

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

IN RE: )  
) Bankruptcy Case No. 88-40611  
ANN M. AHLGREEN, )  
)  
Debtor. )  
  
ANN M. AHLGREEN, )  
)  
Plaintiff, )  
)  
v. ) Adversary Case No. 88-0227  
)  
ILLINOIS STATE SCHOLARSHIP )  
COMMISSION, )  
)  
Defendant. )

O P I N I O N

The debtor filed a complaint on September 16, 1988, to have an education loan debt declared dischargeable as an undue hardship under 11 U.S.C. §523(a)(8)(B). The Illinois State Scholarship Commission answered that repayment of the educational loan would not be an undue hardship. A trial was held on January 20, 1989. The parties requested, and were given, two weeks to submit additional briefs. A brief filed by the debtor was received by the Court on February 1, 1989.

The issue before the Court in this case is whether the debtor's circumstances amount to an "undue hardship" provided in the Code.

The debtor is a married, but separated, forty year old female who has four children and one grandchild at home. The children are ages

nineteen, eighteen, seventeen, and thirteen. The grandchild is age two. She receives no financial support from the children's father at the present time, but did receive some support in the past. She has been unable to collect on a judgment for support obtained in Indiana against him.

The nineteen year old son is not working now, but is seeking employment. The eighteen year old daughter works part time at a fast food restaurant to assist in the support of her son, the debtor's grandchild. The same daughter is a part time student who receives some financial aid.

The debtor has earned the A.A., B.S. and M.S. degrees in the business and education fields. She has served since October 1988 as an instructor at Robert Morris College, a business college in Springfield, Illinois. She expects a ten month contract for this teaching position and has a gross income from it of \$2,000 per month. She claims a net income of \$1,486 per month after deductions.

The debtor testified that her monthly expenses included utilities of \$127.65, telephone charges of \$100, automobile payment of \$296, and rent for a small home of \$465 per month. She listed other smaller monthly expenses.

The debtor testified about certain physical ailments she has had over the years. She claims to have some physical disabilities, including difficulty in climbing stairs, walking long distances, and

driving long distances. Furthermore, she testified that the bankruptcy process has caused some emotional distress because of her current plight. She did testify that she feels like she is getting over her emotional reaction to bankruptcy.

Section 523(a)(8)(B) of Title 11 provides that a student loan that becomes due within five years after the repayments begin is not dischargeable unless repayment,

"will impose an undue hardship on the debtor and the debtor's dependents. . . . The debtor has the burden of proving that repayment would constitute an undue hardship. In re Reid, 39 B.R. 24, 26 (Bkrtcy. E.D. Tenn. 1984); In re Holzer, 33 B.R. 627, 630 (Bkrtcy. S.D. N.Y. 1983); In re Lezer, 21 B.R. 783, 787-88 (Bkrtcy. N.D. N.Y. 1982). As stated in In re Briscoe, 16 B.R. 128, 131 (Bkrtcy. S.D. N.Y. 1981), 'the dischargeability of student loans should be based upon the certainty of hopelessness, not simply a present inability to fulfill financial commitment.'" In re Panteli, 41 B.R. 856 (Bankr. So.D. N.Y. 1984)

The debtor in this case appears to be a determined individual who has obtained three college degrees. She has supported her children almost solely in recent years. Her testimony at trial showed her to be a bright, articulate person who accomplishes her goals. She has earned college degrees in business education, and she is currently teaching at the business college level. It is to be expected that her seventeen, eighteen, and nineteen year old children will soon provide more of their own support. She is overcoming what she described as depression

caused by the embarrassment of having filed for bankruptcy. She has accomplished much by the age of forty and her future looks bright.

The Court concludes that, based on all the evidence, the payment by the debtor of the student loan debt may be difficult, but such payment would not amount to an undue hardship within the meaning of §523(a)(8)(B).

Counsel for the Illinois State Scholarship Commission suggested that, should the Court find for the State, the debtor could be ordered to pay the loan, without interest, at the rate of twenty-five dollars (\$25.00) per month. The Court will follow that advice with a slight adjustment. The debtor is ordered to repay the principle, without interest or attorney's fees for collection, at the rate of twenty dollars (\$20.00) per month beginning three months from the date of this order.

This Opinion is to serve as Findings of Facts and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

ENTERED: February 3, 1989.

/s/ Gerald D. Fines  
U.S. Bankruptcy Judge