

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Jessica Jade Dunn
Jessica NMN Bergo,

Debtor.

BKY NO. 04-32035 GFK

Travis D. Dunn,

Plaintiff,

ADV. NO. 04-3278

v.

COMPLAINT

Jessica Jade Dunn,

Defendant.

Plaintiff, Travis D. Dunn, for his Complaint against Defendant, Jessica Jade Dunn, states and alleges as follows:

1. This is an action brought by Plaintiff as the creditor of the Debtor to determine whether the claims held by the Plaintiff against the Debtor in the above-captioned bankruptcy case are, under the provisions of 11 U.S.C. Section 523(a) excepted from the discharge available under 11 U.S.C. Section 727.
2. The Debtor is subject to the jurisdiction of this Court in her pending Chapter 7 case captioned above.
3. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. Section 523, 28 U.S.C. Section 1334(a) and 28 U.S.C. Section 157(a).
4. Venue is proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409.
5. The Debtor filed a voluntary Chapter 7 Petition on April 2, 2004.



6. Plaintiff and Debtor were previously married to each other. They were divorced on December 18, 2001.
7. While Plaintiff and the Debtor were still married, they received a home equity loan from CitiFinancial in the approximate amount of \$16,000.00, which loan was secured by a mortgage on the parties' homestead. The home equity loan was used by the parties to pay off various marital debts.
8. In addition, while the Plaintiff and Debtor were still married, they purchased a 2001 Ford Focus automobile. This purchase was financed by Affinity Plus Credit Union ("Affinity Plus") of Rochester, Minnesota. Both Plaintiff and Debtor are co-debtors on the note to Affinity Plus.
9. Plaintiff is a creditor of the Debtor by reason of that certain Judgment and Decree of Dissolution of Marriage entered on December 18, 2001 (hereinafter referred to as "Decree") in Wabasha County District Court, State of Minnesota (Court File No. F8-01-660). Said Decree was entered based upon the parties' Joint Petition for Dissolution of Marriage and stipulated Marital Termination Agreement.
10. Pursuant to paragraph 7 of the Decree, Debtor was awarded title and possession to the 2001 Ford Focus. Debtor was ordered (and agreed) to assume full responsibility for the Affinity Plus encumbrance on the vehicle.
11. In the Chapter 7 Petition, the Debtor has stated her intention of surrendering the Ford Focus to Affinity Plus. It is believed that the vehicle may sell for \$4,500.00 rather than valued at \$8,500.00 as alleged by the Debtor. Therefore, the parties may be facing a deficiency of approximately \$5,000.00. Affinity Plus has expressed its

intention to Plaintiff that it will pursue a deficiency judgment against Plaintiff once the vehicle is surrendered and sold.

12. Therefore, Plaintiff will be facing a probable liability of approximately \$5,000.00 to Affinity Plus, which Debtor agreed to assume in the parties' Divorce Decree.
13. Pursuant to paragraph 9 of the Decree, Debtor was ordered (and agreed) to pay to Plaintiff the sum of \$10,195.63 "to make the division of debt equitable." The \$10,195.63 represented debts of the Debtor which were paid off by the parties' home equity loan assumed by Plaintiff. The debts are more specifically itemized in paragraph 9 of the Decree.
14. Debtor agreed to pay this sum to Plaintiff within 30 days after entry of the Decree.
15. Because Debtor did not pay this sum within the 30 day period, Plaintiff was forced to reduce the amount to judgment and attempt to collect by writ of execution issued by Wabasha County District Court on March 18, 2004. The writ of execution included \$10.00 costs/disbursements as well as \$720.43 interest, giving a total amount due to Plaintiff of \$10,926.06.
16. Debtor is now attempting to discharge her indebtedness to Plaintiff through bankruptcy proceedings. The \$10,926.06 debt to Plaintiff represents over 85% of Debtor's total unsecured debt listed in her Chapter 7 Petition.
17. Paragraph 9 of the Decree also provides that "[e]ach party shall be liable for reasonable attorney fees and costs incurred by the other party for defending against claims by creditors for debts which are not their responsibility under this agreement."

18. Plaintiff has a contingent claim against Debtor for the approximate \$5,000.00 deficiency judgment owed to Affinity Plus as well as Plaintiff's reasonable attorney fees and costs incurred.
19. The Debtor is unable to show that she does not have the ability to pay the debt owed (or that may be owed) to Plaintiff from income or property of the Debtor not reasonably necessary to be expended for the maintenance or support of the Debtor.
20. The Debtor is unable to show that discharging the debt, whether actual or contingent, owed to Plaintiff would result in a benefit to the Debtor that outweighs the detrimental consequences to Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Determine and adjudge that the claims, actual and contingent, of Plaintiff, Travis D. Dunn, are excepted pursuant to the provisions of 11 U.S.C. Section 523(a)(15) from any discharge which the Debtor may receive.
2. Grant judgment for the reasonable and necessary costs incurred by Plaintiff as a result of this proceeding.
3. Enter judgment in favor of Travis D. Dunn and against the Debtor for \$10,926.06 plus interest and any other amounts adjudged due Plaintiff, by reason of Debtor's obligations under the Wabasha County Decree.
4. Should Plaintiff be required to pay any deficiency judgment to Affinity Plus as a result of the surrender of the 2001 Ford Focus, enter judgment in favor of Travis D. Dunn and against the Debtor for the amount of the deficiency judgment and any other amounts adjudged due Plaintiff, by reason of Debtor's obligations under the Wabasha County Decree.

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF WABASHA

THIRD JUDICIAL DISTRICT
FAMILY DIVISION

In Re the Marriage of:

Court File No: F8-01-660

Travis Daniel Dunn,

Petitioner,

and

Jessica Jade Dunn,

Petitioner.



**FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER FOR JUDGMENT,
AND JUDGMENT AND DECREE**

The above-entitled matter came before the Court without a final hearing pursuant to Minnesota Statute Section 518.13, subdivision 5 in that there are no minor children of the marriage and the parties have entered into a written stipulation.

The parties filed a joint petition for dissolution of marriage and have reached an agreement and signed a Marital Termination Agreement, the terms of which are set forth in this document as Conclusions of Law.

Based upon the Marital Termination Agreement of the parties, and all of the records on file, the Court now makes the following:

FINDINGS OF FACT

I.

Husband's name, any prior or other names, address, date of birth, age, and Social Security number are as set forth below:

Name:	Travis Daniel Dunn
Prior/Other names:	N/A

Address: 457 Short Street
Mazeppa, Minnesota 55956
Date of Birth: 6-10-82
Age: 19
Social Security Number: See Form 11

II.

Wife's name, any prior or other names, address, date of birth, age, and Social Security number are as set forth below:

Name: Jessica Jade Dunn
Prior/Other names: Jessica Jade Bergo
Address: P.O. Box 566
Preston, Minnesota 55965
Date of Birth: 6-10-80
Age: 21
Social Security Number: See Form 11

III.

The name and address of Husband's Attorney are as follows:

N/A

IV.

The name and address of Wife's Attorney are as follows:

N/A

V.

Husband and Wife were married on June 23, 2001, in the City of Preston, County of Fillmore,
State of Minnesota.

VI.

There has been an irretrievable breakdown of the marriage relationship, with no chance of
reconciliation.

VII.

The parties have resided in Minnesota for more than 180 days immediately preceding the commencement of this proceeding. Husband resided in Wabasha County at the commencement of this proceeding.

VIII.

Neither party is in the military or armed services of the United States.

IX.

No order for protection under Minn. Stat. 518B or a similar law in another state, that governs the parties or a party and a minor child of the parties, is in effect.

X.

The marriage has not previously been dissolved and no separate proceeding for dissolution, legal separation, or custody is pending in any court in this state or elsewhere.

XI.

The parties have no children.

XII.

Wife is not pregnant.

XIII.

Husband is a student at Rochester Community and Technical College and is currently employed as a bartender at Leo's Sports Bar in Mazeppa, Minnesota, and as a carpenter for Danny Dunn Construction, in Mazeppa, Minnesota, and earns a gross income of approximately \$1,000.00 per month.

Wife is currently employed as a licensed practical nurse at Samaritan Bethany Heights, in Rochester, Minnesota, and earns a gross income of approximately \$2,400.00 per month.

XIV.

Each party has expressly waived any claim he or she may have against the other party for spousal maintenance.

XV.

The parties are the owners in joint tenancy of homestead property located at 457 Short Street, City of Mazeppa, County of Wabasha, State of Minnesota, and legally described as follows:

Lot 7, Block 22, in the Village of Mazeppa, Wabasha County

Husband has a non-marital interest in this property.

XVI.

The parties have divided between themselves all of their personal property consisting of household goods, furnishings, and furniture.

XVII.

The parties own a 2001 Ford Focus automobile which is currently in the possession of the Wife. Husband owns a 1995 GMC Sonoma automobile which is currently in the possession of the Husband.

XVIII.

The parties have incurred various debts during their marriage.

XIX.

The parties have acknowledged that they have made full disclosure to one another of all their assets, both real and personal, and all of their income. The parties are aware that failure to disclose shall be considered fraud or misrepresentation upon the Court and the other party.

XX.

The parties have signed a Marital Termination Agreement which the Court finds to be fair and equitable, and incorporates by reference.

From the foregoing, the Court makes the following as:

CONCLUSIONS OF LAW

1. **Dissolution of Marriage:** The bonds of matrimony existing between the Husband and Wife are dissolved.
2. **Financial Circumstances:** The financial circumstances of the parties upon which this Judgment and Decree is based are as follows:
 - a. Husband is a student at Rochester Community and Technical College and is currently employed as a bartender at Leo's Sports Bar in Mazeppa, Minnesota, and as a carpenter for Danny Dunn Construction, in Mazeppa, Minnesota, and earns a gross income of approximately \$1,000.00 per month.
 - b. Wife is currently employed as a licensed practical nurse at Samaritan Bethany Heights, in Rochester, Minnesota, and earns a gross income of approximately \$2,400.00 per month.
3. **Spousal Insurance:** Neither party has any obligation to provide health, medical, or dental insurance for the other party.
4. **Spousal Maintenance/Karon Waiver:** Neither party shall be awarded any spousal maintenance, past, present, or future. The Court shall be divested of any jurisdiction to award maintenance or to entertain any motion by either party for spousal maintenance under Minn. Stat. § 518.552 or § 518.64.
5. **Real Estate:** The real property of the parties, located at 457 Short Street, City of Mazeppa, County of Wabasha, State of Minnesota, and legally described as follows:

Lot 7, Block 22, in the Village of Mazeppa, Wabasha County

shall be awarded to Husband free and clear of any claim by the Wife. Any encumbrance on the property shall be the sole responsibility of the Husband. A summary real estate disposition judgment shall be sufficient to transfer title of this property to Husband.

6. **Personal Property:** Each party shall have the sole title, use and possession of the personal property, including cash and bank accounts, as well as household goods, furniture and equipment in his or her respective possession as of the date the Marital Termination Agreement was signed.

7. **Vehicles:** Wife shall be entitled to the exclusive title and possession of the 2001 Ford Focus automobile. Wife shall assume full responsibility for any encumbrances on this vehicle. Husband shall be entitled to the exclusive title and possession of the 1995 GMC Sonoma automobile and shall assume full responsibility for any encumbrance on this vehicle.

8. **Pensions:** Each party is awarded all right, title and interest in any pension or retirement plan he or she may have.

9. **Marital Debts:** a) Husband shall be responsible, and hold Wife harmless, for the parties' debts which are owed to the following: Sterling State Bank (home mortgage, approximately \$75,000.00); Citifinancial (home equity loan, approximately \$16,000.00); Sears (\$750.00); and Associates Bankcard (\$700.00).

b) To make the division of debt equitable, Wife shall pay to Husband \$10,195.63 within thirty (30) days after entry of the Judgment and Decree. The \$10,195.63 represents the following debts owed by the Wife which were paid-off by the parties' home equity loan: \$272.50 (First Tennessee Bank); \$67.00 (Miscellaneous expenses); \$354.00 (Associates Bankcard); \$705.50 (IBM Credit Union); \$6,819.00 (Peterson Credit Union); \$2,417.50 (Sterling State Bank); \$187.50 (appraisal fee); \$120.00 (title fee); and \$42.05 (recording fee).

Each party shall be liable for reasonable attorney fees and costs incurred by the other party for defending against claims by creditors for debts which are not their responsibility under this agreement. Any debt incurred after the parties' separation date, November 1, 2001, shall be solely the obligation of the

party incurring the debt.

10. **Charge Accounts/Credit Card:** The parties' charge accounts, whether in the name of both parties, or either party under which the other can receive credit, shall be canceled immediately. The credit cards shall be returned or destroyed immediately.

11. **Legal Fees:** Each party shall be responsible for his or her own attorney fees incurred in this proceeding.

12. **Tax Filing:** The parties shall file separate state and federal income tax returns for the 2001 tax year. Each party shall be solely responsible for any tax liability and shall be the sole owner of any refund received.

13. **Execution of Documents:** Both parties shall promptly execute all documents necessary to effectuate the terms of this Judgment and Decree. If either party fails to do so within the deadlines specified in this Judgment and Decree, or within thirty (30) days if no deadline is specified, the Judgment and Decree shall be sufficient to transfer title or otherwise effectuate this order.

14. **Service:** Service of a copy of the Judgment and Decree upon each respective party by U.S. mail shall constitute due and proper service of the Judgment and Decree upon each party and proof thereof for all purposes.

15. **Reopening for Non-Disclosure:** If either party failed to make an accurate, full and current disclosure of all income, assets, debts, and liabilities, this Judgment and Decree shall be subject to reopening, at any time, pursuant to Minnesota Statute §518.145.

16. **Final Judgment:** Except as set forth herein, neither party shall have any further claim of any kind against the other party arising out of the marital relationship of the parties.

ORDER FOR JUDGMENT

There being no just reason for further delay, let Judgment be entered accordingly.

Dated: 12-17-01

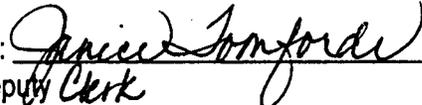

Judge of District Court

JUDGMENT AND DECREE

I certify that the above Conclusions of Law constitute the Judgment and Decree of the Court.

Judgment and Decree entered this 18th day of December, 2001.

Twila K. Holtan
Wabasha County Court Administrator

By: 
Deputy Clerk

TRAVIS DANIEL DUNN
vs. JESSICA JADE DUNN

District Court Case Number 79-F8-01-000660	Court of Original Entry
Judgment Date 12/18/2001	DISTRICT
Date Docketed 04/10/2002 at 8:30 a.m.	Original Judgment Amount
	\$ 10,195.63

County Where Judgment Roll or Transcript Filed: WABASHA

JUDGMENT INFORMATION

THE STATE OF MINNESOTA TO THE SHERIFF OF Fillmore COUNTY:

WHEREAS, Judgment was entered in favor of
TRAVIS DANIEL DUNN

and against

JESSICA JADE DUNN

THEREFORE, you are hereby commanded to satisfy said judgment, with interest and your fees, out of the personal property of the judgment debtor within your county on the day when said judgment was docketed in your county, or at any time thereafter not exceeding ten years from the date of entry. The writ of execution expires 180 days after its issuance by the Court Administrator.

Amount to be Collected on Date Issued:

CURRENT PRINCIPAL DUE	:	\$	10,195.63
CURRENT COSTS/DISBURSEMENTS	:	\$	10.00
INTEREST	:	\$	720.43
EXECUTION FEE	:	\$	
Subtotal Due	:	\$	10,926.06

Date Execution Issued: 03/18/2004

Twila K. Holtan
Court Administrator:

Denise M. Sauer

By Deputy

Endorsed
(Creditor or Atty):

Travis Dunn

**In Re: TRAVIS DANIEL DUNN
vs. JESSICA JADE DUNN
Case Number: 04-32035-GFK**

**TRAVIS DANIEL DUNN
457 SHORT ST
P.O. BOX 102
MAZEPPA, MN 55956**

Enclosed for filing as Adversary Complaint.

Enclosed: \$150 Filing Fee

**UNITED STATES BANKRUPTCY COURT — DISTRICT OF MINNESOTA
LOCAL ADVERSARY PROCEEDING COVER SHEET**

ADVERSARY PROCEEDING NUMBER (COURT USE ONLY)

PLAINTIFFS (Name and address)

Travis D. Dunn
457 Short St.
P.O. Box 102
Mazeppa, MN 55956

DEFENDANTS (Name and address)

Jessica Jade Dunn
fka Jessica NMN Bergo
P.O. Box 35
Preston, MN 55965

ATTORNEYS (Name, firm name, address, telephone)

Pro Se

ATTORNEYS (Name, firm name, address, telephone)

Steven Corson
P.O. Box 65
Preston, MN 55965

PARTY (Check one box only) 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 U.S. NOT A PARTY

NATURE OF SUIT (Check ALL appropriate boxes.)

- 426 Complaint to determine dischargeability of one debt under § 523.
- 459 Notice Of Removal to remove this action to the Bankruptcy Court under § 1452.
- 424 Complaint to deny or revoke a discharge of all debts of the debtor under § 727.
- 454 Recover Money or Property 458 Sale of co-owner's interest 435 Determine Validity, Priority, or Extent of a Lien 455 Revoke confirmation of a Plan
- 434 Obtain an injunction 456 Declaratory judgment 457 Subordinate allowed claim 498 Other (specify)

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)
Debt arising out of dissolution of marriage; 11 U.S.C. 523(a)(15)

ORIGIN OF PROCEEDINGS 1 Original Proceeding 2 Removed Proceeding 3 Reinstated or Reopened 4 Transferred from Another Bankruptcy Court CHECK IF THIS IS A CLASS ACTION

DEMAND \$ 10,926.06 **OTHER RELIEF SOUGHT** JURY DEMAND

BANKRUPTCY CASE NUMBER 04-32035 GFK **DEBTOR** Jessica Jade Dunn, Jessica NMN Bergo

DISTRICT AND DIVISION IN WHICH CASE IS PENDING Minnesota **NAME OF JUDGE** GFK

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF **DEFENDANT** **ADVERSARY PROCEEDING NUMBER** 04-3278

DISTRICT **DIVISIONAL OFFICE** **NAME OF JUDGE**

FILING FEE (Check one box only) FEE ATTACHED #146514 FEE NOT REQUIRED FEE DEFERRED

DATE 6-4-2004 **PRINT NAME** Travis D. Dunn **SIGNATURE OF ATTORNEY (OR PLAINTIFF)**