

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

IN RE:)
)
GREGORY C. PHILPOT,) Bankruptcy Case No. 03-61133
)
Debtor.)
_____)
)
RENEE LYNN PHILPOT,)
)
Plaintiff,)
)
vs.) Adversary Case No. 03-6051
)
GREGORY C. PHILPOT,)
)
Defendant.)

OPINION

This matter having come before the Court for trial on a Complaint to Determine Dischargeability of Debts Under 11 U.S.C. Section 523; the Court, having heard arguments of counsel, having reviewed evidence and documentation submitted by the parties, 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.

Title 11 U.S.C. § 523(a)(5) provides that an indebtedness to a former spouse for alimony, maintenance, or support of the spouse or of the couple's children, which is memorialized in a divorce decree is not dischargeable in bankruptcy. However, the division of marital property, pursuant to a divorce decree, is treated as a debt dischargeable in bankruptcy. In re Coil, 680 F.2d 1170 (7th Cir. 1982). The

burden of proof is upon the plaintiff by a preponderance of the evidence to show that the debts in question are in the nature of maintenance or support, rather than purely property settlement matters. Grogan v. Garner, 111 S.Ct. 654 (1991). Both the language of the statute and case law require that the Court determine the substance of the obligation and make its ruling based upon substance, rather than the label attached to the obligation. See: In re Shine, 802 F.2d 583 (1st Cir. 1986); In re Calhoun, 715 F.2d 1103 (6th Cir. 1983); and In re Messnick, 104 B.R. 89 (Bankr. E.D. Wisc. 1989).

In determining whether a property settlement agreement is in the nature of alimony, maintenance, or support, the Court must review numerous factors. In re Daulton, 139 B.R. 708 (Bankr. C.D. Ill. 1992). The Court notes that certain of the facts set out in Daulton, supra, bear more weight upon the decision than do others. The mere fact that a party may have more factors in his or her favor is not dispositive of the dischargeability issue where those factors are of less significance than others.

The material facts in this matter are not in dispute, and, in fact, the Defendant admitted all allegations of the Plaintiff's Complaint, except paragraph 8, which concludes that the debts at issue are non-dischargeable under both provisions of 11 U.S.C. §§ 523(a)(5) and (15). At this point, the Court would note that, at the outset of the hearing held on May 24, 2004, Plaintiff noted that she was proceeding only under 11 U.S.C. § 523(a)(5), and that the Court need not consider issues previously raised under 11 U.S.C. § 523(a)(15).

The Court has examined the debts at issue in this proceeding, and finds that, in applying the factors set forth in Daulton, supra, the debts are non-dischargeable pursuant to the provisions of 11 U.S.C. § 523(a)(5). Even though the debts in question are to be paid to third parties, the Court finds that the allocation of payment to the Defendant/Debtor was in the nature of maintenance, just as the State Court

concluded in concurrent proceedings before it.

In ruling in favor of the Plaintiff, the Court finds that the original State Court judgment awarding debts against the Defendant and in favor of the Plaintiff acts as a balance of the income between the parties. Additionally, the Court finds that the provisions in the divorce decree of the parties regarding the debts at issue here is separate and apart from the property settlement and division sections of the divorce decree. The Court also finds that, absent the award of the debts against the Defendant in the divorce decree, the amount of maintenance and child support otherwise awarded would have been inadequate. At the time of the award of debts, the evidence is clear that the Defendant was making more money than the Plaintiff, and that the award of maintenance and child support in and of themselves was insufficient to properly support the Plaintiff and the minor children of the parties. The Court also notes that, although it is not controlling, the award of debts was related to maintenance, and it is clear that the parties understood that the award of debts was done in such a manner as to afford more support and maintenance to the Plaintiff.

In addition to the factors noted above, the Court also finds that the parties to the State Court divorce decree were represented by counsel and that, in approving the divorce decree, the State Court intended for the award of debts to be a supplement to maintenance to the Plaintiff. For all these reasons, the Court must conclude that the debts at issue are non-dischargeable pursuant to the provisions of 11 U.S.C. § 523(a)(5), and judgment should be entered in favor of the Plaintiff.

ENTERED: June 16, 2004.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

