

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

IN RE:)
)
DARREN W. SIEBERT,) Bankruptcy Case No. 96-
60818)
)
Debtor.)
_____)
MICHELLE L. SIRES,)
)
Plaintiff,)
)
vs.) Adversary Case No. 97-6006
)
DARREN W. SIEBERT,)
)
Defendant.)

OPINION

This matter having come before the Court on a Complaint to Determine Dischargeability of Debts filed by the Plaintiff, on February 10, 1997; 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.

Findings of Fact

The Court finds that the material facts in this matter are not in serious dispute and are, in pertinent part, as follows:

The Plaintiff and Defendant were married on June 5, 1992, and separated on or about February 10, 1996. A Judgment of Dissolution of Marriage was entered, in Effingham County, on August 16, 1996. At the time of the divorce, both parties were 24 years old and both were employed. The Debtor was employed with 21st Century Pork,

in Bible Grove, Illinois, earning approximately \$18,000 per year. The Plaintiff was employed with the Petty Company, in Effingham, Illinois, earning somewhere between \$8,300 and \$11,000 per year. At the time of the divorce, the Plaintiff was also a full-time student at Eastern Illinois University. The parties did not have any children during their marriage or from any previous relationship. The Judgment of Dissolution of Marriage (Plaintiff's Exhibit 1) entered in Effingham County, on August 16, 1996, contained a Marital Settlement Agreement which the parties had executed and which was incorporated into the Judgment of Dissolution. At paragraph 4A, of the Marital Settlement Agreement, the Debtor agreed to be responsible for the following marital debts:

- (1) Sears in the approximate amount of \$804.00;
- (2) Shell Master Card in the approximate amount of \$2849.38;
- (3) NBC Visa in the approximate amount of \$1124.76;
- (4) Discover Card in the approximate amount of \$2014.12;
- (5) Internal Revenue Service in the approximate amount of \$406.00;
- (6) RTA in the approximate amount of \$325.00;
- (7) Dentist bill in the approximate amount of \$176.00.

The Marital Settlement Agreement further stated as to these debts that:

and with respect to all such debts, Husband agrees to hold Wife harmless thereon. Wife waives her right ever to claim or seek maintenance from Husband except insofar as he is responsible for the payment of the debts listed herein. Husband's assumption of the joint debts of the parties specified herein is intended by the parties to be a duty directly related to the support and maintenance of the wife, though payments of said debts shall not be deductible by Husband as alimony for tax purposes or included in the gross income of Wife for tax purposes.

At the time of the parties divorce, Plaintiff's uncontroverted testimony indicated that her average monthly expenses exceeded her

average monthly income, even though she was not paying rent, given that she had moved back in with her parents in order to make ends meet. The evidence indicated that the Plaintiff was paying approximately \$125 a month on the parents' phone bill to compensate them for her living in their home. The evidence further indicated that, while the Debtor received a majority of the marital debt, he also received the marital residence, the furniture in it, the appliances in it, and his pick-up truck, along with all of his personal property. At the present time, the parties' testimony indicates that the Debtor is still earning a greater income than the Plaintiff; the Plaintiff is still living with her parents and attending school part time; and that she is having difficulty making ends meet given her present expenses, let alone the difficulties she would have if she were to be required to pay on the joint debts which the Debtor has sought to discharge in his bankruptcy. The instant bankruptcy proceeding was filed under Chapter 7 of the Bankruptcy Code on November 22, 1996. In his schedules, the Debtor seeks to discharge Shell Master Card, Discover Card, NBC Visa debt, and RTA Systems debt, all of which he agreed to hold the Plaintiff harmless on in their Judgment of Dissolution of Marriage. The instant adversary proceeding was filed on February 10, 1997, seeking to hold those debts non-dischargeable which the Plaintiff agreed to hold the Plaintiff harmless on in their Marital Settlement Agreement, made part of their Judgment of Dissolution of Marriage.

Conclusions of Law

Title 11 U.S.C. § 523(a)(5) provides, in pertinent part, that:

(a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt -

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that -

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

The issue of whether a debt is in the nature of alimony or maintenance is determined under federal law and not state law. The intent of the parties in the Divorce Court is controlling. The Bankruptcy Court is not bound by the labels which are placed upon awards in the Judgment of Dissolution. However, those labels may well be pertinent evidence in a given case. In re Woods, 561 F.2d 27 (7th Cir. 1977); In re Coil, 680 F.2d 1170 (7th Cir. 1982); In re Daulton, 139 B.R. 708 (Bankr. C.D. Ill. 1992).

In determining whether the debts in question contained in the parties' Marital Settlement Agreement are in the nature of alimony or maintenance, the Court must review numerous factors. See: In re Daulton, supra, at 709. In reviewing the factors set out in Daulton, the Court finds that certain of those factors bear more weight 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. Considering the Daulton factors as applied to the facts of this case, the Court finds that, while the label placed upon the assumption of the debts in paragraph 4A of

the Marital Settlement Agreement is not binding on this Court, it is dispositive of the parties' intent in this matter. The Court finds that, while the Debtor attempted to testify that he did not understand that his payment of these debts was in the nature of maintenance, it is apparent that the Debtor did, in fact, know that he either had the choice of paying these debts or having his ex-wife, the Plaintiff, pay some of these debts and being required to pay her maintenance so that she would be able to do so. Even though the Debtor was not represented by an attorney, it is apparent that he entered into serious negotiations with the Plaintiff and her attorney, and that he did, in fact, understand what he was doing. His intent to provide maintenance in the form of payment of the subject debts is clear when the testimony of all parties is reviewed as a whole. The Court further finds that the payment of the subject debts served to balance the income of the parties as the evidence is clear that, at the time of the divorce, the Debtor was earning more money than the Plaintiff. It is also clear that, without the payment of these debts, the Plaintiff would not have been able to support herself, even though she had streamlined her expenses considerably by moving in with her parents and being required to pay only a minimal amount per month for a place to live. Finally, the Court notes that the positioning of the debt assumption in the category of maintenance, rather than in amongst property settlement items, further bolsters the finding that the parties intended that the debt assumption in question be in the form and nature of maintenance to the Plaintiff.

In conclusion, the Court finds that, after examining numerous factors as set out in Daulton, it must find that the debt assumption in question was in the nature of maintenance to the Plaintiff as that term is defined under 11 U.S.C. § 523(a)(5), and that the definition of alimony and/or maintenance as proposed by the Debtor is not an appropriate definition to consider in making a determination of non-dischargeability under 11 U.S.C. § 523(a)(5).

ENTERED: July 31, 1997.

/s/ GERALD D. FINES
United States Bankruptcy Judge