scott County Sheriff's Department and the United States Army Reserves and had a net monthly income of \$1,360.69. Hageney's only source of income was that of support paid to her by the debtor.

4. Physical custody of the children was awarded to Hageney. The debtor was ordered to pay child support in the amount of \$408.00 per month and to pay all medical expenses incurred by the minor children.

5. The decree also provided that Hageney would receive alimony in the sum of \$308.00 per month for a period of twelve months after which the alimony payments were to be reduced to \$208.00 per month. The payments were ordered to be made until her death. The debtor waived any claim of alimony as against Hageney.

6. The decree also provided:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the following debts shall be paid by the respondent, who shall hold the petitioner harmless thereon, the payment of said debts being in lieu of additional family support: Davenport Bank and Trust Company, MasterCard, J.C. Penneys, Sears, Northwestern Bell, Iowa-Illinois Gas & Electric

Company and Davenport Water Company. The respondent's obligation on any of these accounts shall only cover charges incurred through June 6, 1985; any charges incurred thereafter shall be the responsibility of whichever party incurred the same.

7. Finally, the Iowa District Court ordered the debtor to contribute \$300.00 to the payment of Hageney's legal fees, and judgment for the same was entered.

8. The only debts presently in dispute are the following:

a.	MasterCard (incurred through June 6, 1985)	\$814.48
b.	Dr. Ohsann (office calls for Heather and Sean)	\$347.00
c.	Ruud and Scovil (attorneys for Hageney)	\$300.00

9. Debtor filed his petition for relief on August 26, 1986.

10. Hageney asserts in this adversary proceeding that the three obligations set forth above are nondischargeable pursuant to section 523(a)(5) of the Bankruptcy Code.

APPLICABLE LAW AND ANALYSIS

Section 5-23(a)(5) of the Bankruptcy Code 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 both spouse or child, in connection with a separation agreement, divorce decree, 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 actually in the nature of alimony, maintenance or support.

Therefore, this court must determine whether the debts in question are merely part of a property settlement which is dischargeable or constitute alimony, maintenance or support, which is not dischargeable.

Whether a particular obligation is a support obligation or a part of a property settlement is a question of federal bankruptcy law, not state law. 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. A bankruptcy court is not bound by state laws that characterize an item as maintenance or property settlement. In re Williams, 703 F.2d 1055, 1057 (8th Cir. 1983). Nor is a bankruptcy court bound by the labels used in a divorce decree to identify an award as alimony or as a property settlement. Id.; In re Voss, 20 B.R. 598, 601 (Bankr. N.D. Iowa 1982). The court may look behind the decree to determine the real nature of liabilities. In re Ramey, 59 B.R. 527, 530 (Bankr. E.D. Ark. 1986). Whether an obligation in a divorce decree is in fact one for support depends upon the intent of the state court or the parties. In re Calhoun, 715 F.2d 1103, 1107 (6th Cir. 1983); Matter of Walker, 50 B.R. 523, 525 (Bankr. Del. 1985).

Courts have considered several factors in an effort to decipher the intention of the parties and the real nature of liabilities. Those factors include:

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 levels 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. Md. 1985) (and citations contained in footnote 6 at p. 674). Furthermore, bankruptcy courts may only consider the circumstances existing at the time of dissolution and "not the present situation of the parties". Boyle v. Donovan, 726 F.2d 681, 683 (8th Cir. 1984); In re Neely, 59 B.R. 189, 193 (Bankr. S.D. 1986).

The debts involved in the instant case are debts owed to third parties. Such debts, including agreements to pay attorney's fees, can be viewed as maintenance or support depending on the function

the award was intended to serve. In re Williams, 703 F.2d 1055, 1057 (8th Cir. 1983). In that case a state court divorce decree provided that the debtor would pay his wife's attorney's fee. In a subsequently filed bankruptcy, the debtor sought to discharge a number of debts including his obligation to pay the attorney fees. The debtor argued that under state law an award of attorney fees is not an order for support. The court rejected this argument noting the court was not bound by the characterization of an award under state law. The court found that the former wife was in poor health, unemployed and living on only \$600.00 per month. From these facts the court concluded that the transfers described in the decree, including payment of attorney's fee, were intended as support.

The court finds that the parties intended that the debtor's payment of the debts serve as support. Various considerations lead to this conclusion.

First, at the time the decree was entered, Hageney was unemployed and totally dependent upon the debtor for support. Child support payments and alimony totalled \$716.00 per month or \$8,592.00 per year. After the first twelve payments, this amount dropped to \$616.00 per month or \$7,392.00 per year. For a family of three, a lifestyle based upon this yearly income can only be regarded as austere. To be burdened with the debts listed in the decree would have undermined the ability of Hageney to care for herself and her children.

Secondly, the court's attention is drawn to that part of the decree ordering that alimony payments only shall terminate at the death of Hageney. This provision convinces the court that Hageney's ability to financially support herself was limited and hence payment of the debts was made with the intention of support.

Thirdly, the obligation to Dr. Ohsann arises from office calls for the children. Given that the nature of this obligation concerns the physical well-being of the children, the payment of the obligation must be considered for support.

Fourthly, although not bound by the labels used in a divorce decree to identify an award as property settlement or support, the court finds under the facts of this case that the language of the

decree stating that "payment of said debts [are] in lieu of additional family support" is convincing evidence of the parties' intent.

CONCLUSION AND ORDER

WHEREFORE, for the reasons expressed above, the court finds that the defendant's obligations to pay the debts in question are in the nature of alimony, maintenance or support.

THEREFORE, IT IS ORDERED that the debts to MasterCard, Dr. Ohsann and Ruud and Scovil are not dischargeable debts.

Signed and filed this 1st day of October, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE