

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

IN RE:

INDIA JO NEWLIN,

Bankruptcy Case No. 01-60983

Debtor.

INDIA JO NEWLIN,

Plaintiff,

vs.

Adversary Case No. 02-6015

EDUCATIONAL CREDIT
MANAGEMENT CORPORATION,

Defendant.

OPINION

This matter having come before the Court for trial on a Complaint to Determine Dischargeability of Debt; 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.

In determining whether a student loan is dischargeable under 11 U.S.C. § 523(a)(8) of the Bankruptcy Code, the Seventh Circuit Court of Appeals, in In re Roberson, 999 F.2d 1132 (7th Cir. 1993), adopted the three-part test set forth by the Second Circuit in the case of Bruner v. New York State Higher Education Services Corp., 831 F.2d 395 (2nd Cir. 1987). The three-part test enunciated in Bruner

requires the Debtor in this case to demonstrate: (1) that the Debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that her state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the Debtor has made good faith efforts to repay the loans. The Debtor bears the burden of proof by a preponderance of the evidence to establish the three Bruner elements and to show that repayment would constitute an undue hardship. Roberson, supra.

The first prong of Bruner requires that the Debtor show that she cannot maintain, based on current income and expenses, a minimal standard of living for herself and her dependents if she is forced to repay the student loan at issue. The evidence adduced at trial indicates that the Debtor currently had no dependents other than herself. As such, the Court is limited to considering only the Debtor's personal living expenses under this analysis. While the Court is not unsympathetic to the unfortunate circumstances that the Debtor finds herself in, the Court is unable to conclude that the Debtor has shown that she cannot maintain a "minimal" standard of living for herself if forced to repay the student loan at issue. In particular, the Court notes that some of the Debtor's expenses are not necessary, and, if eliminated, would provide funds that could be directed toward repayment of her student loans. The Court understands the desire of the Debtor to retain a five-acre tract of rural real estate; however, the Debtor's payment of the mortgage on this property and the real estate taxes are not payments which are reasonably necessary living expenses. Additionally, the Court finds that the Debtor's voluntary payment of approximately \$100 per month to her son is not necessary for the Debtor's support. The Court understands the Debtor's desire to make this payment; however, under the authority of In re Roberson, supra, and In re Goulet, 284 F.3d 773 (7th Cir.

2002), the Court is unable to conclude that said payment is a necessary expense of the Debtor in maintaining a "minimal" standard of living.

In addition to finding that the Debtor has the ability to relieve herself of certain expenses, the Court finds that the Debtor is gainfully employed at a good job earning approximately \$32,000 per year. The Debtor has a very good employment record, and clearly has marketable skills, not only in relation to her present employment, but also in relation to her educational background. The Debtor in this case has both a Bachelor's and a Master's Degree, and, although her present situation is unfortunate, the Court is unable to conclude that this debtor fits within the profile typically seen in cases where an undue hardship is found under 11 U.S.C. § 523(a)(8). The Court is cognizant of the Debtor's present medical situation; however, there is no evidence to indicate that the Debtor's condition will hamper her ability to remain gainfully employed so long as she continues to seek proper medical treatment.

Under part 2 of the Bruner test, the Debtor must demonstrate, by a preponderance of the evidence, that additional circumstances exist indicating that her state of affairs is likely to persist for a significant portion of the repayment period of the student loans at issue. As stated above, while the Debtor presently finds herself in an unfortunate position, there is insufficient evidence showing additional circumstances that indicate that her state of affairs will persist for a significant portion of the repayment period of the student loans at issue. The Defendant indicated at trial that the Debtor could choose a period of time as long as 15 years in which to repay her student loan indebtedness, and there is no evidence to substantiate any assertion by the Debtor that her present situation will continue to exist indefinitely. While the Court is aware that the Debtor will have difficult decisions to make to free up the funds necessary to pay on her student loans, the difficulty of those decisions does not rise to the level of an "undue hardship" as defined under 11

U.S.C. § 523(a)(8).

In conclusion, having determined that the Debtor has failed to meet her burden of proof on parts 1 and 2 of the Bruner test, the Court finds it unnecessary to address part 3. Based upon the Debtor's failure to meet her burden of proof by a preponderance of the evidence, the Court finds that the Debtor's Complaint to Determine Dischargeability of Debt must be denied.

ENTERED: April 17, 2003.

/s/Gerald D. Fines
United States Bankruptcy Judge