

DISTRICT OF MINNESOTA  
THIRD DIVISION

In re: BKY 3-89-01264

Dennis David Waite,

Debtor.

Linda D. Murphey, f/k/a  
Linda Murphey Waite,

ADV. 3-92-203

Plaintiff,

vs.

ORDER

Dennis David Waite,

Defendant.

This matter came before the Court on trial to determine nondischargeability of debts owing under a dissolution decree. William Hanley appears on behalf of Plaintiff. Judith L. Mason appears on behalf of Defendant. At the conclusion of the evidence, the parties requested and were permitted to submit their final arguments in written form as post-trial memoranda. Based upon the files, records, evidence presented at trial, arguments of counsel and post-trial final written arguments, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

I.

Facts

The dispute in this case is whether property division, payment of the marital debt, and payment of attorney's fees awarded in a marriage dissolution decree are spousal maintenance or property settlement provisions. Plaintiff Linda Murphey contends that the provisions were intended as maintenance and support, and that the obligations created under them are nondischargeable. Defendant Dennis Waite argues that the provisions were in settlement of marital property claims of the parties, and that the obligations are all dischargeable under 11 U.S.C. Section 727.

Plaintiff and Defendant were married for approximately eight years. Two children were born of the marriage, one on May 24, 1982, and the other on December 12, 1983. The couple began having marital problems and Mr. Waite moved out of the Minneapolis home in February 1987. Ms. Murphey controlled the household checking account and finances during the marriage. She continued control over the couple's income after the separation, allotting Mr. Waite money each month to meet his monthly expenses. When she filed the petition of dissolution, Mr. Waite closed the account in the summer of 1988. The parties stipulated to their dissolution proceeding and the Hennepin County District Court entered its Judgment and Decree on December 8, 1988.

Paragraph 10 of the Decree, entitled: "Division of Personal Property," provides:

10. Division of Personal Property. [T]he parties have effected to their mutual satisfaction a division of all personal property in which they had an interest, either singly or jointly(FN1)...As a full final complete and equitable property division, Petitioner is awarded \$12,000.00 from the rental property jointly owned by parties located at 1077 Bradley Street, St. Paul, Minnesota, ...The Property Award shall be paid as follows:

- (1) \$5,000.00 to Petitioner within ten days following the entry of the Judgment and Decree of dissolution; and
- (2) \$5,000.00 in 40 days following (1) above; and
- (3) \$2,000 to be paid in interest free installments as \$300.00 per month for 7 months commencing the month following the termination of spousal maintenance as described in paragraph 14 above...(FN2)

Plaintiff was awarded all right, title and interest to the parties home located at 4813 36th Avenue, Minneapolis.(FN3) Defendant was awarded all right, title and interest in a duplex located at 1077 Bradley Street, St. Paul.(FN4) Both parties were ordered to execute quit claim deeds to convey title to each other's awarded property.

Defendant was obligated to pay all marital debts of the parties and to defend and hold Ms. Murphey harmless for the debts.

The debts totalled approximately \$27,000, according to schedules filed with the bankruptcy petition. Additionally, Defendant was ordered to pay Plaintiff's attorney's fees directly to Krause & Rollins in an amount up to \$2,500.00.

After the dissolution, Ms. Murphey completed a four-week course at Normandale Community College and was qualified to substitute teach on a part-time, as-needed basis for the City of Minneapolis School System. Currently, she is recertified and employed full-time as a special education teacher. She is no longer living at the Minneapolis residence as she has remarried and is living with her husband in Burnsville.

Mr. Waite was and still is employed with Northwest Airlines as a mechanic. At the time of the dissolution, he was earning \$34,000. He testified that it was necessary to work overtime with Northwest and part-time employment performing building maintenance in order to make ends meet. Defendant testified that he thought that he could fulfill his obligations under the property settlement by borrowing money from a credit union. However, the credit union would not consider his application.

Defendant filed a Chapter 13 petition on April 13, 1989. He paid the property division payments outside of his plan.(FN5) No

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objected to the plan and it was confirmed. Defendant testified that Northwest subsequently cut his overtime and that he was forced to convert to a Chapter 7 on April 28, 1992. According to Mr. Waite, he had been using his overtime pay from Northwest to meet his own personal living expenses.

Ms. Murphey contends that the property division, payment of

the marital debt, and payment of her attorney's fees were all intended to represent spousal maintenance obligations and are, therefore, nondischargeable in the Chapter 7 case. Mr. Waite argues that the obligations represent property settlement, and are dischargeable under 11 U.S.C. Section 727.

## II.

### 1. Preliminary Matters - Post Trial Argument Evidentiary Objections

With the submission of Defendant's post-trial argument, his attorney attached four documents not introduced as exhibits at trial: Stipulation to Amend Judgment and Decree dated July 21, 1989; and three Orders from the Family Court dated September 1, 1989; April 20, 1992; and January 22, 1993. Upon receipt of Defendant's final argument, Plaintiff's counsel, by letter to the Court dated January 29, 1993, objects to the introduction of these documents as untimely, arguing that the documents were not provided to him prior to trial; and, Defendant closed his case at trial without any request for submission of these exhibits or reservation of right to submit additional exhibits. Plaintiff's attorney states that his cross-examination of Defendant would have been significantly different had these documents been offered at trial.

Defendant did not provide the documents to Plaintiff pursuant to the trial order of the Court or offer them as exhibits at trial. Receipt of the exhibits after trial would unfairly prejudice Plaintiff. The documents are not part of the record and will not be considered in determination of the issues tried.

Additionally, Plaintiff's counsel, in his letter of January 29, 1993, objects to the relevancy of an exhibit offered by Plaintiff and admitted at trial. Specifically, Plaintiff's counsel argues that the Amended Judgment and Decree of Divorce dated June 11, 1992 is irrelevant because that document is dated after Debtor's conversion from a case under Chapter 13 to a case under Chapter 7. If Plaintiff did not want it considered as evidence, she should have not offered the document. The Judgment and Decree dated June 11, 1992, that was offered by Plaintiff and received by the Court as Exhibit 8 with no objections being made to it at the time of trial, is now part of the record, and will be considered in this proceeding.

### 2. Dischargeability Issues

#### A. Generally

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

A discharge under section 727...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 the 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--

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

The complaining spouse has the burden of establishing that an obligation is nondischargeable because the debt obligation is actually in the nature of alimony, maintenance or support. This burden flows from the concept that nondischargeability under 11 U.S.C. Section 523 must begin with the assumption that dischargeability is favored under the Bankruptcy Code. *Freyer v. Freyer*, (In re Freyer), 71 B.R. 912, 916 (Bankr. S.D. N.Y. 1987) citing *Long v. Calhoun* (In re Calhoun), 715 F.2d at 1111; *Tilley v. Jessee*, 789 F.2d 1074, 1077 (4th Cir. 1986). Whether a debt in a state court dissolution decree is a family support obligation or a property division is a question of federal law. H.R. REP. No. 595, 95th Cong. 1st Sess. 364 (1977); S.REP. No 989, 95th Cong., 2d Sess. 79 (1978); U.S. Code Cong. & Admin. News 1978, p. 5787; *Adams v. Zentz*, 963 F.2d 197, 199 (8th Cir. 1992); *In re Williams*, 703 F.2d 1055 (8th Cir. 1983). In order to determine whether the obligation is nondischargeable spousal support the first place the court looks is to the document itself. If intent is not apparent from the document, the court must then ascertain the intent of the parties at the time they executed their stipulated agreement. The substance of the agreement rather than its form must be considered in light of the surrounding circumstances of the parties at the time of the dissolution. *Anderson v. Anderson* (In re Anderson), 62 B.R. 448, 454 (Bankr. D. Minn. 1986); *Goss v. Goss* (In re Goss), 131 B.R. 729, 731 (Bankr. D. N.M. 1991).

To assist the court in ascertaining what constitutes nondischargeable support as opposed to a dischargeable property division, many courts have considered a list of factors designed to aid it in resolving the question of what the parties actually intended the obligation to encompass at the time of their dissolution. As the number of cases in this area has grown, so has the number of factors on the list. *Bohneur v. Bohneur* (In re Bohneur), 148 B.R. 379 (Bankr. E.D. N.Y. 1992). Some of these factors include:

1. Whether the debtor's obligation of payment terminates on the death or remarriage of the recipient, or on the death of the debtor;
2. Whether the debtor's obligation of payments terminates when dependent children reach the age of majority or are otherwise emancipated;
3. Whether payments are made directly to the recipient or to third parties;
4. When a duty to pay debts to third parties is at issue, whether the debt was incurred to pay immediate living expenses of the recipient/beneficiary;
5. The relative earnings of the debtor and the recipient at the time of stipulation or trial;
6. Whether the recipient relinquished property rights in consideration for the entitlement to payments from the debtor;
7. The length of the debtor's and the recipient's marriage and the number of dependent children;
8. The facial language of the decree itself and the

inference to be drawn from the inclusion of specific provisions in it;

9. Whether the payments are intended for the economic safety of the debtor's dependents;
10. Whether the obligation is payable by installments over a substantial period of time;
11. The nature of the obligations assume (provision of daily necessities indicates support);
12. Relative earning powers of the parties;
13. Age, health and work skills of the parties;
14. The adequacy of support absent the debt assumption.

Anderson, at 454, 455; Smith v. Smith (In re Smith), 131 B.R. 959 (Bankr. E.D. Mich. 1991).

#### B. Attorney's Fees

Where state law allows an award of attorney's fees to be based on the financial circumstances of the parties, and the facts show that the recipient is in need of the award, the Bankruptcy Court may find the award had a support function and is nondischargeable. Anderson at 456, citing Williams at 1057; see also MINN. STAT. Section 518.14. Here, Ms. Murphey was unemployed at the time of the dissolution. Although she was receiving adequate child support and spousal maintenance from Mr. Waite, it would have been inequitable to require her to pay her attorney's fees directly from her award of child support and spousal maintenance. At the time of the dissolution, Mr. Waite was in a far better position to assume responsibility for payment of Ms. Murphey's attorney's fees. Additionally, Ms. Murphey's earning potential at the time of the dissolution and the 18-month period post-dissolution was limited to part-time employment in light of her goal to return to school to accomplish recertification. Therefore, the attorney's fees were intended as maintenance and support and are nondischargeable in Debtor's bankruptcy.

#### C. Marital Debt Assumption

In resolving the parties' intent as to whether the marital debt assumption constituted spousal maintenance or a property settlement, the Court must determine the intent of the parties when they executed the stipulation which the state district court ultimately relied on in the entry of the Judgment and Decree. Factors that support the claim that this award was a property settlement are: the obligation did not terminate on death or remarriage of Ms. Murphey or on the age of majority of the children. The facial language in the document itself does not refer to it as spousal maintenance. The debts were payable directly to third parties. However, debts payable to third parties can be viewed as support obligations. See: Williams at 1057.

A number of factors support the assertion that the award was intended as spousal maintenance. At the time of the stipulation, Mr. Waite was the sole-wage earner of the family, Ms. Murphey was a homemaker. There were two minor children. Ms. Murphey's goal was to become recertified as a teacher and, therefore, could not seek immediate full-time employment. Therefore, Mr. Waite was in a far better position to undertake the parties' marital indebtedness. Also, if Mr. Waite had not assumed the marital debts, Ms. Murphey's child support and maintenance would not have

been adequate to also service the outstanding marital debt. Mr. Waite's assumption of these debts was necessary to preserve Ms. Murphey's support and maintenance. Therefore, the debt assumption was intended as support and maintenance and is nondischargeable.

#### D. Property Award

The Judgment and Decree as well as the Amended Judgment and Decree facially describe the provision as: "Division of Personal Property." Other separate and distinct provisions in the document provided for child support and maintenance.(FN6) The arrearages in

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property division are not merged into the child support as was accomplished with the spousal maintenance upon the death or remarriage of either spouse, which has been held to be indicative of a property settlement award rather than spousal maintenance. See: Morel V. Morel (In re Morel), 983 F. 2d 104 (8th Cir. 1992); Seablom v. Seablom (In re Seablom), 45 B.R. 445, 450 (Bankr.D.N.D. 1984). Rather, it only provided that if Mr. Waite should remarry, the entire unpaid balance was to be paid in full to Ms. Murphey. Taking the analysis one step further, the Court considers the intent of the parties at the time the stipulation was executed.(FN7) In the stipulated dissolution, Ms. Murphey received the majority of the couple's personal and real property. She received 90 percent of the household belongings; the family residence in Minneapolis, which contained at least \$15,000.00 equity; she essentially received whatever equity was in Mr. Waite's duplex. Mr. Waite accepted responsibility for all the couple's marital debt in the approximate amount of \$27,000. Essentially, she was debt free, except for the first mortgage on the Minneapolis residence. She was awarded separately adequate child support and spousal maintenance. The spousal maintenance was for a 18-month term which can be construed as a monetary award necessary for the time period required for Ms. Murphey's recertification in teaching.

At trial, Plaintiff appeared to be a well-educated, articulate woman. Prior to her marriage, she had obtained a degree in teaching special education from a college in New Jersey. When she moved to Minnesota, she obtained secretarial employment. Thereafter, she was employed with Northwest Airlines (Northwest) as a flight attendant, earning approximated \$676.00 to \$1,100 bi-monthly. She continued employment with Northwest until the birth of the couple's first child. She then took maternity leave, and subsequently quit her employment at Northwest to become a full-time homemaker.

Additionally, Ms. Murphey at the time of the dissolution was a young woman, in excellent health. She had marketable secretarial skills and a degree in education which only required minimal schooling for recertification. Ms. Murphey also testified that after completing a preliminary course through Normandale Community College, she was qualified as a part-time substitute teacher with the Minneapolis School System, so she was marketable in her chosen profession.

Based upon all the above, the Court finds that the parties intended this provision to be a property settlement and not spousal maintenance.

Accordingly, the Court finds that the "personal property settlement" is just what it is entitled, and what it was intended to be, a property settlement. It is, therefore, an obligation dischargeable in bankruptcy.

III.

IT IS HEREBY ORDERED:

1. The attorney fee award in favor of Plaintiff arising out of the dissolution of the marriage of the parties was intended as alimony, maintenance or support and is nondischargeable in Defendant Debtor's bankruptcy proceeding.

2. The marital debt assumption of the Defendant arising out of the marriage dissolution of the parties was intended as alimony, maintenance or support and is nondischargeable in Debtor's bankruptcy proceeding.

3. The "Division of Personal Property" obligation arising out of the marriage dissolution of the parties, in the present amount of \$9,500 owing Ms. Murphey, is a property settlement. Therefore, the obligation is covered by the Defendant Debtor's 11 U.S.C. Section 727 general discharge in his Bankruptcy Case 3-89-01264.

Let Judgment Be Entered Accordingly.

Dated: April 6, 1993.

BY THE COURT:

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

(FN1)Plaintiff testified that she received approximately 90 percent of the household personal property as this was her property prior to the marriage.

(FN2)This provision was subsequently amended on June 11, 1992, to provide for \$250 monthly installments until the \$11,700 balance was completely paid. The entire unpaid balance was to be paid in full to Ms. Murphey if Mr. Waite remarried or refinanced the property. The amendment provided that Ms. Murphey was entitled to a lien on the property to secure payment.

(FN3)The Minneapolis home must have contained substantial equity as Ms. Murphey post-dissolution obtained a second or third mortgage on the home in the amount of \$15,000.

(FN4) The Amended Judgment and Decree subsequently entitled Ms. Murphey to a lien against the property to secure payment of the \$12,000 award. The St. Paul property has since been foreclosed upon by senior lienors.

(FN5)Currently, \$9,500 is owing Ms. Murphey under the dissolution property division.

(FN6) Under the Judgment and Decree, Defendant was initially required to pay Plaintiff "Child Support" of \$840 per month until August 1, 1989. Effective August 1, 1989, Defendant's child

support payment increased to \$977.60 per month. Currently, he is paying Plaintiff \$1,133 a month in child support. The Defendant was and is paying Plaintiff child support above the statutory amounts provided in MINN. STAT. 518.551. Under the Decree, Defendant was ordered to pay Plaintiff \$350.00 "Spousal Maintenance" for a period of 18 months, with all support arrearages then existing being merged into maintenance payments.

This is above the \$150 Mr. Waite was ordered pay Ms. Murphey for spousal support at the hearing for temporary support initially held in the proceeding.

(FN7) The parties apparently had discussions regarding the property settlement without advice of counsel prior to filing the petition for dissolution. Plaintiff testified that they met at the Canteen Restaurant in Minneapolis. She expressed a desire to become certified as a special education teacher with the State of Minnesota. In order to do so, completion of 10 additional courses was required, encompassing approximately a two years of study. She estimated that her educational costs would be between \$10,000 to \$15,000 which included tuition, books, day care, travel expenses and a new wardrobe for her new career. She testified that her husband agreed to pay her \$12,000 to achieve her educational goal in exchange for lower spousal maintenance payments. Previously, she had requested \$600.00 a month in spousal maintenance. She contends that she agreed to reduce her spousal maintenance payments to \$350 per month for 18 months in exchange for property settlement. However, Mr. Waite does not recall discussing the certification issue with Ms. Murphey, but recalls discussing her educational goals in subsequent conversations.

If the property settlement was actually intended as spousal maintenance, it seems that Mr. Waite ultimately agreed to pay considerably more maintenance to settle the supposed spousal maintenance issue than Plaintiff had requested in the firstplace. If Mr. Waite would have paid \$600 a month for 18 months, he would have ultimately paid a total of \$10,800. However, under the Plaintiff's version of the settlement, Mr. Waite's total maintenance payments would be \$6,300, plus the property settlement of \$12,000 equaling \$19,000. The difference represents an additional \$7,500 in maintenance to Ms. Murphey over what she would have received pursuant to her own initial request.

END FN