UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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In re:

LILY E. ROSE, MEMORANDUM DECISION

Debtor.

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LILY E. ROSE,

Plaintiff, BKY 02-92748

v. ADV 03-3056

EDUCATIONAL CREDIT MANAGEMENT CORPORATION and TEXAS GUARANTEED STUDENT LOAN CORPORATION,

Defendants.

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At St. Paul, Minnesota, this 22nd day of October, 2004.

This adversary proceeding for determination of dischargeability of debt under 11 U.S.C. § 523(a)(8) came on before the Court for trial. The Plaintiff ("the Debtor") appeared by her attorney, Barbara J. May. Defendant Educational Credit Management Corporation ("ECMC") appeared by its attorney, Christopher M. McCullough. Defendant Texas Guaranteed Student Loan Corporation ("TGSLC") appeared by its attorney, James C. MacGillis. Upon the evidence received at trial and the arguments and memoranda of counsel, the Court memorializes the following decision.

The Debtor seeks a determination on the dischargeability of her debts to the

Defendants. The governing law is 11 U.S.C. § 523(a)(8):

> (a) A discharge under [11 U.S.C. §] 727, . . . does not discharge an individual debtor from any debt--
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> . . .
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> > (8) . . . guaranteed by a governmental unit, . . . unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents; . . .

The Debtor took out loans from federally-guaranteed programs to finance her courses of study at the University of Minnesota (where in 1990 she received a B.S. degree in elementary education) and at the University of St. Thomas in St. Paul (where from 1996 on she studied for a master's in early childhood special education, completing the coursework but not obtaining the degree). The Defendants now hold the rights to repayment on these loans, via assignment from the entities that originated them.[1] Section 523(a)(8) excepts these debts from discharge in the Debtor's bankruptcy case.[2] The Debtor, however, invokes the section's override to this exception from discharge; she maintains that it would impose an undue hardship on her, were the exception left to work.

The Debtor has the burden of proof on this issue.[3] Toward that goal, she has

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[1] The Debtor's debt to ECMC totalled $41,453.44 as of November 4, 2003, with a daily interest accrual of $5.26. It was attributable to seven component, unconsolidated loans. As of the same date, the Debtor's debt to TGSLC was $47,779.20; it accrued interest of $11.16 *per diem*. This apparently represented the consolidation of several loans.

[2] The Debtor filed for relief under Chapter 7 of the Bankruptcy Code on September 24, 2002.

[3] *In re Ford*, 269 B.R. 673, 675 (B.A.P. 8th Cir. 2001); *In re Svoboda*, 264 B.R. 190, 194 (B.A.P. 8th Cir. 2001); In *re McCormick*, 259 B.R. 907, 909 (B.A.P. 8th Cir. 2001); *In re Cline*, 248 B.R. 347, 351 (B.A.P. 8th Cir. 2000).

established certain facts that bear on her ability to make payment on her debts to the Defendants. Under the binding precedent, this is the central issue of fact under § 523(a)(8). *In re Pollard*, 306 B.R. 637, 651-652 (Bankr. D. Minn. 2004) (citing *In re Long*, 322 F.3d 549, 553-554 (8th Cir. 2003) and *In re Andrews* , 661 F.2d 702, 704 (8th Cir. 1981)).

At the date of the trial, the Debtor was 42 years old. At that time, she was employed as a teacher/caregiver for toddlers at the Fraser School in Minneapolis. She had held this employment for eight years. The Fraser School is a small private non-profit institution that focuses on "special-needs" children (those who have learning and developmental impairments). It services these students in a school population mixed with "regular-needs" children of like age.

At the date of the trial, the Debtor earned $12.68 per hour from this position. She worked 40 hours per week and netted wages of approximately $770.00 in a two-week pay period. On a monthly basis her net earnings were $1,676.81.[4] In the relevant past, the Debtor had been able to get overtime hours at Fraser School, a total of 20-30 per year, at time-and-a-half compensation. She expected to get a pay raise of two percent to three percent effective January, 2004, which she termed typical of past years.

This was her sole source of personal income as of the date of trial. In the past she had held additional part-time employment for several periods of time, but she no longer

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[4] The parties stipulated to this amount before trial. It is very close to the amount that results from a calculation based on the biweekly wage amount to which she testified, processed through a standard factor of 4.3 weeks per month.

considered herself able to maintain that on top of her regular schedule at the Fraser School.[5] The Debtor does not own a home--she has rented the same apartment in Roseville, Minnesota for seven years--or an automobile--she is using a vehicle belonging to her mother, eight years old and with mileage of over 100,000. She had accrued modest balances in retirement benefit accounts through the Fraser School (approximately $3,000.00) and through the Minneapolis Teachers' Retirement Fund (of less than $200.00). Other than a modest wardrobe, furniture, and personal effects, she had no other assets. Her bank accounts had had no significant ongoing balance for years, serving only as a conduit for paying her current expenses.

As of the date of trial, the Debtor was living with one William Tomany, in a state of informal cohabitation without benefit of wedlock. They had done so for approximately three years. Tomany was legally married, but had been physically separated from his wife for at least that amount of time. Tomany had three children by this marriage; they resided with Tomany's wife, subject to regular visitation with him at the Roseville apartment.

Neither Tomany nor his wife had formally commenced dissolution proceedings in family court. Of his relationship with the Debtor, Tomany stated, "It's unique." He opined that there were "no guarantees for him, no guarantees from him," that he was "not

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[5] The Debtor had worked part-time as a cashier at a Target store for about a year. She left that job because the constant standing and required lifting aggravated her problems with spinal arthritis and bulging discs, causing severe pain. During a different interval, she had worked part-time for two years as a personal care attendant to individual special-needs children. She stopped doing that because the cumulated demands of it and the Fraser School position proved too stressful. Her gross earnings from both of these positions were in the range of $7.00 to $8.00 per hour.

guaranteeing five minutes" of further cohabitation, and that he was with the Debtor because he "prefer[red] having a roof over his head to living under a bridge." He was a signatory on the current one-year lease for their apartment. Of his marriage, Tomany stated that his intention was to "try to raise three children," "by the two best-qualified people, their mother and father," and to "enlighten [his] wife." However, he also stated that "if the wife got struck by lightning, I'd be back there, but otherwise, for the foreseeable future," he "had no choice" and "would be with" the Debtor. Tomany testified that he had been unable to find a one-bedroom apartment in the East Metro area for rent of any less than $650.00 per month. He gave that as one reason why he was cohabiting with the Debtor. He also opined that his presence had "stabilized" the Debtor and her life. For her part, the Debtor testified that Tomany's presence in her household "could change, dependent on whether he is employed, or other factors."

The current monthly expenditures of the Debtor's household that apply directly to meeting her personal needs are as follows:

Rent	$ 700.00
Utilities	
Electricity	50.00
Telephone	78.00
Clothing	90.00
Food	150.00
Transportation (using mother's car)	
Gasoline/Maintenance	150.00
Insurance	50.00
Household/Personal	
Prescriptions/Medical Co-pays	65.00
Cleaning Supplies	25.00
Personal Hygiene, Toiletries	50.00
Recreation	40.00
Laundry	45.00
Newspapers	10.00

TOTAL: $1,503.00

All of these line-entries are fairly attributed to maintaining modest lifestyle for the Debtor alone, were Tomany in the household or not.[6] The amount of the monthly rent is commensurate with Tomany's testimony on the results of his own search for housing for a single person in a safe neighborhood in the East Metro of the Twin Cities. Neither ECMC nor TGSLC developed any evidence that the apartment was too large for a single person. More to the point, neither of them showed by evidence that the Debtor could find safe and liveable accommodation, sufficiently close to her place of employment, at a materially lower cost. The same conclusions apply to the Debtor's expenditures for electric and telephone utility service, i.e., that they would not be materially less were she to be living alone; there certainly is not a record on which to make alternate findings. The Debtor's stipulated $450.00 line-entry for food was measured by actual experience with both the Debtor's 21-year-old son and Tomany in residence; thus, it is appropriately divided in three to arrive at her personal expenditure.

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[6] ECMC and TGSLC argue that any amount of expense to be attributed to Brian's and Tomany's needs must be deleted from consideration. In that they are correct. The Debtor and Tomany are not legally married, of course, and the nebulously-phrased terms of their relationship certainly do not qualify him as a dependent of the Debtor under some principle of contract or partnership. For that reason, as well as the utter lack of expressed personal commitment, Tomany is properly treated as a stranger to the Debtor's financial affairs in all ways, for the attribution of income and expenses alike. He clearly meant to say that he could be gone tomorrow, no matter how good he had had it. The Debtor obviously is aware of that. To like result, expenses attributable to the needs of legally-emancipated adult children are not properly considered in a calculation of surplus income under § 523(a)(8), *Educ. Credit Mgmt. Corp. v. Buchanan*, 276 B.R. 744, 752 (N.D. W. Va. 2002), at least where they are not *de facto* dependent by reason of severe medical or psychological disability. *Cf. In re Lieberman*, 2004 WL 555245, *4-5 (Bankr. D. Minn. 2004) (financial consequences of continuing presence in debtor's household of seriously-disabled adult child may be considered in undue hardship analysis).

None of the other categories or amounts of expense is out of line for the needs of a single middle-aged person in the Twin Cities metropolitan area.

Subtracting the total of these items from the Debtor's stipulated income shows a difference of about $170.00 per month.[7] The evidence suggests that such funds had been applied in the past to subsidize the living expenses of other persons, both the Debtor's adult son Brian[8] and Tomany.[9]

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[7] This is the very largest surplusage that could be calculated, based on the findings just made--contrary to ECMC's main line of argument. ECMC attacked a number of the Debtor's other claimed expenses, arguing that total expenses of $909.00 and a "monthly surplus of approximately $767 per month" must be attributed to her. ECMC was well-put in objecting to the Debtor's inclusion of Tomany's transportation expenses. However, its suggested division of every one of the costs of occupancy of her modest apartment is not tenable in fact or law---given the tenuousness of Tomany's presence, and the accomplished fact of her son's departure. Once one recognizes the Debtor's basic isolation in self-support, ECMC's suggestion has the sound of hyperbolic advocacy: it is not at all grounded in real, current human experience, at least in a large metropolitan area with high costs of housing, transportation, and utilities like Minneapolis-St. Paul. A single, middle-aged working person who does not receive governmental assistance or subsidy simply can not be deemed capable of surviving on $909.00 per month in this area.

[8] Brian had moved out of the Debtor's apartment before trial but after the parties had executed their stipulation of fact. The Debtor was not sure whether he would return, but she thought that he would not. His most immediate draw on the household fisc had been in grocery expense, but that has already been taken into consideration. As of the date of trial, Brian's auto insurance premium was still direct-debited from the Debtor's checking account, a measure to reduce the amount of the premium. In the past, the Debtor had absorbed most or all of the immediate cost, at $171.00 per month, to the extent that he was not able to reimburse her. She testified that with recent increases in his income, he would be able to cover the full amount himself.

[9] From the sum of the Debtor's and Tomany's testimony, it appears that they exhaust her earnings to pay household expenses and only then resort to his for the balance of their needs. Tomany admitted that "it may be fair to say [he was] not contributing [his] fair share." According to him, the thought was that the payment of his child support obligation and meeting his children's clothing needs and school expenses was his highest priority; his net wages of about $1,300.00 per month, from employment as a night attendant and mechanic at an Amoco

However, the result is not that an income surplus of at least $170.00 must be attributed to the Debtor. The Debtor is meeting her transportation needs entirely on the good graces of her mother. For some years, this has relieved her of the cost of vehicle acquisition, that ubiquitous annoyance and burden of modern life. It is fatuous to think that she will always have this boon, more immediately as her present borrowed vehicle ages and ultimately as her mother gets older and has increased needs herself. Over the medium- and long-range future, it is only realistic to attribute a fairly constant expense of vehicle acquisition to the Debtor. At some point, probably sooner rather than later, she will have to foot the expense of a car purchase. It will not take much of one to consume at least $150.00 per month.[10] *See U.S. Dept. of Educ. v. Reynolds,* 2004 WL 1745835, *5 (D. Minn. 2004) (holding that bankruptcy court, *In re Reynolds*, 303 B.R. 823, 834 (Bankr. D. Minn. 2004), did not commit clear error in fact-finding to same result, on "substantial evidentiary support" of comparable situation facing debtor-plaintiff in proceeding under § 523(a)(8)).

This inevitable expenditure virtually consumes the $170.00 remaining from the Debtor's monthly income. Because the categories of expense previously found include little or nothing to generate a "cushion" for emergency or contingency expenses, the remaining twenty-odd dollars are properly routed to that category, the unavoidable consequence of the vagaries of everyday life. *In re Reynolds*, 303 B.R. at 834, *aff'd*, 2004 WL 1745835, *5.

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service station, had to go first to them, with the needs of his and the Debtor's household second in priority.

[10] This would be the case whether that be directed to saving for an outright purchase of an inexpensive used vehicle, or accumulating a downpayment for a more reliable one and then paying the monthly debt service on financing for the balance of the price.

The Debtor, then, met her burden to demonstrate that she lacks the ability at present to make *any* payment on any portion of her educational-loans obligation, even under the structured amelioration of the William D. Ford Direct Loan Program.[11]

The inquiry can not end with the Debtor's situation at present, though. Her prospects for an income surplus in the future must be gauged, on the record presented. *In re Long*, 322 F.3d at 554-555 ("reasonably reliable future resources" and "the prospect of future changes--positive or adverse--in the debtor's financial position" are relevant to undue hardship inquiry). On the record presented, this is an easy matter--if one assumes an indefinite continuation of the Debtor's present employment. The annual increases in wages of two to three percent that she has had and that she expects for the future certainly do not enable a recipient to do more than keep pace with inflationary increases in the cost of subsistence.

The Creditors' argument, however, does not make that assumption. Arguing

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[11] Under the Ford Program, borrowers may consolidate their educational loan obligations and then may be eligible for reamortization under four different plans. Borrowers with limited income can qualify for the "Income Contingent Repayment" plan. Under this, they may qualify for a reduced current payment obligation, calculated on a fraction of their "discretionary adjusted gross income," periodically adjusted over a 25-year period of repayment; any unpaid balance is cancelled at the end as long as the borrower has remained current in payment and otherwise has complied with the program. Under the parties' stipulation of fact, the Debtor would have qualified for a current monthly payment amount of $242.67 under this program. ECMC's and TGSLC's arguments on the income-surplus issue were all directed toward showing that she could meet such an obligation and still maintain her modest lifestyle; but it is clear that she can not, and will not, in the ordinary course of modern everyday life. Even if one were to reject the findings on deemed expenditures for vehicle acquisition and emergency expenses, the "surplus" of $170.00 would not have kept her current under the Ford Program's option that is most lenient toward borrowers; she would fall short by about 35% of the required payment. She would not be able to "*sufficiently cover* payment of the student loan debt," the measure for ability to pay under the binding precedent. *In re Long*, 322 F.2d at 554-555 (emphasis added).

that the Debtor has not "maximized her income," the Creditors produced a vocational expert, rehabilitation consultant Richard VanWagner. VanWagner testified that the Debtor could get her teacher's license back with relatively little difficulty.[12] He then testified that specialist-teachers in early childhood special education are in "constant demand" presently.[13]

VanWagner had made a telephone inquiry to staffing specialists at a number of metro-area school districts. He had presented a hypothetical set of teacher qualifications (a B.A. degree, 30-plus graduate-school credits, "seven years experience," and licensure) and inquired about the districts' standards for salary. The range he found was from $37,132.00 per annum in Roseville to $41,450.00 in Minneapolis. Ultimately, his opinion was that, assuming licensure, a person of the Debtor's experience and educational credentials could earn $36,000.00 to $37,000.00 in annual salary, and possibly up to $41,000.00. On cross-examination, he admitted that if the Debtor's work at Fraser School did not qualify as "experience," a likely salary would be closer to $31,000.00 to $32,000.00. He thought that experience in the preschool program of a non-public school in an unlicensed status "wouldn't not be counted."[14] However, he clearly did not investigate this issue with precision.

The tenor of the Creditors' argument is that the Debtor is underemployed, given

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[12] Specifically, by applying for reinstatement, paying the fee, and proving up attendance at continuing education to the extent of 125 units or "clock hours" within the five preceding years. He opined that the "in-service" training the Debtor had received through Fraser School "should satisfy" the credit-hour requirement.

[13] However, he had found only a handful of current openings in Minneapolis, St. Paul, and Roseville as of the date of trial. To be sure, this was at a point approaching the middle of a school year, by which time most districts had had to fill their current staffing vacancies.

[14] The double negative is an accurate quotation.

her educational credentials, and hence a hypothetical level of income commensurate with those credentials should be deemed to her. As the Creditors would have it, this enhancement could come from one of two different sources: the taking of new part-time employment, as she had held in the past, or the abandonment of her present employment in favor of an elementary-school teaching position in special education.

At the outset, it should be noted that the discussion in the binding precedent never mentions this forced deeming of income as a permissible aspect of fact-finding for the undue hardship inquiry. *In re Long*, 322 F.3d at 553-555; *In re Andrews*, 661 F.2d at 704.[15] With the Eighth Circuit's recent warning to the bankruptcy courts, to follow its undue-hardship formulation and no other, *In re Long*, 322 F.3d at 555, one must be careful about buying into the specific details of undue-hardship formulations from other courts. In point of fact, the "maximization-of-effort" argument is too amenable to contortion "to find every possible way to boost a[n income] surplus"--a rhetorical tactic that the Bankruptcy Appellate Panel for the Eighth Circuit has criticized in the context of § 523(a)(8). *In re Cline*, 248 B.R. at 351.

So, in the matter at bar, the appropriate thrust of the inquiry is not judgmental,

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[15] The Creditors try to make much of a lower-court ruling, *In re Rose*, 227 B.R. 518 (W.D. Mo. 1998), and its pronouncement that under § 523(a)(8) a debtor must "have done everything possible to minimize expenses and maximize income...", 227 B.R. at 526, n. 11. However, that decision is not only not precedential, it was rendered before the Eighth Circuit revisited the § 523(a)(8) standard in *Long* and expanded a bit on its prior pronouncements in *Andrews*. TGSLC's counsel tries to shoehorn *Rose* into precedentiality by noting that the decision was "cited favorably" in *In re Andresen*, 232 B.R. 127, 140 (B.A.P. 8th Cir. 1999), but there is no basis for such a leap. There is no unequivocally laudatory quality to the BAP's citation of *Rose*. In any event, the mere fact of a "favorable" citation to one or a few component holdings does not get a corollary decision into the status of "annexed precedent"--for several obvious reasons, logical as well as structural.

i.e., should the Debtor be censured for not doing somewhat better. Rather, it is practical and functional: is there a *realistic* prospect for the Debtor to significantly change her patterns of work and life so as to generate enough income to meet payment obligations to the Creditors? Finally, whether the case for such a prospect is strong or only preponderant, there is another consideration: whether it is "due," condign, and meet for the bankruptcy court to lever a debtor into such a change by denying relief under § 523(a)(8). In passing on that, there has to be room for at least a little heart, as well as the hard stuff of dollars-and-cents analysis and vocational considerations.[16]

The Creditors urged a boosting of the Debtor's deemed income surplus on two different theories. The first one was a two-pronged pitch that the Debtor should be working an additional part-time job. On the first alternative, however, there is simply no realism. The Debtor testified convincingly that she was physically unable to continue her after-hours effort to earn more as a retail sales clerk, after a year of trying; it so exacerbated her back problems that it threatened her attendance at her regular job. The activities that caused the aggravation--prolonged standing and sitting in one place, bending, and lifting--are ubiquitous to this sort of part-time service-sector employment, widely-available as it may be. That clearly writes out this avenue of income enhancement for her.

On the other prong, the Creditors argued that the Debtor must return to an after-hours engagement as a personal care attendant to developmentally-disabled children. The

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[16] Because the Eighth Circuit's totality-of-the-circumstances test is more resonant of equity than of the strictures of law, this has to be the case. Of course, the application must be made only on a strong foundation in fact, and still must be articulated in terms of the potential hardships. *In re Reynolds*, 2004 WL 1745835, *5.

Debtor's testimony on the nature of this work was not lengthy, but it enabled enough understanding. A personal care attendant works "one on one" with learning- or developmentally-disabled children, apparently at their homes or outside an institutional setting. The duties are a combination of teaching, sensory and neural stimulation, behavior modification, and physical caretaking. While the Debtor did this, her clientele was very similar to her student base at the Fraser School. The Debtor's testimony made it clear that the progress from personal care attendant involvement with any particular child is very slow, to be measured in very small increments over long periods of time. This is very much the same as in her teacher-caregiver work. These positions obviously require a huge reservoir of patience and calm, and an ability to cope firmly but lovingly with emotional deficits in impaired children. The anguish of seeing the manifestations of the afflictions must be ever-present, requiring a dynamic balance between objectivity and sensitivity. As the Debtor credibly testified, after two years of stacking similar stresses from two such positions, over beyond-full-time hours, it "got too much." She recognized that she was suffering "job burnout," and had to stop doing personal care attendant work.

The Debtor clearly is effective in carrying out the duties of one demanding position, on a full-time basis. The only evidence of record shows that it indeed would be "too much" for her, psychologically and perhaps physically, to do any more work with this hugely needy population than she is presently doing. It simply is not "realistic" to expect her to function effectively in her main job *and* to take back the burden of additional part-time work. The income that would be derived from a return to a personal care attendant position is not to be reasonably deemed to her for the future.

The Creditors made no other record on income-augmentation via part-time work. Their vocational expert did not even address the Debtor's suitability for it. There is no basis for a finding that she could materially augment her income by taking on another job while maintaining her position at Fraser School.

The Creditors' case on income-deeming, then, is down to their other theory: that her educational credentials would support a different main job, one that would generate greater income, and therefore the future possession of such a job should be attributed to her in the determination of available resources over a relevant period of time.[17]

Out of the Bankruptcy Appellate Panel's most significant decision under § 523(a)(8), the frame of reference for the financial implications of a Debtor's vocational profile is identified as follows:

> The undue hardship analysis is to be applied to a debtor as that person is found at the time of trial--vocational profile, medical condition, net worth, actual earnings, family responsibilities, psychological impediments, and all. The debtor's future prospects for career change and advancement, income

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[17] This formulation is convoluted, yes, but there is no other way to even take cognizance of the argument within the framework enunciated in *Long* and *Andrews*. The Debtor is not malingering, in the sense of avoiding all work or even by working in a menial job far outside and below her credentials. She is making use of her training and education in the job she now performs. Contrary to what the Creditors argue, there is no egregious mismatch ---and, really, only by showing one could they have made out another material "fact and circumstance" that would have fit within the *Long/Andrews* analysis. The Eighth Circuit requires consideration of "*reasonably reliable* future financial resources." *In re Long*, 322 F.3d at 554; *In re Andrews*, 661 F.2d at 704. The very phraseology here suggests a calmer and more distanced and dispassionate analysis, rather than a judgmental inquisition into "maximizing" and "minimizing." Neither *Long* nor *Andrews* make reference to the latter. Indeed, the verbiage is an import from the longstanding undue hardship formulations from other courts--e.g., *In re Johnson*, 5 B.C.D. 532 (Bankr. E.D. Pa. 1979)--which the trial courts of the Eighth Circuit must eschew to the extent it constricts the breadth of considerations under *Long* and *Andrews*. *In re Long*, 322 F.3d at 555.

> enhancement, and other personal improvement can be considered, but must be measured on hard evidence. Such prospects must be gauged against the aging of the debtor's educational credential, the debtor's historical experience in exploiting the credential, and the current and anticipated job markets in relevant field(s). Unfocused grunting about the huge abstract benefit of a particular educational credential is not only superfluous to this analysis; it actually hinders clarity in adjudication. Tendentious moralizing about the choices a debtor made for career paths and in choosing places to live and work is similarly unilluminating.

In re Pollard, 306 B.R. at 652 (citing *In re Andresen*, 232 B.R. at 137-139).

In the first place, from the evidence at bar, one cannot realistically project a future for the Debtor where she is employed as an elementary-level special education teacher at the higher income levels posited by the Creditors. VanWagner could not testify unequivocally that the Debtor could satisfy the substantial continuing-education requirement for relicensure without incurring a substantial cost for the course-hours; the Debtor testified credibly enough that she lacked the money to pay for this education if her past in-service training did not meet it. More directly to the point of income, VanWagner could not state unequivocally that her experience as a preschool instructor would qualify as the in-class teaching experience that could raise her as a freshly-hired elementary teacher to the income level that the Creditors propounded under the local districts' wage scales, of $36,000.00 to $41,000.00 per year. A convincing case for the attribution of a substantially enhanced income capacity simply was not there.

If the Debtor's experience did not so qualify, taking elementary-school employment at the salary level for which she would qualify would increase her gross income

by only $4,700.00 to $5,700.00 per year.[18] Netted down after taxes, such an enhancement would likely garner the Debtor no more than $250.00 to $300.00 in additional net income per month. The Creditors, predictably, point out that this would be enough to meet a payment obligation under the income-contingent option of the Ford Program, and insist that it must be deemed to her.

This, of course, is all a hypothetical, a possible future for which there can be no guarantee of attainment. The real question is not just whether this future should be attributed to the Debtor, but whether the risks of attempting a leap into it should be foisted on her by denying her relief under § 523(a)(8).

In the last instance, it is simply not right to assume that future--with nominally small degree of financial betterment, ultimately not even to be received by the Debtor in-hand--as cornerstone of a finding of no undue hardship. The fiscal stability of local governments and school systems is currently quite unsettled. In today's political climate the continuing availability of public funding for social intervention programs is far from certain. Local school districts in the Twin Cities have laid off large numbers of employees recently. The underlying reasons are deep, extending up to the federal government's looming structural deficits. A forced jump into the fiscally-besieged environment of the public schools may well be a matter of significant risk to the Debtor, even in a curriculum area that has enjoyed favor in funding recently. Against that large backdrop, it simply is not reasonable to foresee her being able

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[18] This is the difference between her current earnings from the Fraser School, stipulated to be $26,374.00 per year, and the $31,000.00 to $32,000.00 for which she would qualify as an incoming teacher without classroom experience.

to transition into a job more nominally in line with her formal credentials, even at the lower wage level to which VanWagner testified, and still protecting her own financial security for the indefinite future.

Beyond this, there is a more intangible reason why the undue-hardship determination should not go against the Debtor. While she is only in middle age, and thus has years of natural adaptability before her, she is well-established in a job for which she clearly is well suited, and that she apparently can count on keeping. She serves the most vulnerable members of our society, children with profound deficits. Her young charges require concentrated early intervention before they even stand a chance to grow to functionality in school and society.[19] The Debtor clearly has a personal calling to that sort of intervention. To all appearances, her vocation does her proud, and does her young clients well. She may not be making a constant, broad-ranged, and finely-directed use of every last skill she learned in her college and graduate school career. Nonetheless, she uses enough of it where she is, to the undeniable benefit of those entrusted to her. One simply cannot brand her with the coarse judgment of "not having maximized the potential" from her educational curriculum. Clearly functioning effectively where she is, she makes her corner of the world a better place. Having her stay there, continuing to do good works, does not defeat the holding of undue hardship under § 523 (a)(8) that the rest of her showing supports.

This addresses every last point that the Creditors raised to oppose the Debtor's bid for relief from the burden of her very substantial educational-loan indebtedness.

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[19] As the Debtor testified, sometimes the only thing she can do for the more profoundly impaired of her students was to hold them, and to give them a connection with our reality through simple human contact.

On the record that she made, she is entitled to judgment in her favor.

ORDER FOR JUDGMENT

On the memorandum of decision thus made,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Excepting the Plaintiff's obligations to the Defendants from discharge in BKY 02-92748 would impose an undue hardship on her.

2. Accordingly, the Plaintiff's obligations to the Defendants were discharged in the due course of BKY 02-92748.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

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GREGORY F. KISHEL
CHIEF UNITED STATES BANKRUPTCY JUDGE

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

I, Judy Brooks, hereby certify that I am judicial assistant to Gregory F. Kishel, Chief Bankruptcy Judge for the District of Minnesota; that on October 22, 2004, true and correct copies of the annexed:

ORDER

were placed by me in individual official envelopes, with postage paid; that said envelopes were addressed individually to each of the persons, corporations, and firms at their last known addresses appearing hereinafter; that said envelopes were sealed and on the day aforesaid were placed in the United States mails at St. Paul, Minnesota, to:

ROSE, LILY E
1125 ROSELAWN AVE W APT 17
ROSEVILLE MN 55113

BARBARA J. MAY, ESQ.
4105 N. LEXINGTON, ROOM 310
ARDEN HILLS, MN 55126

McCULLOUGH, CHRISTOPHER M
GRAY PLANT MOOTY MOOTY & BENNETT
80 S 8TH ST STE 500
MINNEAPOLIS MN 55402

MacGILLIS, JAMES C
TREPANIER & MACGILLIS PA
8000 FLOUR EXCHANGE BLDG
310 4TH AVE S
MINNEAPOLIS MN 55415

and this certificate of service was made by me.

/s/ Judy Brooks
Judy Brooks

Filed on October 22, 2004
Lori Vosejpka, Acting Clerk
BY jrb, Deputy Clerk