IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of:	:	
KEVIN CLINGAN,	:	Case No. 97-05062-C J
Debtor.	:	Chapter 7
SHERI CLINGAN,	:	Adv. Pro. 98-98015
Plaintiff,	:	
v.	:	
KEVIN CLINGAN,	:	
Defendant.	:	

MEMORANDUM OF DECISION

Plaintiff Sheri Clingan ("Plaintiff") objects to Chapter 7 Debtor Kevin Clingan ("Debtor") receiving a general discharge of debts. She relies on 11 U.S.C. sections 727(a)(2)(A), 727(a)(3), 727(a)(4)(A) and 727(a)(5). In the alternative, Plaintiff asks the Court to find the judgment she was awarded against the Debtor in state court is nondischargeable pursuant to 11 U.S.C. section 523(a)(15). She also objects to the Debtor's claim of exemptions. Having reviewed the trial transcripts, the exhibits and the arguments of counsel, the Court now enters its decision.

The Court has jurisdiction of these matters pursuant to 28 U.S.C. section 1334 and the standing order of reference entered by the U.S. District Court for the Southern District of Iowa. These are core matters under paragraphs (B), (I) and (J) of 28 U.S.C. section 157(b)(2).

BACKGROUND

In the November 12, 1998 Stipulated Final Pretrial Order, the parties set forth the following Statement Of Undisputed Facts:

A. Plaintiff, Sheri Clingan ("Sheri") was married to Defendant, Kevin Clingan ("Kevin") in Fairfield, Iowa on October 30, 1982.

B. On September 16, 1996, Sheri filed a Petition for Dissolution of Marriage in the Iowa District Court for Jefferson County, seeking to terminate her marriage to Kevin.

C. During Sheri's marriage to Kevin, the parties had three children, all of whom were and continue to be minors:

Child's Name	Date of Birth
Kyle Wayne Clingan	February 17, 1983
Colby Lee Clingan	August 13, 1985
Kasey Jo Clingan	January 5, 1990

D. On August 29, 1997, the Jefferson County District Court entered its Findings of Fact, Conclusions of Law, and Decree in the dissolution of marriage proceeding (the "Decree") involving Sheri and Kevin.

E. Pursuant to the Decree, Sheri was awarded custody of the minor children of the parties and Kevin was ordered to pay child support in the amount of $436.00 per month.

F. Pursuant to the Decree, Kevin was awarded the farming operation and ordered to make payment of all debt owing on the farming operation.

G. Pursuant to the Decree, Kevin was ordered to pay Sheri, the principle sum of $175,000.00. This sum was to be paid to Sheri by Kevin in annual installments of $8,750.00 plus 10% accrued interest beginning November 1, 1997 and continuing on the 1st day of November of each year thereafter until November 1, 2016.

H. Pursuant to the Decree, Kevin was ordered to secure payment of the $175,000.00 by a purchase money mortgage on his land, (105 acres).

I. Pursuant to the Decree, in order to secure payment of the $175,000.00, Kevin was ordered to place a Purchase – Money Fixture Filing on improvements located on unowned land.

J. Pursuant to the Decree, in order to secure payment on the $175,000.00 judgment, Kevin was ordered to name Sheri as the sole primary beneficiary of his life insurance policy.

K. On November 5, 1997, Kevin filed his Bankruptcy Petition pursuant to 11 U.S.C. Chapter 7.

L. Sheri was among the creditors listed in Kevin's bankruptcy schedules.

M. On December 23, 1997, Sheri filed her Objection to Debtor's Claim of Exemption.

N. On January 26, 1998, Sheri filed her Complaint Objecting to Discharge and Dischargeability of Debts with respect to the judgment owed to her by Kevin and with respect to the debts ordered to be paid by Kevin pursuant to the Decree entered by the Jefferson County District Court in the parties' dissolution of marriage proceeding.

O. Pursuant to the Decree, Kevin was awarded the 105 acre farm and ordered to make payment to Farm Credit Services for the debt owing thereon. Following the filing of bankruptcy, the Farm Credit debt became delinquent and as a result of said delinquency, Farm Credit filed a foreclosure petition and obtained personal judgment against Sheri Clingan, Franklin M. Clingan and Sandra K. Clingan (Kevin's parents) and in rem against Kevin Clingan for the sum of $57,539.21.

P. Pursuant to the Decree, Kevin was ordered to make payment of an additional farm debt owing to Farm Credit Bank of Omaha. The debt went into default. Kevin's mother and father, Sandra and Franklin Clingan, have as a result thereof filed a lawsuit against Sheri Clingan claiming that they have made payment of $71,456.79 on said Farm Credit debt as Guarantors, and requesting the Jefferson County District Court to enter judgment in their favor against Sheri Clingan for $71,456.79 plus interest and court costs.

Based on the trial record, the Court makes the following additional findings:

Debtor has been farming since he was a child. He basically worked for his father until he graduated from high school in 1981. At that juncture, his formal education ended and he began to carve out his own livestock operation on his father's land. With hard work and financial assistance from both his father and certain institutional lenders, he was able to purchase machinery, equipment, and ground. He devoted most of his

energies to feeder lambs. He typically purchased them from September through November and again from December through February. He sold them between one and five months after purchase. His operation included some fat cattle. He added feeder pigs in 1992. During the summer months, he spent most of his time taking care of his father's crops. He used some of his own equipment in that endeavor.

From 1990 to 1996 Farm Credit Services (FCS) provided Debtor with a $201,000.00 maximum revolving line of credit for lambs and a $50,000.00 maximum revolving line of credit for pigs. FCS required Debtor and Plaintiff to sign balance sheets, loan applications, farm agreements and notes. FCS requested Debtor's parents cosign the production loans because Debtor and Plaintiff were young farmers engaged primarily in the high risk feeder lamb business. FCS also requested the Debtor's parents cosign the real estate loan because the Debtor and Plaintiff did not have clear title to any land of their own.

From 1990 to 1995 Debtor typically used some of the revolving line of credit to make payments on the real estate debt. He routinely paid off the operating notes from the sale of livestock. He occasionally went over his credit limits at the end of the year when he would pay for the next year's crop inputs and related operating expenses. Whenever that happened, he would obtain a term note with FCS to cover the difference.

Debtor testified that he attempted to carry on his operation as usual after Plaintiff filed for divorce and moved into town in September 1996. However, FCS cut off his revolving line of credit for 1997 and would not extend a term note at the end of 1996. Debtor maintains that was the beginning of the end for his business. He blames the Plaintiff for refusing to sign the renewal documents. Acknowledging she hoped to hasten

a settlement of the dissolution proceeding by withholding her signature, Plaintiff testified she was more concerned about the impact her participation in the renewal process would have on her personal debt load.

Mike Dickinson, an experienced senior loan officer with FCS and the loan officer on the Debtor's account from 1990 to 1997, verified that annual renewal of the operating loans required a new application, current financial information from all the parties and sometimes income projections for the operation. On direct examination, he testified that Plaintiff's failure to provide the requested information and signature prevented him from processing the renewal application for 1997. On cross-examination, he attempted to explain why Plaintiff's signature was a "deal breaker" as follows:

> Well, I guess I – I guess I always considered it a partnership out there, that you know, Sheri had income also. Sheri was in control of the draft book too, so she had not only an effect on income but also had an effect on how much money is being spent. So without them two – without everybody's oars in the water at the same time, it's a deal breaker.

(Tr. at 390, ll. 10-17.) Nevertheless, he acknowledged the Plaintiff's failure to sign the papers was only the first step in the process. That is, the overall financial picture would have determined the outcome.

Mr. Dickinson initially testified that picture was not pretty. First, the operation's working capital fell from $57,785.00 at the end of November 1995 to a negative $145,000.00 at the end of November 1996. Meanwhile, equity decreased from 41 percent to 22 percent. Finally, he believed the impending dissolution made the location of the improvements on leased land troublesome. However, he later acknowledged that the existing mortgages and security agreements protected the position of FCS, meaning not only that Plaintiff's signature on new mortgages and security agreements was not an

issue but that there was adequate collateral to cover the outstanding indebtedness for 1997.

On cross-examination, Mr. Dickinson also admitted the Debtor could have filed an application for a new loan given the impending dissolution. He also agreed the Debtor's parents were extremely wealthy in the sense they would be able to weather tough times. Then in response to an inquiry looking for verification that Debtor and his parents did not submit a new application when the renewal process faltered, he stated:

> Okay. In a word, no. Many things were discussed. I spent many hours with the Clingans, and possibly a discussion came up about that, but I – if it did, I obviously would not have given Kevin any encouragement, because what assets are going to be left when you're done. Tell me what the financials are going to be after divorce. I don't know and you can't either. If you can't give an accurate financial statement, that really tied my hands. So if the discussion come up, it wasn't encouraged. I don't even remember for sure if it – the discussion came up, but to answer your question, no, there was no formal application provided.

(Tr. at 368, l. 23 through 369, l. 11.) On redirect examination, he reiterated a new application would not have been feasible prior to a resolution of the dissolution because factors like asset distribution would be unknown.

On January 3, 1997 Debtor's father made payments of $32,060.09 and $54,530.53 to FCS to lower Debtor's debt balance of $276,200.00. A few days before that, Debtor's father paid $96,459.47 for feeder lambs the Debtor had purchased in November 1996. With that assistance, Debtor continued his operation into 1997. Basically, Debtor fed his lambs, pigs, and cattle and sold them when they were ready to market. Proceeds from the sale of hogs and cattle went to FCS. With Mr. Dickinson's blessing, the proceeds from the sale of sheep went to pay back his father in full before paying FCS. If there were any funds remaining, Debtor used them to pay some of his other bills. Debtor did not

purchase any lambs, pigs or cattle in 1997. His livestock was depleted less than a week before the June 24-26, 1997 dissolution trial.

Meanwhile, the FCS operating loans became delinquent. In four letters dated February 27, 1997, FCS informed Debtor, Plaintiff and Debtor's parents that their various loans were now considered distressed loans and invited them to submit a plan to restructure the notes consistent with the lender's policies. When restructuring did not occur, the matter proceeded to mediation. Mr. Dickinson testified that the Plaintiff contacted him on May 12, 1997 regarding the mediation notice she had received. According to his notes for that date, she indicated surprise that the "Clingan pride" would let the matter proceed that far. Not surprisingly, mediation failed.

As indicated in the parties' stipulation, the state court entered the dissolution decree on August 29, 1997. Neither party appealed that decision. Though the division of assets and liabilities were clear at that juncture, Mr. Dickinson again turned down Debtor's request for financing. He explained:

> I told him as much as I would like to, that it was impossible, because without a resolution I had no comfort level in recommending anything. I didn't know where he stood. There was too many unanswered questions, so it would be impossible to do business until this was resolved.

(Tr. 417, ll. 6-11.) He further testified that he told the Debtor new financing would require bringing the FCS loans current.[1]

In turn Debtor sought relief in this forum—68 days after the dissolution decree was entered. As of the bankruptcy petition date, his child support payments were

[1] Mr. Dickinson's testimony was curious at best. This Court seriously questions his role in the matter as did the state court. (Exhibit 1 at 11-15.) His loyalties appeared to lie with the Debtor and the Debtor's parents. The Plaintiff, however, characterized him as having "been like a friend through all this." (Tr. at 431, ll. 3-4.)

basically current.[2] He, however, had not made the first $8,750.00 payment to the Plaintiff. He also had failed to secure that payment obligation as ordered by the state court.[3]

As for his failure to name Plaintiff as the sole beneficiary on his life insurance policy, Debtor testified he had not complied with that provision yet but probably would do so. He explained his conflict with the issue as follows:

> My insurance policy is for my family, always was, and there's one person that decided not to be part of the family, so the way I view it, that life insurance policy is for my three children, and if I was assured as I sit here if I signed it over it would go to them, it would be done, but that's my conflict.

(Tr. at 44, ll. 6-12.) Debtor acknowledged he could cash in his $37,000.00 life insurance policy and apply that amount to the debt he owed the Plaintiff, but he did not wish to do that because "[i]t's not mine." (Tr. at 281, l. 15.)

As for his failure to place a purchase money mortgage on the 105 acre Weston farm, Debtor explained he did not do so because FCS intended to foreclose on that farm. Indeed, FCS did commence foreclosure proceedings against the Debtor in rem and against the Plaintiff and Debtor's parents but it did so only after they defaulted on the December 1, 1997 installment payment and late charges. In any event, the Debtor did list the $87,000.00 farm on Schedule A (Real Property). The Debtor's father then rented that farm from the bankruptcy trustee in 1998 and subsequently bought the farm at the foreclosure sale for $64,000.00. Plaintiff did not enter a credit bid at that sale. Debtor continues to farm that land with his father.

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[2] Debtor listed $436.00 in child support on Schedule F (Creditors Holding Unsecured Nonpriority Claims).

[3] Debtor also listed the $175,000.00 property settlement on Schedule F.

As for his failure to place a purchase money mortgage on the improvements located on the 80 acre farm upon which he and Plaintiff lived during their marriage, Debtor testified: "The way it was presented to me, I was supposed to receive papers from some attorney, and I received nothing." (Tr. at 42, ll. 9-11.) As for his failure to list the $157,000.00 in improvements on his bankruptcy schedules filed November 5, 1997, Debtor's explanation was more complicated.

Debtor reported that his father had been leasing the 80 acre farm to him in exchange for sweat equity since 1981. His father paid the taxes on the house located on that property. In 1994 his father loaned him approximately $52,000.00 to obtain a grain bin.[4] Debtor paid the taxes and insurance premiums on the grain bin and certain other improvements on that land. He took care of the maintenance. He also made routine payments on the grain bin loan. Then in late October 1997, Debtor's father terminated the verbal lease. Debtor testified the termination was involuntary on his part. Even though he indicated it was his understanding the termination meant the improvements he had placed on that land were no longer his to claim, Debtor admitted making a $10,000.00 loan payment to his father on October 25, 1997 and insisted he intended to pay off the $20,000.00 balance.[5]

Debtor's father corroborated the Debtor's representations but did not clarify them. He maintained the verbal lease terminated when he said so even though Debtor continues to live on the 80 acre farm and continues to provide him with sweat equity. He offered

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[4] Debtor's testimony and his father's testimony are not consistent regarding the description of this improvement. The Court finds that inconsistency inconsequential and will refer to the improvement as a grain bin for the purpose of this memorandum of decision.

[5] Debtor listed the balance on Schedule F.

Debtor's inability to obtain livestock financing as the reason for the lease termination. He admitted he filed neither a forcible entry and detainer action nor a foreclosure action to enforce his landlord's lien against the improvements. Then, while maintaining all the improvements were now his, Debtor's father not only acknowledged that Debtor was paying him back in full for the financing he had provided for the grain bin but also stated he assumed Debtor's equity in that improvement was increasing accordingly.

On December 23, 1997 Debtor amended Paragraph 5 of his Statement of Financial Affairs as follows:

> Debtor and his former spouse had an interest in certain improvements on properties leased from Franklin Clingan. The oral lease was verbally terminated prior to the filing of the Petition. Debtor did not list improvements as an asset on Schedules as it is his understanding that improvements on leasehold property go to the landlord under the applicable Iowa law after the termination of the Lease.

On November 2, 1998 Debtor amended Schedule B (Personal Property) by adding a list of machinery and equipment that he valued at $1,460.00. Debtor testified he discovered the omission of the shop tools when his deposition was taken by one of Plaintiff's attorneys. However, he did not add to the amendment machinery and equipment worth $226,915.00 on December 31, 1996. Debtor explained he sold those items to his father and his brother-in-law between that date and the date he filed his bankruptcy petition. He used some of the proceeds to pay child support and other bills. He admitted $114,953.87 of those proceeds went to FCS.[6] Debtor's father verified he purchased most of the Debtor's machinery in October 1997. He acknowledged the

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[6] In paragraph 5 of the Statement of Financial Affairs (Repossessions, Foreclosures and Returns) filed November 5, 1997, Debtor reported: "Secured machinery sold to Franklin Clingan. Proceeds to Farm Credit Services." In paragraph 10 (Other Transfers) of that document, he stated: "Sold machinery and equipment to Franklin Clingan for $114,860. Monies applied to secured debt at PCA."

machinery is still in use in connection with his farming operation "just like it always was" and the Debtor uses that machinery "to feed my livestock." (Tr. 225, at l. 24 and Tr. 226, at l. 16.)

With regard to livestock worth $232,126.00 on December 31, 1996, Debtor again stated he probably sold off his lambs to his father, his hogs to Iowa Beef Packers and his fat cattle at a sale barn in Kalona, Iowa by June 1997. Then between the entry of the dissolution decree and the time he commenced this case, Debtor sold off his corn and soybeans to pay bills, including making payments to FCS. Hence, livestock and crops do not appear on Schedule B.

On November 2, 1998 Debtor also amended Paragraph 3(b) of his Statement of Financial Affairs to reflect the following six payments he made to his father: $18,717.80 on February 18, 1997; $1,529.70 on March 25, 1997, $75,000.00 on April 21, 1997; $47,082.00 on May 2, 1997; $5,598.40 on May 9, 1997; and $10,000.00 on October 25, 1997.[7] The last was the building payment mentioned above; the rest were reimbursements for livestock purchases. Except for the October 25, 1997 payment that appeared in paragraph 3(a) and 3(b) of his original Statement Of Financial Affairs, Debtor denied making any other payments to his father between the dissolution trial and the commencement of his Chapter 7 case. Exhibit S, however, reveals that Debtor signed a check dated August 15, 1997 and payable to his father in the amount of $846.39. Debtor otherwise agreed he paid his father approximately $157,927.00 during the year before he sought bankruptcy relief.

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[7] Exhibits A-14 and A-17 indicate that the $18,717.80 payment was made on February 28, 1997. The exhibits also reveal very slight variations in the amount of cents for some of the other payments.

Debtor also testified that he owed his father over $183,000.00 on December 31, 1996. He reduced that amount to $118,196.00 prior to the dissolution trial in June 1997. He stated that Schedule F (Creditors Holding Unsecured Nonpriority Claims) incorrectly shows him owing his father only $38,000.00 on November 5, 1997.[8] He claimed the amount should be between $110,000.00 and $118,000.00. He insisted his deposition testimony to the contrary was incorrect. The Debtor, however, has not amended Schedule F to date.

At the time of filing, Debtor represented on Schedule I (Current Income of Individual Debtor) that he had no income except from crops. He did not set forth any average monthly amount. At the time of trial, Debtor acknowledged he started receiving payments-in-kind from his father as early as December 1997. During the Plaintiff's case-in-chief, he did not dispute that the transfers he received between December 3, 1997 and June 19, 1998 amounted to $13,003.55, meaning the average monthly income was approximately $1,857.65. During his case-in-chief, he stated he received approximately $13,313.00 in payments-in-kind in 1998 or an average of $1,109.62 per month. From that he subtracted $100.00 per month in taxes to arrive at a net monthly income figure of $1,009.62.

Debtor's father testified the payment-in-kind arrangement was devised by his CPA to avoid paying social security tax. Debtor's father simply had the packer or buyer of the commodity he was selling make a check out to the Debtor for a given amount. He acknowledged having full discretion over how much of the sale proceeds Debtor would receive. For example, the December 1997 payment had been over $5,000.00. Debtor's

[8] Debtor listed only the $20,000.00 balance on the September 1, 1994 grain bin loan and $18,000.00 incurred in 1996 for feed corn.

father also pointed out that Debtor continued to reside in the home on the 80 acre farm rent free in return for sweat equity. He suggested the waived rent was the equivalent of at least $800.00 additional monthly income.

At the time of trial Debtor indicated his monthly expenses were $1,731.77, as compared to the $2,522.66 figure listed on original Schedule J (Current Expenditures of Individual Debtor). He provided historical information in support of the following itemized expenses: $220.26 for utilities; $250.00 for food; $58.85 for medical and dental costs not covered by insurance; $632.91 for all insurance; $93.95 for miscellaneous items; and $39.80 for recreation. His monthly child support obligation continued at $436.00. Debtor reported he had not sought an adjustment for Kyle's support even though the eldest son was now staying with him.

In addition to the above expenses, Debtor testified that he owed his father for the following loans: $12,000.00 for purchase of items from the bankruptcy trustee; $6,518.00 and $308.00 for 1997 taxes; and $10,000.00 for legal fees related to this litigation. He added he still owed his attorney another $3,000.00 for this proceeding. He had no pension or retirement plan. Debtor, however, is the beneficiary on his parents' life insurance policy. Debtor's father testified the policy is set up to permit the Debtor to buy any land the Debtor chooses after he and the Debtor's mother die.

On cross-examination, Debtor acknowledged that a payment-in-kind transfer had directly paid his semi-annual health insurance premium in January 1998. As for the loan amounts he owed his father, he was not sure whether he would be paying those on a monthly basis. Debtor admitted reaffirming his lease with New Holland Credit Company and that the annual lease payment was $588.06. He did not deny that he bought back

items from his bankruptcy estate for seemingly less than full market value. Debtor admitted he hoped to resume his farming operation but disputed any contention he could have continued farming after the dissolution, even if the lease with his father had not been terminated. Debtor reasoned bankruptcy was the only way out because he had no money.

Debtor also testified the amount of the judgment awarded to the Plaintiff did not have much impact on his decision to file for Chapter 7 relief. In support of that representation, he pointed out he owed others and could not obtain credit in the interim. While Debtor agreed he could have paid Plaintiff rather than some other creditors before filing on November 5, 1997, he insisted that really did not make any difference because he could not pay everyone.[9] Though Debtor repeatedly mentioned the Plaintiff's failure to cooperate in the renewal process as the reason for his financial demise, he did not openly admit that was the reason he had not adhered to the letter and the spirit of the dissolution decree.

Plaintiff testified that she did not take the need for her signature on the renewal documents seriously because she believed the Debtor would be able to continue farming by borrowing from his father if necessary. She was surprised that Debtor sold his assets in lieu of seeking financial help from his father. When called as a witness in the Debtor's case-in-chief with respect to the 11 U.S.C. section 523(a)(15) exceptions, Plaintiff nevertheless agreed with Debtor's counsel that Debtor did not and does not have the

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[9] In Paragraph 3(a) of the Statement of Financial Affairs filed on November 5, 1997, Debtor indicates he paid 18 creditors a total sum of $37,107.64 in the 90 days preceding the commencement of his Chapter 7 case. The sum includes approximately $3,500.00 in child support that he paid in advance to the clerk of the state district court. (The record does not explain the discrepancy with Schedule F. See supra note 2.)

ability to pay her the $175,000.00 without financing from an institutional lender or without a bail-out from his father.

During cross-examination in her case-in-chief on the third day of trial, Plaintiff qualified her earlier testimony by stating she believed Debtor could pay her the amount he owed under the dissolution decree regardless of help from his father. She believed he simply did not wish to do so for the reason she gave during direct examination: "He swore he would never pay me a dime." (Tr. 520, l. 24.) When pressed to explain how he would be able to pay her, Plaintiff responded: "From the time of the dissolution and the time that he filed bankruptcy, he lost over $200,000.00 worth of assets. Who knows where they're at, and who knows what they are, but they're gone." (Tr. at 546, ll. 9-12.) Upon redirect examination, she reiterated her belief the Debtor had the ability to pay her before he sought relief in this forum.

Debtor acknowledged that his net worth was $387,392.00 on November 3, 1995, $204,355.00 on December 31, 1996, and $178,828.92 on June 20, 1997. Furthermore, he did not dispute that the August 29, 1997 dissolution decree left him with approximately $213,000.00 net worth. When asked why he had a negative net worth of almost $170,000.00 on November 5, 1997, Debtor responded: "That is a question that a lot of us can't seem to answer." (Tr. at 111, 11. 18-19.)

As for her financial picture without the property settlement, Plaintiff estimated her monthly income was $1,733.55 and her monthly expenses were $1,775.00 on November 5, 1997. As for her income, Plaintiff reported she had been earning $9.00 an hour as a maintenance coordinator for Telegroup. Her 1997 income included those wages, plus $4,800.00 from self-employment as a groundskeeper and $547.00 from the sale of her

artwork. In May of 1997, she also cashed out her life insurance policy worth over $3,000.00 to pay some bills. After the petition was filed, her rate of pay at Telegroup increased to $12.00 an hour but then she was laid off from that work at the end of October 1998. As of May 1999, she was earning $9.74 an hour or approximately $390.00 a week working as a meter reader for the City of Fairfield Water Department. The work included a little overtime at time and a half. She was accruing one sick day per month of work and would be entitled to one week of vacation after one year. She was eligible for medical insurance.

Plaintiff indicated some of her monthly expenses had increased since the bankruptcy petition was filed and some had decreased. The most current figures included: $500.00 for rent; $132.00 for utilities; $80.00 for telephone; $40.00 for home maintenance and bookkeeping; $40.00 for cable; $350.00 for food; $150.00 for clothing; $87.00 for fuel; $35.00 for recreation; $10.00 for homeowner's content insurance; $32.00 for auto insurance; a $187.00 auto installment; and $145.00 for auto repairs[10] and registration. She was also paying off a $849.00 debt for a couch at $35.00 a month, and she had more than $3,4000.00 in credit card debts. She owed her parents approximately $7,000.00 and her attorneys over $25,000.00. Pursuant to the dissolution decree, she was responsible for half of the medical bills related to Kyle's knee surgery.

Plaintiff testified she already found it difficult to make ends meet and that she definitely would not be able to absorb any more debt should the Debtor's parents be

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[10] Plaintiff based her auto repair estimate on actual expenses she had incurred for maintenance of a vehicle she has since traded for a 1992 van. Her father cosigned the van loan.

successful in their lawsuit against her.[11] Plaintiff, however, has counterclaimed for $175,000.00 in damages based on allegations of fraud and racketeering related to the loss of the improvements resulting from the alleged termination of the lease.

DISCUSSION

With respect to objections to discharge, the plaintiff bears the burden of proof. Fed. R. Bankr. P. 4005. The standard of proof is a preponderance of the evidence. In re Scott, 172 F.3d 959, 966-67 (7th Cir. 1999) (noting the United States Supreme Court has not specifically addressed the standard for 11 U.S.C. section 727(a), citing to four circuits that have ruled on the matter, and concluding that preponderance of the evidence is the appropriate standard).

Section 727(a)(2)(A)

11 U.S.C. section 727(a)(2)(A) provides:

> (a) The court shall grant the debtor a discharge, unless –
> . . . .
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> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed –
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> (A) property of the debtor, within one year before the date of the filing of the petition; or. . . .

11 U.S.C. § 727(a)(2)(A).

A plaintiff must establish the debtor had an actual intent to hinder, delay or defraud a creditor; constructive intent will not suffice. See Lovell v. Mixon, 719 F.2d 1373, 1376-77 (8th Cir. 1983). Since the statute sets forth the intended consequences in

[11] According to Debtor's father, Mr. Dickinson and another FCS representative requested he pay off the Debtor's operating note in full rather than simply curing the arrearage. Hence, as stated in the parties' stipulation, the parents are seeking $71,456.79 from the Plaintiff.

the disjunctive, a plaintiff need not prove intent to defraud in order to prevail under this section. See McCormick v. Security State Bank, 822 F.2d 806, 808 n.3 (8th Cir. 1987). However, "[f]raudulent intent is presumed in section 727(a)(2) cases in which the debtor has gratuitously conveyed valuable property." Matter of Armstrong, 931 F.2d 1233, 1239 (8th Cir. 1991) (citing City Nat'l Bank v. Bateman, 646 F.2d 1220, 1222 (8th Cir. 1981)). Then the burden shifts to the debtor to prove intent was not to defraud one or more of his or her creditors. See id. A court may determine intent based on the circumstances surrounding the transaction. See McCormick, 822 F.2d at 808.

Plaintiff contends the Debtor should be denied a discharge under this section because he intended to hinder, delay or defraud her both by making significant cash payments to his father within months before filing for relief in this forum and by permitting the loss of ownership in the improvements to occur via the termination of the lease within two or three weeks before filing his bankruptcy petition. The Court agrees.

Debtor's bankruptcy petition was filed on November 5, 1997. Thus, the one year period in issue began on November 5, 1996. During that time frame, Debtor systematically sold off his property and made both due and advance payments to various creditors—other than the Plaintiff. In particular, Debtor's November 2, 1998 amendment to Paragraph 3(b) of his Statement of Financial Affairs reveals he made significant payments to his father, an insider, between mid February and late October of 1997. Though some of the payments may have been reimbursements for purchases of livestock and paybacks on personal loans, no documentation establishes that the Debtor's father was a secured creditor. Their past business relationship suggests there was no immediate need to make all of those payments. While the Debtor's amendment reflects only one

payment made to his father after the dissolution decree was entered, the prior payments appear to have been made in anticipation of an unfavorable outcome in the dissolution proceeding. In any event, those payments were made at the expense of the first $8,750.00 due and owing Plaintiff on November 1, 1997.

The Court need not rely on the badges of fraud present in this case to determine the Debtor's intent. That is, the Debtor's testimony and demeanor leave no doubt that he intended to avoid paying the Plaintiff one dime of the $175,000.00 judgment.[12] A comparison of Schedule F and Paragraph 3(a) of his Statement of Financial Affairs filed November 5, 1997 reveals that he paid most of his unsecured debts and even made advance payments on child support. His protest about having insufficient funds to pay everyone falls far short of being persuasive. The bottom line is the Debtor chose not to pay the Plaintiff despite otherwise available funds.

As for the transfer of the improvements on the 80 acre farm by operation of the termination of the lease, the Court finds the representations made by the Debtor and his father lack credibility. The form over substance termination was a convenient stratagem that the Debtor did not challenge because he had no need to do so. That is, the oral termination of the verbal lease resulted in no meaningful change in the long standing relationship between the Debtor and his father. The Debtor still resides on the 80 acre farm in exchange for his sweat equity. Indeed, the Debtor's father specifically noted the current waived rent had a value of at least $800.00 per month. Likewise, the Debtor

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[12] Throughout the three days of trial, Debtor appeared to be hurt and angry. The Court did not notice him glance at the Plaintiff even once when he was seated at counsel table and only rarely when he was testifying. His obvious hostility toward the Plaintiff often came across in his testimony and appeared to dominate his reasoning on many issues.

continues to pay back the grain bin loan and his father assumes the Debtor's equity is growing accordingly. The purported termination of the lease and the concomitant transfer of ownership in the improvements from the Debtor to his father had but a single purpose—to hinder, delay, and defraud the Plaintiff.[13]

Accordingly, the Court finds that the Plaintiff has sustained her burden of proof and the Debtor must be denied a discharge of debts under section 727(a)(2)(A).

Section 727(a)(3)

11 U.S.C. section 727(a)(3) provides:

> (a) The court shall grant the debtor a discharge, unless –
> . . . .
>
> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case. . . .

11 U.S.C. § 727(a)(3).

Intent is not an element of this section. See In re Wolfe, 232 B.R. 741, 745 (B.A.P. 8th Cir. 1999). The statute requires the debtor to create books and records that accurately document the debtor's business affairs. See Scott 172 F.3d at 969. Once a creditor has established a prima facie case, the burden shifts to the debtor to justify why the particular records were not maintained. See Wolfe 232 B.R. at 745 (citing Anderson v. Wiess, 132 B.R. 588, 592 (Bankr. E.D. Ark. 1991)). See also Meridian Bank v. Alten,

[13] The Court concludes the circumstances of this case fall within the range of conduct Congress sought to address in enacting 11 U.S.C. section 727(a)(2)(A) whether one considers the result of the conduct in this case to be a transfer, a removal, or a concealment. Accordingly, the Court declines to analyze whether the termination of the lease was valid and, if so, whether the Debtor thereby lost his ownership rights in the improvements. (The Plaintiff somewhat inconsistently argued that the termination resulted in a transfer of the Debtor's property but that the termination did not comply with sections 562.6 and 562.7 of the Iowa Code because it was not in writing. The Debtor, on the other hand, cited case law discussing situations in

958 F.2d 1226, 1232-34 (3rd Cir. 1992) (noting whereas the objecting party had the burden of persuasion under Section 14(c) of the Bankruptcy Act and former Bankruptcy Rule 407, the debtor carries that burden under the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4005 as interpreted in light of the Advisory Committee comments). But compare In re Brown, 108 F.3d 1290, 1295 (10th Cir. 1997) (holding that in order to establish a prima facie case, the objecting party must establish that the debtor failed to maintain and to preserve adequate records and that such failure made it impossible to ascertain the debtor's financial condition and material business transactions).

Justification turns on what records a reasonable person similarly situated would have kept and maintained. In re Cox, 41 F.3d 1294, 1299 (9th Cir. 1994). Factors that courts consider on a case-by-case basis include: the debtor's intelligence, education, and business acumen; the debtor's involvement in the business; the debtor's reliance on another to keep the business records; the nature, size and complexity of the debtor's business; the debtor's compliance with any state law record-keeping requirements; and any other circumstances that should be considered in the interest of justice. See id.; Meridian, 958 F.2d at 1231-32.

Plaintiff contends the Debtor's failure to keep or to preserve any recorded information verifying the basis for the substantial payments to his father warrants a denial of discharge. The Court agrees.

Though Exhibit A-14 contains Debtor's handwritten record of various transactions between February 10, 1997 and November 1, 1997 and though Exhibits K

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which written leases were under consideration and seeming overlooked the footnote that suggested the modern trend is to find tenants have rights in improvements when there is no actual lease to consider.)

and A-17 contain copies of the checks Debtor wrote to his father on or about the dates reflected in the November 2, 1998 amendment to Paragraph 3(b) of the Statement of Financial Affairs, those documents do not evidence any details about the livestock purchases or the underlying loans. The Court is left to wonder about the existence, nature and extent of any true borrower-lender relationship between the Debtor and his father. Of additional concern is that Exhibit S, the August 15, 1997 check that Kevin made payable to the order of his father in the amount of $846.39, is not reflected on Exhibit A-14 and was not included in the November 2, 1998 amendment.[14]

The Court realizes the Plaintiff did the farm bookkeeping prior to her move from the farm homestead in September 1996. That does not justify the Debtor's subsequent failure to keep and to preserve adequate records documenting the alleged loans from his father. That is, the Debtor appeared to be an intelligent individual who should not have had any difficulty keeping the necessary paperwork to support his representations to the Court. Nor does the fact that the Debtor's farming operation has always been closely tied to that of his father alleviate the need for appropriate documentation. Indeed, given the insider nature of the relationship, accurate and complete record keeping is of paramount importance.

Accordingly, the Court finds that the Plaintiff has sustained her burden of proof and the Debtor must be denied a discharge of debts under section 727(a)(3).

Section 727(a)(4)(A)

11 U.S.C. section 727(a)(4) provides:

> (a) The court shall grant the debtor a discharge, unless –
> . . . .

[14] Unlike the checks appearing in Exhibits K and A-17, the check in Exhibit S appears to contain a handwritten memo regarding the purpose of the check.

> (4) the debtor knowingly and fraudulently, in or in connection with the case –
>
> (A) made a false oath or account;

11 U.S.C. § 727(a)(4).

The statute requires the misrepresentation be material. See In re Olson, 916 F.2d 481, 484 (8th Cir. 1990). "The subject matter of a false oath is 'material,' and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." Id. (quoting In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984)(per curiam)). The value of the subject matter of a false oath is not determinative of the materiality of the false oath. See id. at 484. "[T]he petition, including schedules and statements, must be accurate and reliable, without the necessity of digging out and conducting independent examinations to get the facts." Mertz v. Rott, 955 F.2d 596, 598 (8th Cir. 1992) (quoting from trial court's bench ruling).

Plaintiff contends the Debtor's failure to list all transfers, payments, assets and income on his original petition, schedules and statement of financial affairs should reap a denial of discharge. Except for the omission of payments-in-kind, the Court agrees.

The record establishes that the Debtor participated in the preparation of the documents in issue and that he signed them under oath. The documents were filed on November 5, 1997. The record reveals that those documents were materially deficient because they did not mention the termination of the verbal lease and loss of improvements within two or three weeks of filing, the six (or seven) payments to Debtor's father within nine months of filing, and certain items of machinery and

equipment. Those events and items were related to the Debtor's business transactions or estate. As for the omission of income related to the payments-in-kind, the record indicates that indirect financial support from the Debtor's father did not commence until December 1997.

As indicated earlier, the Debtors' demeanor and testimony left the Court with no doubt that he intended to avoid paying the Plaintiff the amount awarded under the state court judgment. Clearly, with the exception of the provisions related to child support, he had failed to comply with any of the other provisions in the dissolution decree. The running record before the state court and this court chronicles the steps he took to whittle down his financial ability to comply with any judgment favorable to the Plaintiff. His father and his lender assisted him in that effort. Given the short amount of time that transpired between those efforts and the bankruptcy filing and given the value of the improvements and size of the payments to the father, it is inconceivable that such events and items would have been overlooked at the outset of the case. Given the pattern of conduct, the Court also finds it impossible to excuse the original omission of $1,460.00 in machinery and equipment.

The Court realizes that Federal Rule of Bankruptcy Procedure 1009(a) permits a debtor to amend a voluntary petition, list, schedule or statement any time before the chapter case is closed. That Rule, however, does not permit a debtor to take lightly the separate sworn declarations regarding the information provided in the original petition, list, schedules and statement of financial affairs. While there may be situations in which a debtor may avoid a denial of discharge by amending a petition, list, schedule or statement, this is not such a case. That is, the Court finds that both the December 23,

1997 amendment to Paragraph 5 of the Statement of Financial Affairs and the November 2, 1998 amendments to Schedule B and Paragraph 3(b) of the Statement were too little too late under the facts of this case.

Accordingly, the Court finds that the Plaintiff has sustained her burden of proof and the Debtor must be denied a discharge of debts under section 727(a)(4)(A).

Section 727(a)(5)

11 U.S.C. section 727(a)(5) provides:

> (a) the court shall grant the debtor a discharge, unless –
> . . . .
>
> (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities. . . .

11 U.S.C. § 727 (a)(5).

Though the plaintiff has the burden of persuasion, a debtor must satisfactorily explain the loss or deficiency once the plaintiff establishes the basis for the objection. See In re Hawley, 51 F.3d 246, 249 (11th Cir. 1995). Vague and indefinite explanations based on estimates uncorroborated by documentation are unsatisfactory. See In re Chalik, 748 F.2d 616, 619 (11th Cir. 1984); Matter of Reed, 700 F.2d 986, 992-93 (5th Cir. 1983). In sum, the section requires the debtor to provide a good enough explanation about the loss or deficiency of assets so that the court need not speculate about what really happened to those items. See Matter of D'Agnese, 86 F.3d 732, 734-35 (7th Cir. 1996). The section does not require the debtor to justify the wisdom of such disposition. See id. at 735.

The Plaintiff argues the Court should deny the Debtor a discharge of debts because the Debtor has not satisfactorily explained the reason for the sudden and drastic dissipation of his assets prior to filing his bankruptcy petition. The Court does not agree.

Though even the Debtor testified that he could not explain why he had a negative net worth on November 5, 1997, the Court finds that the record leaves no need to speculate about what happened to his assets. That is, the Debtor sold his crops, livestock and most of his machinery and equipment to make some payments in the ordinary course of business and to make some significant payments that were not. By operation of the termination of the lease, he claims to have lost the value of the improvements. The Court does not find that his motive in taking or participating in such actions is of any consequence for this particular Code section.

Accordingly, the Court finds the Plaintiff has failed to carry her burden of persuasion under section 727(a)(5).

Section 523(a)(15)

Though the Court's rulings on sections 727(a)(2)(A), 727(a)(3) and 727(a)(4)(A) render the dischargeability complaint moot, the Court will address that cause of action in the alternative. This is done for the purpose of completing all findings and conclusions at the trial level lest the denial of discharge be appealed and reversed and the adversary proceeding be remanded for a determination of the dischargeability issues.

With respect to the complaint to determine dischargeability under section 523(a)(15), the Plaintiff bears the burden of proving by a preponderance of the evidence that the debt in issue arose from a separation agreement, dissolution decree or other court order and is not in the nature of alimony, maintenance or support. If she succeeds then

the Debtor bears the burden of proving by a preponderance of the evidence that he is nevertheless entitled to a discharge of that debt pursuant to one of the two exceptions set forth in the statute.

11 U.S.C. section 523(a)(15) specifically provides:

> (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 –
>
> . . . .
>
> (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).

The parties do not dispute that the $175,000.00 judgment arose from a dissolution decree and is not in the nature of alimony, maintenance or support. The record before the Court does not suggest otherwise. Accordingly the Debtor must pay that obligation unless he can establish he does not have the ability to do so or the benefit of his fresh start outweighs the detrimental consequences to the Plaintiff.

Debtor testified he did not have the ability to pay the debt in issue. During cross-examination on the second day of trial, the Plaintiff agreed. She changed her opinion on the third day of trial. Though the Court initially wondered why the Plaintiff had

commenced a section 523(a)(15) complaint after the Court heard her testimony on the first date and though the Court typically finds a witness' change in testimony on a subsequent date to be somewhat suspect, the Court nevertheless finds that the Plaintiff sufficiently qualified her earlier remarks in a credible fashion.

Indeed, on the date of filing, the Debtor indicated that he had no monthly income except for an unspecified amount from crops and that his monthly expenses averaged $2,522.66. Then the trial testimony of the Debtor and his father suggested the net monthly income figure should be at least $1,000.00, without even taking into consideration the value of the waived rent. At trial, Debtor also adjusted his monthly expenses downward to $1,731.77. Nevertheless, based on those limited facts, he still had negative monthly disposable income.

Once again, however, the Court can not ignore the material and relevant facts found in the bigger picture. While the dissipation of assets may have temporarily left the Debtor without the ability to generate income as he had done in years prior to 1997, the record suggests no reason to conclude the Debtor will not be able to resume running a profitable operation in the future. In the interim, he receives a steady flow of payments-in-kind to cover his expenses. Neither the Debtor nor his father explained why their arrangement could not accommodate an extra $8,750.00 plus interest per year until the Debtor resumes his own operation and begins turning a profit.

Instead, the record reveals the Debtor's operation and that of his parents have been closely aligned over the years—always in reality if not always on paper. Moreover, as the state court noted, the Debtor has a phenomenal work ethic. He has provided his father with sweat equity for years and will likely provide more as the father continues to

age. It was clear to this Court that the Debtor has a strong sense of commitment to his family in general and to the family farm in particular. His father appears to realize and to appreciate Debtor's devotion and hard work and, with his wife, has arranged their estate planning to secure Debtor's future on a farm of his choice.

Last but not least, the Debtor's access to funds in his life insurance must not be overlooked. $37,000.00 is not a trivial amount.

In sum, the Debtor had the ability to pay at least the $8,750.00 owing the Plaintiff on the date of filing and, as directed by the dissolution decree, he should have the ability to continue making the yearly installments plus interest until 2016. Whether he could have paid off the full amount of the judgment on the petition date is of no consequence. Hence, the Debtor is not entitled to discharge the debt in issue under paragraph (A) of section 523(a)(15).

As for paragraph (B) of that section, the Debtor has failed to persuade the Court that the benefit of his fresh start outweighs the detrimental consequences the Plaintiff faces if the $175,000.00 judgment were discharged. The record indicates that the Plaintiff's average monthly expenses slightly surpassed her monthly net income at the time the Debtor commenced his Chapter 7 case. As of the third day of trial, her financial situation had not noticeably improved. Absent realizing an actual dollar recovery on the counterclaim in the suit Debtor's parents have brought against her and not just a dollar for dollar setoff against any judgment they might obtain, the Plaintiff will be facing even tougher times meeting routine expenses while paying off the extra substantial bills that have accrued in the interim. Her attorney fees alone are cause for concern, especially when the Court takes into account that the fees result from various litigation related in

one way or another to the Debtor's efforts to avoid paying the judgment in issue. Finally under the dissolution decree, she has custody of the three children and is primarily responsible for their day to day living expenses. That the eldest son had been living with the Debtor at the time of trial and that the Debtor continued to pay the Plaintiff the full amount of child support ordered by the state court does not factor significantly into this analysis.

Meanwhile, the Debtor paid much of his outstanding debt prior to filing his bankruptcy petition. According to his bankruptcy schedules, the debt he owes the Plaintiff far surpasses anything he owes any other creditor. Moreover, the record demonstrates that he filed his Chapter 7 case in an attempt to avoid paying the judgment in issue and that he did so in a hurry—barely more than two months after the dissolution decree was filed.[15] Except for child support, the Debtor made absolutely no effort to comply with any of the directives found in the state court dissolution decree. The fresh start was not intended to cover the debt under consideration.

Accordingly, in the alternative to the objection to discharge rulings, the Court finds that the Debtor has failed to carry his burden with respect to the exceptions found in section 523(a)(15) and, therefore, the debt in issue is nondischargeable.

Exemption Controversy

Plaintiff also timely objected to Debtor's claim of exemptions on the ground that all the property was covered by the judicial lien imposed by the dissolution decree. The Plaintiff did not otherwise argue the exemptions were not properly claimed under Chapter 627 of the Iowa Code. The Debtor responded that the judicial lien did not cover all his

[15] The record does not reveal whether the bankruptcy filing was held in abeyance until the 60 day presumption period found in 11 U.S.C. section 523(a)(2)(C) had passed.

exemptions and, more importantly, that the imposition of the judicial lien was not relevant in an exemption controversy.

At the time of the preliminary telephonic hearing on the exemption controversy, the Court observed that the objection to exemption did appear to anticipate a motion to avoid lien and might be impacted by the outcome of the dischargeability action since the Plaintiff had also alleged a section 523(a)(5) cause of action.[16] Accordingly, the Court continued the matter for hearing in conjunction with the trial in this adversary proceeding and, if filed in the interim, with a hearing on the Debtor's motion to avoid lien.

To date, the Debtor has not filed a motion to avoid lien in the Chapter 7 case. The Plaintiff did not pursue a section 523(a)(5) cause of action at trial. Finally, in closing argument, Plaintiff simply relied on the record in support of her objection to exemption without explaining why the objections would not be proper under Iowa Code section 627.6.

Accordingly, the Court finds that the objection to Debtor's claim of exemptions has no merit and should be overruled. Parenthetically, the Court points out that such ruling does not impact the disposable income analysis set forth in the discussion of section 523(a)(15)(A).

CONCLUSION

Wherefore, the Court hereby finds that:

(1) The Plaintiff has met her burden of proof under 11 U.S.C. section 727(a)(2)(A), section 727(a)(3) and section 727(a)(4)(A); and therefore

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[16] 11 U.S.C. section 522(c)(1) provides in part that exempt property remains liable for a debt excepted from discharge under 11 U.S.C. section 523(a)(5). 11 U.S.C. section 522(f)(1)(A) provides in part that a debtor may not avoid a judicial lien that secures a debt for alimony, maintenance or support.

(2) The objection to discharge is sustained; and

(3) Judgment shall be entered accordingly in this Adversary Proceeding; and an Order Denying Discharge shall be entered accordingly in the Chapter case; and

(4) The Clerk of Court shall give Notice of No Discharge in accordance with Federal Rule of Bankruptcy Procedure 4006.

(5) The $175,000.00 judgment arose from a dissolution decree and is not in the nature of alimony, maintenance or support; and

(6) The Debtor has failed to meet his burden of proof under paragraphs (A) or (B) of section 523(a)(15); and therefore

(7) The judgment is nondischargeable and the terms and conditions of the state court decree remain in full force and effect; and

(8) Judgment in the alternative shall be entered accordingly in this Adversary Proceeding.

(9) The objection to Debtor's claim of exemptions lacks merit; and therefore

(10) The objection is overruled, and

(11) An Order shall be entered accordingly in the Chapter 7 case.

(12) The parties shall bear their own costs.

Dated this 29th day of August, 2000.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE

Parties served: Debtor, M. Mallaney, A. Landis, S. Gardner, Trustee, U.S. Trustee