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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH
Central Division

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In re	:	
	:	
KENT D. HOSKINS	:	Bankruptcy No. B-79-00074
	:	
Bankrupt	:	
	:	
PATRICIA E. HOSKINS	:	
	:	
Plaintiff	:	
	:	
KENT D. HOSKINS	:	ORDER
	:	
Defendant	:	
	:	

Appearances: Steven R. McMurray representing the plaintiff, Patricia E. Hoskins; David B. Boyce representing the defendant, Kent D. Hoskins.

This case was submitted to determine what evidence the Court may properly consider in determining what is alimony, maintenance and support within the context of §17a(7), 11 U.S.C. §35a(7). Specifically, the issue presented is whether the Court can "look behind" the wording of the divorce decree to the substance of the situation to determine the nondischargeability of the debts created by such decree. Also raised is the question of whether, based upon state law treatment of such, attorney's fees awarded to the spouse in the divorce decree are nondischargeable as a matter of law. Although there has been considerable dispute in the past over these questions within this circuit, they have been finally answered by the United States Supreme Court in Brown v. Felsen, 442 U.S. 127 (1979). The Brown case, although decided under §17a(2), 11 U.S.C. §35a(2) enunciates principles equally applicable to a case brought under §17a(7), 11 U.S.C. §35a(7). The Supreme Court held that a state court judgment is not res judicata to the bankruptcy court on the question of nondischargeability. Rather, limited only by the

principle of collateral estoppel, the bankruptcy court may consider extrinsic evidence of the true character of the debt to determine whether it is nondischargeable under §17 of the Bankruptcy Act. Therefore, the bankruptcy court is not bound by the recitations of the state court judgment or decree but may consider any relevant evidence, including, but not limited to, any evidence adduced at the prior state's court hearing, on the issue of whether the debts imposed by the decree are in the nature of alimony, maintenance or support.

The Brown decision made it equally clear that §17 issues were federal law questions to be decided within the exclusive jurisdiction of the bankruptcy court. Such, it was noted, was the intent of congress when it passed the 1970 amendments concerning nondischargeability. The Supreme Court stated:

If a state court should expressly rule on §17 questions, then giving finality to those rulings would undercut Congress' intention to commit §17 issues to the jurisdiction of the bankruptcy court. . . . By express terms of the Constitution, bankruptcy law is federal law, U.S. Const., Art. I, §8, cl. 4 Id at 135.

Therefore, the determination as to what is alimony, maintenance and support for purposes of determining nondischargeability under the Bankruptcy Act must be made by the bankruptcy court as a matter of federal law. Although state law characterization of a particular type of debt may be relevant in determining the nature of the debt under bankruptcy law, particularly in light of the widespread experience state courts have on issues of domestic relations, such state developed law is nevertheless not conclusive in this Court. As further evidence of Congress' continuing intention to insure complete control of the issues of dischargeability by the bankruptcy court, notice is taken of the legislative history of 11 U.S.C. §523 (a) (5), the parallel provisions to §17a(7) under the new Code, which, although the wording of the statute is not much different, states: "What constitutes alimony, maintenance or support will be determined under the bankruptcy law, not State law." H.R.

REP. No. 95-595, 95th Cong., 1st Sess. 364 (1977). For a more complete discussion of these issues, see this Court's opinion in In re Warner, No. 79-00046.

Applying the principles of law previously enunciated, this case must be set down for trial to hear evidence on the dischargeability of the debts in question. As the dischargeability of any debt to a spouse depends on whether it is in the nature of alimony or its payment is necessary for the support or maintenance of the spouse or child, any debt imposed by the divorce decree which meets these requirements may be nondischargeable. If it is clear from the state court record that certain debts were imposed on the bankrupt because of the need for support by the spouse, such evidence is admissible and highly relevant in this proceeding. However, in the absence of such a court record, as appears to be the case here, this determination of need will not be presumed, but must be shown by evidence presented to this Court. Relevant as well is evidence on the present need for support by the spouse or child since, as previously noted by this Court in In re Warner, supra, for a debt to be nondischargeable under §17a(7), it must have been in the nature of alimony, maintenance or support both at the time of its creation as well as the time when the petition in bankruptcy was filed.

ORDER

The parties shall prepare a proposed pre-trial order, such order to be filed on or before September 10, 1980. Plaintiff's counsel shall take the lead in drafting this document after thorough consultation with defense counsel and the proposed order shall be stipulated to by the parties. In the event the proposed pre-trial order denominates legal issues in dispute, trial briefs addressing those legal issues shall be filed with the proposed pre-trial order. Proposed findings of fact and conclusions of law need not be filed.

This cause will be tried to the Court on September 17, 1980 at 2:00 p.m. This trial setting is a second setting. Estimated trial time is one-half day. All exhibits shall be marked for identification prior to the hour of trial and, where practicable, duplicate copies of exhibits shall be made available to the Court at the time originals are received into evidence to assist the Court in reviewing the evidence.

Counsel shall consult the local rules of this Court with respect to motion practice, attorney's conference, content of the proposed pre-trial order, and other matters appropriate to this litigation.

DATED this 14 day of July, 1980.

Ralph R. Mabey
Ralph R. Mabey
United States Bankruptcy Judge

RRM/bl

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing to the following:

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DATED this 15 day of July, 1980.

Becky Leavitt
Clerk