

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:) Case No. 3-91-5418
) Chapter 7 Case
Jeffrey E. Root,)
)
Debtor.)
)
) Adv. No. 3-92-61
Jeffrey E. Root)
aka Jeff Root,)
)
Plaintiff.) ORDER
)
vs.)
)
Higher Education Assistance)
Foundation and Northstar Guarantee,)
Inc. as assignee of Student Loan)
Servicing Center,)
)
Defendants.)

At St. Paul, Minnesota.

The matter before this Court is dischargeability of Debtor's student loans pursuant to 11 U.S.C. Section 523(a)(8)(B). Appearances were as noted in the record. Based upon the testimony, exhibits received at trial, and upon all the records and files herein, the Court makes this Order pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

FACTS

On September 1990, Debtor obtained his first educational loan from Northstar Guarantee, Inc., which is an assignee of Student Loan Servicing Center. This first note (Northstar Note) was executed and delivered to the order of Norwest Bank South Dakota (Norwest) in the principal amount of \$4,000. The note provided for a variable interest rate, currently at 7.51% per annum, which rate may change every July 1. The repayment schedule established for this note provided for monthly payments to begin on October 1, 1990. As of this date, the aggregate unpaid principal and interest due on the loan totalled \$4,839.39. Debtor defaulted in the obligation to repay the Northstar Note, having made no payments thereon, and such default is continuing.

From September through November 1990, the Debtor obtained three loans which were executed by three promissory notes (HEAF Notes) in the principal amount of \$9,250 payable to the order of Norwest. The first note and second note provided for 119 consecutive monthly payments of \$62.52 each, beginning March 8, 1992 and a final payment of \$60.55. These notes bear interest at

the rate of 8% per annum until the end of the first four years following the commencement of the original repayment period, and 10% per annum thereafter. The third note provided for consecutive monthly payments of \$53.94 each, beginning July 21, 1991. This note bears a variable interest rate currently set at 9.34% per annum. As of April 24, 1992, the first two notes totalled \$5,345.45 and the third note totalled \$4,491.33 for a combined amount of \$9,836.78. These notes were guaranteed, endorsed and assigned by the Higher Education Assistance Foundation (HEAF) which joins Northstar as defendant in this action. The Debtor is required by the Northstar Note and HEAF Notes to pay reasonable attorneys' fees and costs of collection. The principal amount of the four loans totals \$13,250.

The Debtor is healthy 34-year old male. He completed high school and completed a two-year vocational degree from Mankato Technical College in Auto Mechanics. Presently, he is a single, divorced individual paying monthly child support in the amount of \$200 through payroll deduction. He is currently a full-time employee as a mail sacker/laborer at Brown Printing Company earning \$6.70 per hour and receives a \$0.20 raise every 3 months toward a maximum earning potential in his current position of \$8.50 per hour. He has been unable to obtain employment by utilizing his skills as an auto mechanic since he completed his two- year vocational degree.

During the first six months of 1992, Debtor's average net monthly income, including the deduction for child support is approximately \$608.99. Debtor also receives \$150.00 per month from a renter who resides with him.(FN1) Debtor lists his expenses as follows:

Lot Rent	\$138.00
Home Insurance	12.00
Gas	50.00
Electricity	50.00
Telephone	30.00
Cable T.V.	32.00
Food	175.00
Clothing	25.00
Vehicle repairs	20.00
Gas for vehicle	40.00
Auto Insurance	30.00
Recreation/Donations	35.00
TOTAL	\$637.00

(FN1) Debtor resides with his girlfriend who was pregnant with his child when the Petition was filed. She expects to go back to work at Brown Printing Co. and presently earns approximately \$9 an hour. The child was born sometime in September or October. At trial, Debtor spoke about the possibility of marriage.

Debtor filed for relief under 11 U.S.C. Chapter 7 on October 3, 1991. On August 17, 1992, he brought this action to discharge the loans under 11 U.S.C. Section 523(a)(8), claiming that he is experiencing extreme hardship due to the loans, which he expects to continue for a considerable indefinite time. HEAF and Northstar object to the discharge, contending that Debtor has steady income

and that he faces no unique or extraordinary circumstances that would justify discharge of the student loan debt.

II.

ANALYSIS

11 U.S.C. Section 523(a)(8)(b) provides in pertinent part:

(a) A discharge under section 727 ... of this title does not discharge an individual debtor from any debt--

(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless--

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents[.]

In order for the Debtor to prevail in this action, the Court must find that the repayment of the student loan constitutes an "undue hardship" to the Debtor and his family. See *In re Frech*, 62 B.R. 235 (Bankr. D. Minn. 1986); See also *Cossette v. Higher Educ. Assistance Found.*, 41 B.R. 684 (Bankr. D. Minn. 1984). The Court must also take into consideration the strong judicial policy which opposes the notion that a bankruptcy filing should be used as a means to discharge student loans. *In re Conner*, 89 B.R. 744, 747 (Bankr. N.D. Ill. 1988).

The Bankruptcy Code and its legislative history do not provide guidelines or a definition of what constitutes an "undue hardship." *Id.* However, the term "undue hardship" means more than an inconvenience. *Id.* Courts have developed a three-prong "progressive" test referred as the mechanical, good faith, and policy tests to properly evaluate the facts and circumstances in a case by case basis. *In re Johnson*, 5 B.R. 256 (Bankr. E. D. Pa. 1979); See also *In re Frech*, at 240. *Shoberg v. Higher Educ. Assistance Found.*, 41 B.R. 684 (Bankr. D. Minn. 1984); *In re Erickson*, 52 B.R. 154 (Bankr. D. N.D. 1985).

Although some courts have focused on only one of the three tests, Judge Kishel of this District considers the use of all three tests as a better approach to make a determination. *Frech*, at 240. The Debtor, who bears the burden of proof in each test, must satisfy each part of the test in order to have his student loans discharged. *Id.* citing *Erickson*, at 157. If the Debtor fails any one of the tests, the repayment of student loans cannot be dischargeable in bankruptcy. *Id.*

In order for the Court to determine that an "undue hardship"

exists, the first test to be satisfied is the mechanical test. Under the "mechanical" test, the Court considers the Debtor's current employment and income, future employment and income prospects, educational level and work skills, health, family support responsibilities, and the practical marketability of the Debtor's work skills. Frech, at 240.

Debtor has not met the burden of proof with respect to the "mechanical" test. He is employed as mail sacker/laborer at a printing company earning \$6.50 per hour and occasionally receives over-time pay at \$9.75 or \$13 per hour. Because the Debtor's current income is minimal, he has indicated that his monthly expenses exceed his monthly income. However, the Debtor's average net monthly income for the first six months of 1992, including the deduction for child support, totals \$733.54. In addition, the Debtor receives \$150 per month from a renter who resides with him. This income should be enough to cover his monthly expenses in the amount of \$637 and allow him to fulfill his student loan obligations as well. Additionally, the Debtor is a 34-year-old healthy male who has a two-year vocational degree in mechanics. Although the Debtor is not and has never made use of his degree, the Debtor's receipt of the degree could very well lead to the attainment of more gainful employment which could provide the Debtor with additional means to repay the student loans.

Under the "good faith" test, the Court considers whether the Debtor is actively minimizing his current living expenses while maximizing his earning potential. Frech, at 241. The Debtor has not met the "good faith" test. In not obtaining or attempting to obtain a part-time job, Debtor is not maximizing his earning potential. In addition, Debtor enjoys what may seem to be unnecessary expenses such as cable television, recreation, and donations, expending \$67 monthly which could be use to pay his student loans.

Under the "policy" test, the Court must determine whether allowing discharge of a given student loan would constitute abuse of the bankruptcy process. Frech, at 241. The "policy test" instructs the court to determine (1) the relative magnitude of the debtor's educational loan obligations as a component of his or her total debt structure; (2) the personal, professional, and financial benefit which the debtor has derived or will derived from the education financed by the loans in question. Id.

The Debtor has not met the "policy" test. First, Debtor's student loans represent a significant percentage of his total indebtedness. This is an indication that his main intention for filing his bankruptcy was to discharge his student loans. Second, the Debtor has benefitted from the education financed by the student loans. Although the Debtor has never been employed in a profession in which he obtained his degree, he testified at trial that he uses his skills to repair his automobile. Thus, the Debtor obtains an indirect benefit from his education. Otherwise, he would have to pay for these services.

Debtor has failed to carry his burden of showing that the repayment of his student loans would create an "undue hardship" against him or his dependents. Accordingly, the foregoing student loan debts are not dischargeable under 11 U.S.C. Section 523(a)(8)(B).

THEREFORE, IT IS HEREBY ORDERED: Debtor's student loans owing to Defendants HEAF and Northstar are nondischargeable in Debtor's Bankruptcy No. 3-91-5418, and such amount is not discharge pursuant to any discharge that has been or will be granted herein.

Let Judgment Be Entered Accordingly.

Dated this _____ day of November, 1992.

BY THE COURT:

DENNIS D. O'BRIEN
U.S. Bankruptcy Judge