
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	Adversary Proceeding
LARRY AMOS LAXTON)	
d/b/a Laxton Tractor & Equipment)	Number <u>93-2004</u>
(Chapter 13 Case <u>92-20512</u>))	
)	
<i>Debtor</i>)	
)	
)	
LARRY AMOS LAXTON)	
)	
<i>Plaintiff</i>)	
)	
)	
v.)	
)	
DARLENE BLANTON)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

Plaintiff filed this adversary proceeding on January 23, 1993, to determine the dischargeability of certain divorce related debts pursuant to 11 U.S.C. Sections 523(a)(5) and 1328(a)(2). A trial of the complaint was held on May 4, 1993. Upon consideration of the evidence adduced at the hearing, the briefs submitted by the parties, and the applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Plaintiff and Defendant were divorced March 20, 1991, pursuant to a Final Judgment and Decree of divorce filed in the Superior Court of Wayne County. The divorce decree incorporated the settlement agreement of the parties dated February 6, 1991. In paragraph one of the agreement designated "Alimony" Plaintiff/Husband agreed to pay Defendant/Wife a total of \$15,000.00 payable as follows:

[T]he sum of FIVE THOUSAND & NO/100 (\$5,000.00) DOLLARS on the date of the Final Judgment and Decree; an additional FIVE THOUSAND & NO/100 (\$5,000.00) DOLLARS, six (6) months after divorce is granted; and an additional FIVE THOUSAND & NO/100 (\$5,000.00) DOLLARS, twelve (12) months after divorce is granted as alimony.

See Final Judgment and Decree, Defendant's Exhibit "1." The Defendant agreed as follows:

The Defendant Wife hereby expressly waives and relinquishes any past, present or future right she may have for her support and maintenance by the Husband and expressly accepts this provision in full and final settlement and satisfaction of all claims, demands for alimony, or other provisions of support and maintenance and fully discharges the Husband from any and all such claims. Further, the Defendant Wife releases any rights she may have for a future modification of this alimony agreement.

See Final Judgment and Decree. In paragraph six, "Division of Property," Defendant agreed to transfer Plaintiff/Debtor possession and title to the real property, which includes their former home and business. Plaintiff agreed to assume the indebtedness on the property. Defendant wife received a 1987 Nissan automobile with Plaintiff to make payments on said

automobile. The agreement states that the parties have otherwise "amicably divided" their personal property.

Subsequent to the entry of the divorce decree, Debtor made the first two \$5,000.00 payments to Defendant. After the two payments were made, Defendant remarried, February 14, 1992, prior to the due date of the third and final payment of \$5,000.00. Defendant filed a contempt action in Superior Court to force Debtor to pay the final \$5,000.00 installment. Debtor argued that the payments were for alimony, which terminated by law upon Defendant's marriage. Defendant argued that the payments were property division, which did not cease upon remarriage.

The Superior Court Judge entered an order on June 1, 1992, concluding that the \$5,000.00 payments constituted a property settlement. The judge heard testimony of the parties and examined the agreement as a whole emphasizing the property division section, which provided the Defendant with the Nissan automobile and few other pieces of property in exchange for her rights. The Court rejected Debtor's alimony arguments and refused to dismiss the contempt action. This Chapter 13 proceeding was filed soon after on July 20, 1992.

A hearing was held on Debtor's adversary complaint on May 4, 1993. Debtor argued that Defendant's claim in the Chapter 13 proceeding is dischargeable and should be treated as an ordinary unsecured claim. Defendant argued that her claim is nondischargeable and should be treated as secured based on equitable lien rights arising from the transactions between the parties.

Defendant gave extensive testimony concerning the value of the property transferred to Defendant under the divorce decree. Defendant produced a May 3, 1993, letter from the Chief Tax Appraiser of Wayne County, which stated that the property records for the real property at issue show a value of \$90,825.00, substantially greater than the \$74,000.00 market value listed by Debtor in his petition. The letter was supported by copies of the official property record cards. Debtor argued that he used the most recent county appraisal when he prepared his petition in July of 1992. Defendant testified that she thought the market value of the property was approximately \$130,000.00 considering the \$60,000.00 in improvements made to the property. Debtor paid \$65,000.00 for the property.

Debtor repaired and sold tractors at his business located next to his home on the real property at issue. Defendant worked at the business as secretary and supervisor during the marriage. A substantial amount of Debtor's repair work was performed under contract with a large industrial plant in Wayne County. Defendant testified that the business grossed approximately \$200,000.00 in 1990 and that business expenses totalled approximately \$150,000.00. Defendant testified that the net profit of the business was \$50,000.00 with \$25,000.00 to \$30,000.00 being placed back into the business.

Defendant testified as to the existence and value of over 15 pieces of equipment and tools used in the business. Defendant testified that she valued the tools and equipment at \$26,000.00. Debtor listed in his petition inventory worth \$1,000.00 and machinery, fixtures, equipment and supplies worth \$500.00. Debtor was ordered to amend his Chapter 13 schedules and explain the disparity between the schedules and the values presented by Defendant.

Defendant argues that she has an equitable lien on the real and personal property conveyed to Debtor in the settlement agreement. Debtor argues that the three lump sum payments to Defendant have been adjudicated in the state contempt action not to be alimony and are thus dischargeable to the extent not paid during this Chapter 13.

CONCLUSIONS OF LAW

Section 523(a)(5) of the Bankruptcy Code creates an exception to discharge of any debt

. . . 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 . . . designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

11 U.S.C. §523(a)(5). This exception from discharge is incorporated into the Chapter 13 discharge provision, 11 U.S.C. Section 1328. The Eleventh Circuit mandates that "what constitutes alimony, maintenance, or support will be determined under the bankruptcy laws, not state law." In re Harrell, 754 F.2d 902, 905 (11th Cir. 1985) (quoting H.R.Rep. No. 595, 95th Cong., 1st Sess. 364 (1977) reprinted in 1978, U.S.Code Cong. & Admin. News 5787, 6319). To be declared non-dischargeable, the debt must have been actually in the nature of alimony, maintenance, or support. Harrell, 754 F.2d at 904.

The non-debtor spouse has the burden of proving that the debt is within the exception to discharge. Long v. Calhoun, 715 F.2d 1103 (6th Cir. 1983). The exceptions

to discharge in Section 523 must be proved by a preponderance of the evidence. Grogan v. Garner, ___ U.S. ___, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991).

A determination as to whether or not a debt is in the nature of support requires an examination of the facts and circumstances existing at the time the obligation was created, not at the time of the bankruptcy petition. Harrell, 754 F.2d at 906.¹ *Accord* Sylvester v. Sylvester, 865 F.2d 1164 (10th Cir. 1989); Forsdick v. Turgeon, 812 F.2d 801 (2nd Cir. 1987); Draper v. Draper, 790 F.2d 52 (8th Cir. 1986) It is the substance of the obligation which is dispositive, not the form, characterization, or designation of the obligation under state law. Bedingfield, 42 B.R. at 645-46. *Accord* Shaver v. Shaver, 736 F.2d 1314, 1316 (9th Cir. 1984); Williams v. Williams, 703 F.2d 1055, 1057 (8th Cir. 1983). According to the Eleventh Circuit in Harrell:

The language used by Congress in Section 523(a)(5) requires bankruptcy courts to determine nothing more than whether the support label accurately reflects that the obligation at issue is 'actually in the nature of alimony, maintenance, or support.' The statutory language suggests a simple inquiry as to whether the obligation can legitimately be characterized as support, that is, whether it is in the nature of support.

Harrell, 754 F.2d at 906 (emphasis original). Although the Harrell court determined that only a "simple inquiry" was needed, the Court did not set forth the guidelines or factors to be considered. The Bankruptcy Court may consider state law labels and designations

¹ Harrell overrules *In re Bedingfield*, 42 B.R. 641 (S.D.Ga. 1983), only to the extent that it held that "the bankruptcy courts may examine the debtor's ability to pay . . . at the time of the bankruptcy proceeding." Bedingfield, 42 B.R. at 646. The Eleventh Circuit in Harrell concluded that only the facts and circumstances at the time the decree was entered are to be considered. Harrell, 754 F.2d at 906-07.

although bankruptcy law controls. *See In re Holt*, 40 B.R. 1009, 1011 ("There is no federal bankruptcy law of alimony and support. Such obligations and the rights of the parties must be devined [sic] by reference to the reasoning of the well established law of the states.")

The Bankruptcy Court must determine if the obligation at issue was intended to provide support. *Calhoun*, 715 F.2d at 1109. In making its determination, the Court should "consider any relevant evidence including those facts utilized by state courts to make a factual determination of intent to create support." *Id.* If a divorce decree incorporates a settlement agreement, the Court should consider the intent of the parties in entering the agreement; if a divorce decree is rendered following actual litigation, the Court should focus upon the intent of the trier of fact. *In re West*, 95 B.R. 395 (Bankr. E.D.Va. 1989). *See generally In re Mall*, 40 B.R. 204 (Bankr. M.D. Fla. 1984) (Characterization of an award in state court is entitled to greater deference when based on findings of fact and conclusions of law of a judge as opposed to a rubber stamped agreement incorporated into a divorce decree); *In re Helm*, 48 B.R. 215 (Bankr. W.D.Ky. 1985) ("It is not those questions of support which have been fully litigated and adjudicated in the state court system which are now subject to second-guessing by bankruptcy judges, sitting as 'super divorce courts.' It is only those cases . . . in which former spouses settle their support differences by agreement albeit with resulting state court approval, that bankruptcy courts may later reopen and re-examine.")

In order to determine if an obligation is actually in the nature of support, the following factors must be examined:

1) If the circumstances of the parties indicate that the recipient spouse needs support, but the divorce decree fails to explicitly provide for it, a so called "property settlement" is more in the nature of support, than property division. Shaver, 736 F.2d at 1316.

2) "The presence of minor children and an imbalance in the relative income of the parties" may suggest that the parties intended to create a support obligation. Id. (citing In re Woods, 561 F.2d 27, 30 (7th Cir. 1977)).

3) If the divorce decree provides that an obligation therein terminates on the death or remarriage of the recipient spouse, the obligation sounds more in the nature of support than property division. Id. Conversely, an obligation of the donor spouse which survives the death or remarriage of the recipient spouse strongly supports an intent to divide property, but not an intent to create a support obligation. Adler v. Nicholas, 381 F.2d 168 (5th Cir. 1967).

4) Finally, to constitute support, a payment provision must not be manifestly unreasonable under traditional concepts of support taking into consideration all of the provisions of the decree. *See* In re Brown, 74 B.R. 968 (Bankr. D.Conn. 1987).

The Superior Court Judge concluded that Debtor's obligation to Defendant

was a property settlement and thus not affected by Defendant's remarriage. The parties now come to this court arguing opposite positions from those taken in Superior Court. Although the findings of the Superior Court are not conclusive, the rule that state court characterizations are entitled to greater weight when actually litigated than when the subject of an agreement between spouses is applicable here, especially when the nature of a specific element of the award was the sole focus of that action. In such a case the greatest of deference to the state court is demanded and that court held the provision did not constitute alimony. In light of such deference, I find that the Defendant/Wife has failed to carry her burden. There was no evidence as to her need for support at the time of the decree, imbalance in income or presence of minor children. In the absence of such evidence the state court determination must control. *See Carver v. Carver*, 954 F.2d 1573 (11th Cir. 1992) (The bankruptcy court should not "delve too deeply into family law . . ." particularly where "the case was being used as a weapon in the ongoing dispute between [the former spouses] . . .").

Further, Defendant's assertion of an equitable lien is not helpful considering the terms of the settlement agreement and the intent of the parties. Such an equitable lien theory could be applicable on other facts, as where a spouse obtained a contractual promise of proceeds from the sale of property.

Defendant cites several Georgia cases for the assertion that Defendant is entitled to an equitable lien upon the real estate. Defendant's cases include Collier v. Bank of Tupelo, 190 Ga. 598, 10 S.E.2d 62 (1940); Murphey, Taylor and Ellis, Inc., v. Williams,

233 Ga. 99, 153 S.E.2d 542 (1957); and Pittman v. Pittman, 196 Ga. 397, 26 S.E.2d 764 (1943). However, none of those cases involve property division transfers in a divorce setting and are distinguishable.

First, Collier, supra, involved a co-tenant requesting reimbursement from a tenant in common for taxes and upkeep on real property. The court concluded that the co-tenant was entitled to an equitable lien, which was not subject to the dormancy statute. The second case, Murphey, supra, involved joint venturers and a broker's claims to rental fees earned on a lease negotiated by the broker. The court noted that "a special lien on specific property may be decreed whenever under the rules of equity the circumstances require this remedy." 223 Ga. at 104. The court concluded that no special facts were pleaded which would entitle the broker to an equitable lien. Id. The third case, Pittman v. Pittman, involved the claims of a widow against the claims of her deceased husband's two sisters. The widow claimed certain real property and attempted to sell it, and the sisters claimed that the deceased husband had agreed to share the sales proceeds with them. The jury concluded that the sisters had conveyed the land to the deceased brother in a constructive trust for their benefit. The Georgia Supreme Court affirmed.

In all of the above cases the court considered whether or not special circumstances existed to declare a constructive trust or equitable lien in favor of an injured party. Here, those special circumstances do not exist. The parties voluntarily entered into a settlement agreement setting forth the alimony obligations of Plaintiff and the property division obligations of both parties. Defendant could have demanded a lien to secure her right to payment but did not, and there was no evidence of a promise by Debtor or any

inequitable conduct on his part to give rise to such a lien. Plaintiff's subsequent failure to pay the "alimony" obligation determined by the Superior Court to be actually a "property division" obligation does not bring about the special circumstances required for the court to declare and enforce an equitable lien.

In light of the foregoing, I conclude that Plaintiff's obligation to Defendant is dischargeable. To the extent that Debtor's plan will not fully fund the wife's unsecured claim, upon completion of the plan and entry of an order of discharge, the unpaid balance owed Defendant/Wife will be discharged.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the obligation of Debtor, Larry Amos Laxton, in favor of Defendant, Darlene Blanton, is dischargeable.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of July, 1993.2