

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Jill Vedders,

Chapter 7

Jill Vedders,

ADV. No. 3-95-118

Plaintiff,

vs.

Eduserve Technologies and
Texas Guaranteed Student Loan
Corporation,
Defendants.

ORDER

This adversary proceeding came on for trial January 30, 1996, to determine the dischargeability of Debtor's student loan obligations under 11 U.S.C. Section 523(a)(8)(B). Appearances were noted in the record. The Court having reviewed and considered the evidence received, heard the arguments of counsel, and otherwise being fully advised on the matter, now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

Statement of Dispute

The Debtor seeks a determination of the dischargeability of her student loan obligation as an undue hardship. She owes \$10,252.63 to Defendants, from student loans taken to fund her six years of classes at Mankato State University. Debtor asserts that she suffers from chronic depression, is taking prescription medications, and undergoing therapy for a mental condition. She claims that as a result of her fragile mental state, she is unable to repay the loan obligations. She contends her income level will not dramatically improve in the foreseeable future and, accordingly, asserts that the debt should be discharged as an undue hardship in accordance with 11 U.S.C. Section 523(a)(8)(B).

Defendants dispute Debtor's assertions that her mental condition gives rise to the type of undue hardship provided in the Code. Debtor is only 29 years old, has no dependants and no physical disabilities. The Defendants contend that in the near future, it is reasonable to suspect Debtor's financial circumstances will improve; and, that she will be able to service her student loan indebtedness.

The evidence in the record concerning Debtor's mental condition and tenuous employment circumstances, is insufficient to meet her burden of showing undue hardship. Therefore, Debtor's student loan debts in the amount of \$10,252.63, are nondischargeable.

II.

FACTS

The Debtor commenced classes at Mankato State University in 1985. To finance her education, she obtained guaranteed student loans, in the principal

amounts of \$2,240 and \$1,870.(FN1) At the time of filing, the balance owed on the TGSLC loans was \$4,674.46. The Debtor also received loans from the Minnesota Higher Education Coordinating Board (MHESO).(FN2) At the time of the filing, Debtor owed \$5,735.18 to MHESO. Debtor requests that the entire balance owing on these loans of \$10,252.63, be discharged in her Chapter 7 bankruptcy case.

The Debtor attended Mankato State University from 1985 until July, 1991. She was 17 credits short of completing an accounting degree, when she left school. The Debtor testified that most of the proceeds of these loans were used for financing her education, but some proceeds were used to purchase a vehicle and pay personal expenses.

In 1987, the Debtor missed time in school due to the surgical removal of a tumor. Also, she was hospitalized for injuries sustained following a car accident. The Debtor had additional surgery on her feet, and was forced to miss more classes. As a result of this time off, it delayed her completion of her education. Additionally, the Debtor worked part-time and, at certain points, she was unable to pay for her current load of classes.

The Debtor stopped attending classes in 1991, after a serious case of depression, which left her suicidal and in the hospital. She was hospitalized for 48 hours at Emmanuel St. Joes in Mankato, Minnesota. Following her hospitalization, she was prescribed Prozac and Trazedone, both administered to alleviate the depression. She also began psychiatric counseling with Dr. Julie Gerdts three times each week. The Debtor remains in treatment today, and battles her condition daily.

Due to her mental condition, the Debtor did not return to complete her degree. Instead, she searched for a job, and eventually obtained a position with Minnegasco, as a customer service representative in August 1992. She has held this position for more than three years. At the time of filing, the Debtor's gross monthly income was \$1,593, and her net was approximately \$1,200.

The Debtor claims her expenses are \$1,410.50. These expenses included monthly \$15 co-payments for medication and a \$10 co-payment for each therapy session. The Debtor's rent is \$325, and she makes a car payment of \$270 each month on a car loan that will end in October 1996.

Vedders filed her Title 11 petition under Chapter 7 for relief from her creditors, which included past due medical bills, her student loan debts, and other unsecured credit card debts. She was unable to make payments on these obligations, and maintain treatment for her medical condition.

II. ANALYSIS

Under 11 U.S.C. Section 523(a)(8)(B), an individual debtor is not discharged in bankruptcy proceedings from any debt incurred for an educational benefit, arising from a loan made by a governmental unit or made under a program funded in whole or in part by a governmental unit, unless excepting such debt would impose an "undue hardship" on the debtor and debtor's dependents. While the Bankruptcy Code does not provide the exact meaning for "undue hardship," various courts have developed and adopted several tests to evaluate the exceptions to the non-dischargeability of student loan obligations for individual debtors. The current applicable test in this jurisdiction is found in the case of *In re Frech*. *In re Frech*, 62 Bankr. 235 (Bankr. D. Minn. 1986).

In *Frech*, the court set forth the three elements of consideration for dischargeability of student loan obligations. *Id.* at 240. The debtor carries the burden of all three elements in order for the debt to be deemed discharged as undue hardship.

The three elements are detailed in terms of tests that the debtor's special circumstance must meet in order for consideration of dischargeability. The first is the mechanical test, where the court considers the financial

duties, obligations, prospects, and hardships of the debtor. The second is the good faith test, where the court considers whether or not the debtor has made good faith attempts to minimize expenses, maximizing resources, and mitigate defaults with the lender through negotiations for payment plans or additional deferral time. Lastly, the policy test requires the court to consider the impact of discharging the debt in conjunction with the Congressional intent behind 11 U.S.C. Section 523(a)(8)(B). Debtor must first pass the threshold mechanical test before any other consideration by the court is to take place.

The Debtor testified to her mental condition and presented evidence of her clinical depression. She also testified to the tenuous status of her employment at Minnegasco, and the possibility that her department could be closing in the future. Finally, she presented evidence that her current expenses exceed her income. She has made efforts to locate a job that pays more, but fears that doing so will be a distance from her treating psychiatrist, and she will lose her medical insurance.

The Defendants do not dispute that the Debtor suffers from clinical depression. But, they do contend that in the foreseeable future, there is a great likelihood that Debtor's financial condition will improve. She is only 29

years old, has no dependants, and is not under any physical restrictions for employment. Additionally, she has been with Minnegasco for more than three years, and has received raises accordingly. They dispute Debtor's contention that her position will be terminated, and argue that this is only speculation, and should not be determinative for dischargeability.

The Debtor has failed to carry her burden to satisfy the mechanical test under 11 U.S.C. 523 (a)(8)(B). With respect to her medical condition, the Debtor failed to provide any medical records which would substantiate the severity of her mental condition. The Debtor's battle with depression has been debilitating. But, her testimony alone is insufficient to support a finding that she is presently employment disabled; or that her condition will not improve in the reasonably foreseeable future.

Moreover, there was insufficient evidence offered to support Debtor's contention that her present employment status is in doubt. The Debtor's testimony regarding the potential closure of her office was not substantiated by any further evidence. The Debtor has maintained her employment with Minnegasco for more than three years, and presumably this will continue.

Additionally, the Debtor's expenses will be reduced in the foreseeable future. For example, Debtor no longer will need to contend with the unsecured debts and medical bills discharged in her Chapter 7 bankruptcy case. Also, the Debtor's car payment of \$270 each month will end in October 1996. At least a portion of this payment, less an amount used for car maintenance, may be used to service her student loan obligation. Therefore, the Debtor fails to meet the threshold mechanical test of financial hardship, and no further consideration of the good faith or policy tests is necessary.

IV.

Based upon the foregoing, it is hereby ORDERED that the Debtor's student loan debts to TGSLC of \$4,674.76, and MHESO of \$5,735.18, are not dischargeable under 11 U.S.C. Section 523(a)(8)(B).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 3/28/96

By the Court:

Dennis D. O'Brien
Chief U.S. Bankruptcy Court

(FN1) These loans were ultimately assigned to the Texas Guaranteed Student Loan Corporation (TGSLC).

(FN2) The named defendant in this adversary proceeding, EduServ Technologies, Inc., is the agent ofMHESO responsible for administering and collecting the Debtor's loans.