

§523(a)(5)

Adversary, Support or Property Settlement?

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

RANDALL LANE DAWSON
(Chapter 7 Case 89-41368)

Debtor

DONNA DAWSON

Plaintiff

v.

RANDALL LANE DAWSON

Defendant

Adversary Proceeding

Number 89-4127

FILED

at 1 O'clock & 11 min. PM

Date 5/8/90

MARY C. BICTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER

FINDINGS OF FACT

A dischargeability action was brought by Debtor's ex-wife in the above-captioned case seeking to determine the dischargeability of the following language of a divorce settlement agreement which was incorporated by Superior Court Decree. The language at issue is as follows:

As part of an equitable division of the property herein, the Plaintiff shall convey to the Husband all of her right, title and interest in and to that certain real property known as Parcel A, being a part of a resubdivision of Lot 78, Grange Subdivision, in Savannah, Chatham County, Georgia. The Husband, as an equitable division of the property, will be (sic) pay to the Wife the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) for her one-half undivided interest. The Ten Thousand and 00/100 Dollars (\$10,000.00) shall be paid as follows: Five Thousand and 00/100 Dollars (\$5,000.00) cash payable on or before October 15, 1986. Five Thousand and 00/100 (\$5,000.00) to be paid in twelve (12) consecutive and each monthly installments of \$416.67 each due and payable on the first day of each month commencing January 1, 1987, with the last payment due and payable on December 1, 1987.

The decree also provided that the single minor child born as an issue of the marriage would be in the custody of the wife and that the husband would pay the sum of \$250.00 per month as permanent child support and would provide major medical and hospitalization insurance for the benefit of the child.

The Debtor paid the \$5,000.00 due under the terms of the Decree which was payable on or before October 15, 1986. Of the remaining \$5,000.00, however, Debtor has paid only the sum of \$750.00 leaving a balance of \$4,250.00 owed. The real estate which was the subject of that language was ultimately turned back over to the Debtor/Husband's creditors who liquidated the collateral for

loans they had extended to him prior to his filing bankruptcy. Debtor received no proceeds from the liquidation of these assets by his creditor.

Mrs. Dawson works as a nurse and was trained for that type of work at the time of the divorce. The husband is presently unemployed, but worked as a mechanic and operated a towing service and garage.

CONCLUSIONS OF LAW

11 U. S. C. Section 523(a)(5)¹ creates an exception from

¹ 11 U.S.C. Section 523(a)(5) provides that:

(a) A discharge . . . 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--

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise . . . ; or

(B) such debt includes a liability designated as alimony, maintenance, or

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 . . . ", but only if the debt is "actually in the nature of alimony, maintenance, or support". There is ample controlling authority in the Eleventh Circuit and the Southern District of Georgia in interpreting and applying 11 U.S.C. Section 523(a)(5).² The Eleventh Circuit has made it clear that "what constitutes alimony, maintenance, or support will be determined under the bankruptcy laws, not state law". Harrell, 754 F.2d at 905 (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 held non-dischargeable, the debt must have been actually in the nature of alimony, maintenance, or support. Harrell, 754 F.2d at 904. A determination is made by examining 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 906.³; Accord

support, unless such liability is actually
in the nature of alimony, maintenance, or
support;

² In re Harrell, 754 F.2d 902 (11th Cir. 1985); Matter of Crist, 632 F.2d 1226 (5th Cir. 1980), cert. denied, 451 U.S. 986 (1981) cert. denied, 454 U.S. 819 (1981); In re Holt, 40 B.R. 1009 (S. D. Ga. 1984) (Bowen, J.); In re Bedingfield, 42 B.R. 641 (S. D. Ga. 1983) (Edenfield, J.).

³ In rejecting the analysis in In re Warner, 5 B.R. 434 (Bankr. D. Utah, 1980), Harrell overrules Bedingfield 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".

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); In re Comer, 27 B.R. 1018, 1020-21 (9th Cir. BAP 1983), aff'd on other grounds, 723 F.2d 737 (9th Cir. 1984). Contra, Long v. Calhoun, 715 F.2d 1103 (6th Cir. 1983). 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); Calhoun, 715 F.2d at 1109 Pauley v. Spong, 661 F.2d 6, 9 (2nd Cir. 1981). The Harrell court stated:

The language used by Congress in §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. The language does not suggest a precise inquiry into financial circumstances to determine precise levels of need or support; nor does the statutory language contemplate an ongoing assessment of need

Bedingfield 42 B.R. at 646. The fact that the circumstances of the parties may have changed from the time the obligation was created is not relevant to the inquiry which the bankruptcy court must undertake in a §523(a)(5) action. Harrell, 754 F.2d at 907. In all other respects, Bedingfield remains controlling authority in this jurisdiction.

as circumstances change. 754 F.2d at 906
(emphasis original).

In analyzing this portion of the Harrell opinion, it is clear that only "a simple inquiry as to whether the obligation can legitimately be characterized as support" is needed. While the court did find that bankruptcy laws, not state law is controlling, it did not explicitly fashion guidelines or otherwise set forth factors to be used in resolving the required "simple inquiry".⁴ The controlling law in this Circuit decided under Section 17(a)(7) of the Bankruptcy Act⁵ suggests that the threshold inquiry "requires a determination of the intention of the parties, as reflected by the substance of the agreement, viewed in the crucible of surrounding circumstances as illuminated by applicable state law". Crist, 632

⁴ Although the court did not set forth a laundry list of factors which the bankruptcy court should consider, it did state that a "precise inquiry into financial circumstances to determine precise levels of need or support" is not required. Furthermore, the court rejected the reasoning of those courts which conclude that an ongoing assessment of need is required. 754 F.2d at 906. These limitations on the §523(a)(5) inquiry reflect the court's concern for considerations of comity. 754 F.2d at 907.

⁵ Section 17(a)(7) of the Bankruptcy Act provides in relevant part:

A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as . . . are for alimony due or to become due, or for maintenance or support of wife or child . . .

F.2d at 1229; Accord Holt, 40 B.R. at 1012; Bedingfield, 42 B.R. at 646. In determining the "intention of the parties", reference to state law does not violate the clear mandate that bankruptcy law, not state law, controls. See Holt 40 B.R. at 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."); See also Bedingfield, 42 B.R. at 645-46 ["While it is clear that Congress intended that federal law not state law should control the determination of when a debt is in the nature of alimony or support, it does not necessarily follow that state law must be ignored completely The point is that 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 the characterization of an award as support or maintenance which is contained in the decree itself." (Citations omitted.)]; Accord Spong, 661 F.2d at 9. In addition to the state law factors used in determining alimony, the federal courts have employed a number of factors to determine whether the debt is actually in the nature of alimony, maintenance, or support. These factors include:

- 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) "[T]he 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 account all the provisions of the decree. See In re Brown, 74 B.R. 968 (Bankr. D.Conn. 1987) (College or post-high school education support obligation upheld as non-dischargeable).

The non-debtor spouse has the burden of proving that the debt is within the exception to discharge. Calhoun, 715 F.2d at 1111.

As applied to the facts in this case I conclude that Plaintiff has failed to carry her burden of proof. Since the threshold inquiry is to determine the intent of the parties I view the designation of this obligation as a "property settlement" to be relevant although clearly not determinative by itself. In addition the decree explicitly provides for periodic support of \$250.00 per month which is not a manifestly unreasonable sum for support given the fact that Plaintiff was also gainfully employed. Since the parties defined the obligation to pay the \$10,000.00 as a property settlement and provided for periodic support for the minor children separately, I find no compelling evidence which would demand a finding that the payment was anything other than a property settlement.

Both parties rely on the decision of Williams v. Williams, 703 F.2d 1055 (8th Cir. 1983), in support of their respective positions. I have considered that case carefully and conclude that it requires no different result. There the payments to the wife, denominated as property division, were the only monies payable to her under the decree and the court understandably held

that they were intended as support for the wife for bankruptcy purposes.

Since the facts in this case differ, I conclude that Debtor's obligation is dischargeable.

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 debt of Randall Lane Dawson to Donna Dawson is dischargeable in this proceeding.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 30 day of April, 1990.