

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ILLINOIS

In Re	)	In Bankruptcy
	)	
JAMES R. GOSSETT	)	No. 98-40928
	)	
Debtor.	)	
	)	
AMY SHEEHAN, f/k/a,	)	
AMY GOSSETT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 98-4074
	)	
JAMES R. GOSSETT,	)	
	)	
Defendant.	)	

**OPINION**

Before the Court is the Complaint of Amy Sheehan, f/k/a Amy Gossett ("Plaintiff") objecting to the dischargeability of a debt owed to her by her former husband James R. Gossett ("Debtor") under the terms of the parties' Judgment of Dissolution of Marriage and Marital Settlement Agreement. Plaintiff seeks a determination that the debt is nondischargeable pursuant to Section 523(a)(15) of the Bankruptcy Code.

On January 3, 1996, a Judgment of Dissolution of Marriage was entered by the Circuit Court for the First Judicial Circuit, Jackson County, Illinois, dissolving the marriage of Plaintiff and Debtor and incorporating in its terms a Marital Settlement Agreement entered into by the parties. Paragraph 4 of the Marital Settlement Agreement provided that Debtor would assume and maintain all credit card debts, including interest, the balance of which totaled approximately \$27,000.

Subsequent to the dissolution, one credit card was paid in full; however, Debtor continued

to use the other credit card accounts and make additional purchases and, on May 29, 1998, Debtor filed his voluntary petition under Chapter 7 of the Bankruptcy Code. On July 16, 1998, Plaintiff filed her adversary complaint seeking to have the debt owed to him by Debtor declared nondischargeable pursuant to Section 523(a)(15) of the Bankruptcy Code. At the time of trial, there were three credit cards which made up the subject matter of this action: (i) a Capital One card with a balance of approximately \$9,700; (ii) a First USA card with a balance of approximately \$9,700, and (iii) a Prudential card with a balance of approximately \$7,000.

11 U.S.C. §523(a)(15) provides in pertinent part as follows:

(a) A discharge under section 727 . . . 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 . . . 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. . . ; or

(B) discharging the debt would result in a benefit to the debtor that outweighs the detrimental consequences to the spouse, former spouse, or child of the debtor(.)

To prevail under § 523(a)(15), the debt in question must be other than the type set forth in § 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, 403 (Bankr. N.D. Ill. 1996) *citing In re Silvers*, 187 B.R. 648, 649 (Bankr. W.D. Mo. 1995). Once this is established (and it is not disputed in our case), the burden of proving that the debt falls within either of the two exceptions to nondischargeability rests with the debtor. *In re Crosswhite*, 148 F. 3d 879, 884-85 (7<sup>th</sup> Cir. 1998). Hence, once the creditor's initial proof that the claim falls under Section 523(a)(15) of the Bankruptcy Code is made, the debt is excepted from discharge and the debtor is responsible for the debt unless the debtor can prove either of the two exceptions, subpart (A), the “ability

to pay” test, or (B), the "detriment" test. *Id.*, 148 F. 3d at 885.

If the debtor can show the inability to pay the debt, the examination stops and the debtor prevails. The debt will remain dischargeable if paying the debt would reduce the debtor's income below that necessary for the support of the debtor and the debtor's dependents. *In re Hill*, 184 B.R. 750, 754 (Bankr. N.D. Ill. 1995). 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. *Hill*, *supra* at 755; *In re Smither*, 194 B.R. 102, 108 (Bankr. W.D. Ky. 1996); *In re Carroll*, 187 B.R. 197, 200 (Bankr. S.D. Ohio 1995); *In re Phillips*, 187 B.R. 363, 369 (Bankr. M.D. Fla. 1995); *In re Hesson*, 190 B.R. 229, 237 (Bankr. D. Md. 1995). However, if the debtor can afford to make the payment, either in a lump sum or in installments over time, then the inquiry proceeds to Section 523(a)(15)(B) where the debtor has the burden to show that the benefit to the debtor from not having to pay the debt at issue is greater than the detrimental effects on the creditor - his spouse, former spouse, or child - who then must pay the debt. *In re Crosswhite*, *supra*, 148 F.3d at 885.

In this case, Debtor works full-time as an insurance agent for Prudential Insurance Company where he earns approximately \$2,083 per month. Debtor's income has been declining somewhat substantially over the past several years due to increased competition and various other changes in the insurance industry. After appropriate deductions are taken from his pay (not including voluntary 401K contributions), Debtor nets approximately \$1,458 per month. Debtor is remarried; his current wife suffers from epilepsy and does not work. As a result of the marriage, Debtor has two minor stepchildren. Debtor's wife receives \$500 per month child support.

Debtor's necessary monthly living expenses include a mortgage payment (\$222), electricity/gas (\$100), water/sewer (\$30), telephone (scheduled at \$100; allowed at \$75), cable (\$25), home maintenance (\$150), food (\$668), clothing (\$150), laundry/dry cleaning (\$30), medical/dental expenses (\$188), transportation (\$262 - allowable because of age and mileage of vehicle), recreation (scheduled at \$125; allowed at \$75), auto insurance (\$64), installment debt to Michaelson's (\$50), attorney fees (\$100), cell phone (\$55 - allowable because of Debtor's occupation), Internet service (scheduled at \$20;

disallowed) and pet care (\$24).

Based upon the foregoing, Debtor's household income, consisting of his net income from Prudential and child support payments received by his current wife, totals \$1,958 per month. The reasonable and necessary living expenses of Debtor's household totals \$2,268 per month. As Debtor does not have the ability to pay the subject debt, the inquiry ends at Section 523(a)(15)(A) and the subject debt is dischargeable under Section 523(a)(15).

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

See written Order.

ENTERED: November 30, 1998

/s/ LARRY LESSEN  
UNITED STATES BANKRUPTCY JUDGE