

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

In the matter of:)	
)	Adversary Proceeding
BRAD KENDALL BURROWS)	
(Chapter 7 Case <u>97-20703</u>))	Number <u>97-2065</u>
)	
<i>Debtor</i>)	
)	
BRAD KENDALL BURROWS)	
)	
<i>Plaintiff</i>)	
)	
v.)	
)	
FAMILY SUPPORT DIVISION)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

Debtor filed this adversary on July 24, 1997, seeking declaratory judgment that debts owed to the defendant, Stanislaus County District Attorney Family Support Division (“SCDAFSD”), are dischargeable pursuant to Section 523(a)(5) of Title 11 of the United States Code. The underlying case was filed under Chapter 7 on June 9, 1997. A status conference was held on December 11, 1997, at which time the parties agreed to submit briefs and stipulated facts, at which time this Court took the matter

under advisement. Based upon the submissions of the parties and upon the applicable authorities, this Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor and his ex-wife, Colleen Jean Burrows, are the parents of two children who received public assistance benefits under the Aid To Families With Dependent Children. The benefits were paid by the County of Stanislaus, California. The benefits were payable to the children's mother and the child support owed to her by Debtor, for the time period in which they received benefits from the County, were assigned to the County by operation of law pursuant to Section 408(a)(3) of the Social Securities Act.¹

SCDAFSD provides support enforcement services pursuant to the child and spousal support enforcement program established under the Social Security Act.

¹ 42 U.S.C. Section 608(a)(3) provides:

A State to which a grant is made under section 603 of this title shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family ceases to receive any assistance under the program, which assignment, on or after such date, shall not apply with respect to any support (other than support collected pursuant to section 664 of this title) which accrued before the family received such assistance and which the State has not collected by [specific dates according to the date of the assignment].

SCDAFSD is the delegated organizational unit responsible for “establishing, modifying, and enforcing child support obligations.” CA. WELF. & INST. CODE § 11475.1(a) (West 1997). Accounting records maintained by SCDAFSD with regard to Debtor indicate that Debtor owes \$3,142.77, including interest, for past due assigned child support as of June 30, 1997, and \$18,985.47, including interest, for past due unassigned child support as of June 30, 1997.

In March of 1987, the Superior Court of Stanislaus County entered a Dissolution Judgment, in which it reserved jurisdiction over child support. The court later entered an order in which the court ordered Debtor to pay ongoing child support of \$140.00 per month, per child, payable on the first of the month and commencing February 1, 1991. The court further found that Debtor owed no arrears as of December 31, 1990. (Def.’s Resp., Ex. A, line 31).²

On June 30, 1997, Defendants notified Debtor’s employer, Jekyll Island State Park, to withhold \$430.00 from Debtor’s earnings. The notice designated \$280.00 of that amount as current child support, and \$150.00 as child support arrearages, and listed total arrearages at \$16,563.33. Another notice was sent on July 9, 1997, designating another \$75.00 to be deducted as past due “family support” on arrearages of

² The facts have been stipulated by the parties through an affidavit by David Ingersoll, Deputy District Attorney for the County of Stanislaus. Mr. Ingersoll asserted in his affidavit that “[i]n the Dissolution case, the Court found that Respondent Brad Kendall Burrows owed no arrears as of December 31, 1990.” Given that Mr. Ingersoll had previously avowed that the Dissolution judgment was entered in 1987, this Court assumes that Mr. Ingersoll intended to refer to the Order on Notice of Modification instead.

\$9,083.34. (Pl's Compl., Ex.). Plaintiff commenced this adversary following this second notice.

CONCLUSIONS OF LAW

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

A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child . . . but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (*other than* debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government *or to a State or any political subdivision of such State*). (emphasis provided).

The Code reinforces this mandate by providing that a debt is also nondischargeable if it is “owed under State law to a State or municipality that is in the nature of support, and enforceable under part D of title IV of the Social Security Act.” 11 U.S.C. § 523(a)(18). Thus the Code defers to Social Security law in determining when an assigned right of collection of child support is dischargeable in bankruptcy.

The Social Security laws are clear on this subject. In order for a child to receive public assistance under AFDC, the right to collect child support payments from the owing parent must be assigned to the State providing the public assistance. 42 U.S.C.

§ 608(a)(3). Moreover, once the support rights are assigned to the State on the child's behalf, the assigned rights "shall constitute an obligation owed to such State by the individual responsible for providing such support." 42 U.S.C. § 656(a)(1).

A debtor cannot escape familial obligations by simply not paying those obligations and forcing his child to take public assistance in return for an assignment of the collection right. "A parent's obligation to support his child is not one that should be allowed to be discharged by filing for bankruptcy, and a child support obligation assigned to a State as a condition of AFDC eligibility should not be subject to termination in that way." S. Rep. No. 97-139, 97th Cong., 1st Sess. 523 (1981).³ Not only does the Code specifically provide in Section 523(a)(5) that child support debts assigned to a state are excepted from discharge, Congress further strengthened this message in other non-bankruptcy provisions.

³ Congress amended § 523(a)(5) in 1981 to provide that "debts assigned pursuant to section 402(a)(26) of the Social Security Act" are nondischargeable in bankruptcy. Pub. L.No. 97-35, § 2334(b), 95 Stat. 863 (1981). Later amendments in 1984 added the broader language of "or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of a State." Pub. L.No. 98-353 (1984).

A debt (as defined in section 101 of Title 11) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under Title 11.

42 U.S.C. § 656(b). The intended consequence of this statute is “virtually identical” to that of Section 523(a)(5)(A) of the Bankruptcy Code. In re Walden, 60 B.R. 641, 642 (Bankr. M.D.Fl. 1986).⁴ Originally repealed by the 1978 Code, the provision was reenacted in 1981 contemporaneously with the amendment to Section 523(a)(5) to declare that a “child support obligation assigned to a State as a condition of AFDC eligibility is not discharged in bankruptcy.” S. Rep. No. 97-139, 97th Cong., 1st Sess. 523 (1981); *see also* Omnibus Budget Reconciliation Act of 1981, Pub.L. 97-35, § 2334(b), 95 Stat. 863 (1981).

CONCLUSION

The mandate of Congress is clear and unambiguous. The parties stipulated that “the SCDAFSD has been providing support enforcement services pursuant to the child and spousal support enforcement program established pursuant to Part D . .

⁴ Debtor contends, in his reply brief, that he “found no case law stating that just because the debt was assigned pursuant to the Social Security Act, it then becomes nondischargeable.” (Pl’s Br., p. 1). In this circuit alone, at least three courts have addressed the issue and found an assignment of the right to receive child support to be nondischargeable under § 523(a)(5). *See In re Ward*, 188 B.R. 1002 (Bankr. M.D.Ala. 1995); In re Walden, 60 B.R. 641 (Bankr. M.D.Fl. 1986); In re Sheffield, 27 B.R. 504 (Bankr. N.D.Ga. 1983).

. of Subchapter IV of Chapter 7 of Title 42 of the United States Code as enacted in California in Chapter 2, Article 7 of the Welfare and Institutions Code on behalf of the minor children.” (Stip. Facts of Parties, Aff. of David Ingersoll, p.2). The child support obligation assigned to the State of California, County of Stanislaus, is therefore enforceable under Section 656 of Title 42 and is excepted from discharge.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the child support obligation of Brad Kendall Burrows assigned to the State of California, County of Stanislaus, is enforceable under Section 656 of Title 42 and is excepted from discharge.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 1998.