

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

IN RE:)
)
TERRY L. GOODIN, JR.,) Bankruptcy Case No. 99-61067
)
Debtor.)
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)
LISA TUCKER,)
)
Plaintiff,)
)
vs.) Adversary Case No. 00-6027
)
TERRY L. GOODIN, JR.,)
)
Defendant.)

OPINION

This matter having come before the Court for trial on a Complaint to Determine Dischargeability of Debt filed by the Plaintiff, Lisa Tucker, on June 2, 2000; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The parties herein were married and received a Judgment for Dissolution of Marriage in the Circuit Court of Marion County, Illinois, in Case No. 98-D-259, on January 19, 1999. As a part of their Judgment for Dissolution of Marriage, the parties entered into a Marital Settlement Agreement wherein, at Paragraph 8, it was stated:

8. Husband shall assume and pay the following

outstanding indebtednesses, holding Wife harmless from any liability arising therefrom: Sallie Mae; Fleet Credit Card; Bank of America; and First USA; . . .

In the parties Marital Settlement Agreement, the Debtor was further obligated to pay a Citibank Gold credit card; a debt to Elizabeth Franczyk, MD; and a debt to Samuel M. Smith, Jr., DMD. Subsequent to the dissolution of the parties' marriage, the Debtor filed for bankruptcy relief under Chapter 7 of the Bankruptcy Code on December 23, 1999, including on Schedule F of his bankruptcy petition the debts noted above which he had been ordered to pay as a result of the dissolution of the parties' marriage and the entry of the Marital Settlement Agreement.

The instant Complaint to Determine Dischargeability of Debt was filed by the Debtor's ex-wife, who has since remarried, seeking to have the debts enumerated above to be declared non-dischargeable pursuant to 11 U.S.C. § 523(a)(15). To prevail under § 523(a)(15), the Plaintiff must establish that she has a claim against the Debtor, other than the type set forth in 11 U.S.C. § 523(a)(5), that was awarded by a Court in the course of a divorce proceeding or separation. In re Paneras, 195 B.R. 395 (Bankr. N.D. Ill. 1996), *citing* In re Silvers, 187 B.R. 648 (Bankr. W.D. Mo. 1995). Once the Plaintiff demonstrates that the debts in question are of a type other than set forth in 11 U.S.C. § 523(a)(5) (and this fact is conceded in our case), the burden shifts to the Debtor/Defendant to show either (1) that he lacks the ability to pay the debt at issue, or (2) that the discharge would be more beneficial

to the Debtor/Defendant than detrimental to the Plaintiff. See: Paneras, supra, at 403; In re Hill, 184 B.R. 750, at 754 (Bankr. N.D. Ill. 1995). The debts will remain dischargeable if paying the debts would reduce the debtor's income below that necessary for the support of the debtor and the debtor's dependents. See: Hill, supra, at 754. Because this language mirrors the disposable income test found in 11 U.S.C. § 1325(b)(2), most Courts utilize an analysis similar to that used in determining disposable income in Chapter 13 cases. See: Hill, supra, at 755; In re Smither, 194 B.R. 102 (Bankr. W.D. Ky. 1996); In re Carroll, 187 B.R. 197, at 200 (Bankr. S.D. Ohio 1995); In re Phillips, 187 B.R. 363, at 369 (Bankr. M.D. Fla. 1995); and In re Hesson, 190 B.R. 229, at 237 (Bankr. D. Md. 1995). The burden of proof required for establishing exception to discharge is a preponderance of the evidence. Grogan v. Garner, 111 S.Ct. 654 (1991).

In reviewing the legislative history of 11 U.S.C. § 523(a)(15), this Court concludes that that section is concerned with the relative positions of the parties at the time of the bankruptcy, and not at the time of the dissolution. See: In re Becker, 185 B.R. 567, at 569 (Bankr. W.D. Mo. 1995). The point in time during the bankruptcy which is critical is not precisely spelled out in the statute. In this case, the Debtor/Defendant cites authority for the proposition that the point in time which is critical is the time of trial, whereas the Plaintiff cites cases indicating that the critical point is the time at which the bankruptcy petition was filed. A review of the authorities cited leads

this Court to conclude that the critical point in time is the point at which the bankruptcy petition was filed, and, in support of this finding, the Court cites those cases which were presented by the Plaintiff, namely: In re Carroll, *supra*; In re Taylor, 191 B.R. 760 (Bankr. N.D. Ill. 1996); and In re Strayer, 228 B.R. 211 (Bankr. S.D. Ind. 1996).

In this case, the Plaintiff has established that the claim that she has against the Debtor/Defendant is other than the type set forth in 11 U.S.C. § 523(a)(5). Further, it is clear that the claim the Plaintiff has against the Debtor/Defendant was awarded by the State Court in the course of a divorce proceeding in Marion County, Illinois. This having been established, the burden shifts to the Debtor/Defendant to show either that he lacks the ability to pay the debt at issue or that the discharge would be more beneficial to the Debtor/Defendant than detrimental to the Plaintiff. It has been uniformly held that, if the debtor shows the lack of ability to repay the subject debt, the inquiry ends and the debt is deemed dischargeable. See: In re Jenkins, Bankruptcy Case No. 95-71034, Adversary Case No. 95-7177 (Bankr. C.D. Ill. 1996). In this case, the Debtor/Defendant failed to show that he lacks the ability to pay the debts at issue. At the time of his bankruptcy filing, the Debtor's schedules show that, with the discharge of debts other than those involved in this proceeding, the Debtor would have sufficient income to make regular payments toward the reduction of the debts in question. The Court recognizes that the

Debtor's financial condition has changed since the time of his bankruptcy filing such that his ability to pay is less than it was at that time; however, the Court concludes that the Debtor/Defendant still, even at this point in time, has the ability to pay the debts in question. While the Debtor/Defendant presented evidence that he will have a difficult time making payments, his own testimony indicated that, if he were required to make the payments, his standard of living would only be affected to a minimal degree. The evidence presented by the Debtor/Defendant as to his inability to pay and his financial condition could be described as general at best. The Debtor/Defendant did not supply any detail as to the expenses which he claims to be responsible for, and a review of the information provided leads the Court to the conclusion that the Debtor/Defendant has the ability to adjust his budget in a manner that would allow for substantial and regular payment on the debts at issue.

Having determined that the Debtor/Defendant has failed to show a lack of ability to repay the debts at issue, the Court turns to the question of whether the discharge would be more beneficial to the Debtor/Defendant than detrimental to the Plaintiff. In this case, the evidence is clear that the Plaintiff does not have the ability to repay the debts in question. Her credible and unrebutted testimony reveals that, while she is managing to stay current on her obligations and expenses at this point in time, the added burden of being required to pay the debts in question would make it impossible for her to meet all

of her obligations while maintaining a reasonable standard of living for herself and her dependents. Having concluded that the Plaintiff lacks the ability to pay the debts in question and that she is employed to the fullest extent of her capacity, the Court must find that the discharge of the subject debts would be more detrimental to the Plaintiff than beneficial to the Debtor/Defendant. As such, the Court must find that the Plaintiff has prevailed on her Complaint under 11 U.S.C. § 523(a)(15), and that the debts in question should be determined non-dischargeable in bankruptcy.

ENTERED: December 8, 2000.

/s/ GERALD D. FINES
United States Bankruptcy Judge