

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
Statesboro Division

IN RE:	)	Chapter 7 Case
	)	Number <u>91-60565</u>
STANTON ALBERT PIERCE	)	
	)	
Debtor	)	
	)	
STANTON ALBERT PIERCE	)	FILED
	)	at 3 O'clock & 34 min. P.M.
Plaintiff	)	Date: 2-12-93
	)	
vs.	)	Adversary Proceeding
	)	Number <u>91-6038</u>
BONNIE SASSER f/k/a	)	
BONNIE SASSER PIERCE AND	)	
TURNER AND POOL	)	
	)	
Defendant	)	

**ORDER**

Stanton Albert Pierce, debtor in the underlying Chapter 7 case, brought this adversary proceeding against his former wife, Bonnie Sasser f/k/a Bonnie Sasser Pierce ("Ms. Sasser"), and the law firm of Turner & Pool seeking a determination that his obligations to defendants under a final judgment and decree of divorce by the Superior Court of Screven County, Georgia are dischargeable. Based on evidence presented at trial and relevant legal authorities, I make the following findings.

**FINDINGS OF FACT**

The parties married October 15, 1988. They lived together slightly more than one (1) year separating in December 1989. At the time of their marriage, debtor was employed by Evans Timber Company and Ms. Sasser was self-employed as a beautician doing business as "The Hair Cut," a business she had operated for several years prior

to the marriage and by which she supported herself. Shortly after the marriage, debtor lost his job. He was unemployed for several months thereafter. To help debtor start his own logging business, Ms. Sasser borrowed approximately Two Thousand and No/100 (\$2,000.00) Dollars. The logging business lasted 5 to 6 months, and following its demise debtor was unable to obtain permanent employment. Ms. Sasser borrowed an additional Two Thousand and No/100 (\$2,000.00) Dollars to pay taxes that she and the debtor owed for 1988 income taxes. She testified that the debts she incurred to help debtor start his logging business and to pay taxes remain outstanding.

During the marriage, debtor sought treatment for drug and alcohol dependency. On December 20, 1989 Ms. Sasser filed a complaint for divorce in the Superior Court of Screven County, Georgia. In her complaint for divorce, Ms. Sasser did not seek alimony or support. Ms. Sasser appeared at trial in the divorce proceeding with her attorney, John R. Turner. At the time of the divorce trial, debtor was in a treatment center for his alcohol and

drug addiction. He did not appear in the divorce proceeding, although he was served with Ms. Sasser's complaint.

On November 23, 1990, following a bench trial, the Superior Court judge entered a final judgment and decree of divorce, which provided in part,

The Husband shall pay the sum of Three Thousand Dollars (\$3,000.00) as lump sum alimony to the Wife, which sum shall be paid within 60 days of the entry of this Order . . . .  
The Court awards the sum of Nine Hundred Dollars (\$900.00) as alimony to be paid to the law firm of Turner and Pool within ninety (90) days from the date of this Order.

In support of a motion for summary judgment filed by defendants in

this adversary proceeding,<sup>1</sup> defendants submitted the affidavit of the presiding Superior Court judge in the divorce proceeding, the Honorable William J. Neville. In the affidavit Judge Neville states concerning the divorce decree, "It was my intention as the order [dated November 23, 1990] reflects, that the \$3,000.00 payment and the payment of attorney fees would be in the nature of alimony for the support and maintenance of Mrs. Sasser." Mr. Turner testified at trial of this adversary proceeding that he drafted the divorce order signed by Judge Neville. Mr. Turner further testified that the Three Thousand and No/100 (\$3,000.00) Dollars "lump sum alimony" award was for the purpose of repaying Ms. Sasser for the Two Thousand and No/100 (\$2,000.00) Dollars debt she incurred to

help plaintiff start a business and One Thousand and No/100 (\$1,000.00) Dollars as one-half of the parties' joint tax debt for 1988. Debtor testified that he did not learn of the divorce and the terms of Judge Neville's order until several months after the divorce.

At the time of the divorce, debtor was unemployed and received unemployment benefits of approximately One Hundred SeventyFive and No/100 (\$175.00) Dollars per week. Debtor testified that at the time of the divorce he was addicted to drugs and alcohol. Ms. Sasser testified that at the time of the divorce she supported the household with income from her business. There are no children from the marriage.

Debtor contends the obligations in question are dischargeable because Ms. Sasser was not dependent on him for support at the time of the divorce. Relying primarily on the Superior Court judge's designation of the subject obligations as "alimony," Ms. Sasser maintains that the debts are not

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<sup>1</sup>By order dated September 24, 1992 I denied defendants' motion for summary judgment.

dischargeable.

CONCLUSIONS OF LAW

Bankruptcy Code §727(a) provides for a discharge in Chapter 7 cases; however, §727(b) subjects the discharge to §523(a), which provides in pertinent part,

(a) A discharge under section 727 . . . of this title [11] 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 . .

. .

11 U.S.C. §523(a)(5) (emphasis added).

Federal law, not State law, determines whether an obligation is "actually in the nature of alimony, maintenance, or support." In re: Harrell, 754 F.2d 902, 905 (11th Cir. 1985); see also H.R. No. 595, 95th Cong. 1st Sess. 364 (1977), U.S. Code Cong. & Admin. News 1978, pp. 5787, 6319 ("[W]hat constitutes alimony, maintenance, or support will be determined under the bankruptcy laws not state law."). Section 523(a)(5)(B) is designed to "assure that a debt will not be rendered nondischargeable because it is designated as alimony, maintenance, or support." 3 Collier on Bankruptcy, ¶523.15[5], 523-124 (L. King 15th ed. 1992). Thus, "bankruptcy courts are not bound by state law where it defines an item as alimony, maintenance, or support, as they are not bound to accept a characterization of an award as support or maintenance which is contained in the decree itself." In re: Bedingfield, 42 B.R. 641,

645-46 S.D. of Ga. 1983).<sup>2</sup> The intent of the State court judge or jury in awarding "alimony," although a factor to be considered, is not determinative of whether the debtor's obligations under the divorce decree are nondischargeable under §523(a)(5). Rather, section 523(a)(5) requires the bankruptcy court to conduct a "simple inquiry into whether or not the obligation at issue is in the nature of support," In re: Harrell, supra, at 907, which involves an examination of the facts and circumstances existing at the time the obligation was created. Id. at 906. When an obligation in reality reflects a property settlement the mere characterization of the obligation by the state court as "alimony" does not render the obligation nondischargeable under §523(a)(5). See id. at 906.

The substance and function of the obligation, not a label, determine whether it is "alimony," "maintenance," or "support" as meant in §523(a)(5). See In re: Bedingfield, supra, at 646; accord In re: Youngman, 122 B.R. 612, 614-15 (Bankr. N.D. Ga. 1991); Suarez v. Suarez (In re: Suarez), Ch. 11 case No. 91-20276 Adv. 92-2009 slip op. at 23 (Bankr. S.D. Ga. Davis, C.J. Dec. 23, 1992). An obligation that qualifies as "alimony," "maintenance," or "support" under §523(a)(5) will have the effect of providing support for the

former spouse or child on whose behalf it was awarded. See In re: Bedingfield, supra, at 646; In re: Suarez, supra, at 23. The following factors have been considered by other courts in determining whether a debt is actually in the nature of support:

- 1) The amount of alimony, if any, awarded by the state court and the adequacy of any such award;

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<sup>2</sup>The Eleventh Circuit in In re: Harrell, supra, overruled Bedingfield, supra, to the extent that the district court held "the bankruptcy courts may examine the debtor's ability to pay . . . at the time of the bankruptcy proceeding." Bedingfield, supra, at 646. In all other respects, Bedingfield is binding authority in this district.

- 2) The need for support and the relative income of the parties at the time the divorce decree was entered;
- 3) The number and age of children;
- 4) The length of the marriage;
- 5) Whether the obligation terminates on death or remarriage of the former spouse;
- 6) Whether the obligation is payable over a long period of time;
- 7) The age, health, education, and work experience of both parties;
- 8) Whether the payments are intended as economic security or retirement benefits;
- 9) The standard of living established during the marriage.

In re: Suarez, supra, at 23-24. The party objecting to discharge of a debt must prove the debt is not dischargeable by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.E.2d 755 (1991).

Concerning the factors used in determining whether the debt is actually in the nature of support the only award at issue was the lump sum award of Three Thousand and No/100 (\$3,000.00)

Dollar to Ms. Sasser and the attorneys fee award of Nine Hundred and No/100 (\$900.00) Dollars to Turner and Pool, both labeled "alimony". The evidence clearly established Ms. Sasser was capable of supporting herself at the time of the divorce proceeding. There are no children. The marriage only lasted one year. The "lump-sum" awards are not long term obligations which terminate on the death or remarriage of Ms. Sasser. The debtor's poor state of mental and physical health mitigate against a determination that the awards were support obligations for Ms. Sasser. The "alimony" awards were intended to repay Ms. Sasser for debts she incurred on behalf of the debtor and were not for her future economic security or retirement. Ms. Sasser clearly does not require support from plaintiff to maintain the standard of living she enjoyed prior to the marriage and that the parties experienced during their short marriage.

From the evidence presented, the obligations are not actually in the nature of alimony, maintenance, or support, regardless of the "alimony" characterization in the Superior Court order. The Three Thousand and No/100 (\$3,000.00) Dollars "lump sum alimony" payment reflects a Two Thousand and No/100 (\$2,000.00) Dollars debt incurred by Ms. Sasser to help debtor start a business and a debt of One Thousand and No/100 (\$1,000.00) Dollars for one half the taxes the parties owed for 1988. The Nine Hundred and No/100 (\$900.00) Dollars award is for Mr. Turner's fee for

representing Ms. Sasser in the divorce proceeding. These "alimony" obligations are in reality a property settlement, and not in the nature of alimony, maintenance, or support under §523(a)(5). Section 523(a)(5), therefore, does not render the debts nondischargeable. Defendants have failed to meet their burden of proof that an exception to the discharge of §727(a) applies to debtor's obligation under the divorce decree to pay Ms. Sasser Three Thousand and No/100 (\$3,000.00) Dollars and his obligation to pay Turner & Pool Nine Hundred and No/100 (\$900.00) Dollars. These obligations may be discharged in debtor's Chapter 7 case. 11 U.S.C. §727(a)

It is therefore ORDERED that judgment is entered in favor of plaintiff, Stanton A. Pierce. No monetary damages are awarded.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 12th day of February, 1993.