

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 98-11502-JMD  
Chapter 7Katherine D. Deickler,  
DebtorTimothy C. Bower,  
Plaintiff

v.

Adv. No. 98-1093-JMD

Katherine D. Deickler,  
Defendant*Timothy C. Bower*  
*Pro Se**Dawn E. Caradonna, Esq.*  
*LAW OFFICE OF DAWN E. CARADONNA*  
*Attorney for Debtor/Defendant*

**MEMORANDUM OPINION AND ORDER**

**I. INTRODUCTION**

The Court has before it the complaint of Timothy C. Bower seeking to have the debts of his former wife, Katherine D. Deickler, the debtor, excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(5) and (15). In addition, Mr. Bower objects to Ms. Deickler's claim of exemption under RSA 480:1 in certain property awarded during the parties' divorce. Mr. Bower also requests that Ms. Deickler's debts to him be setoff against his debts to her. Lastly, Mr. Bower asks this Court to order Ms. Deickler to record her quitclaim deed to the marital home. The Court held a trial of these issues on May 3, 1999 and took the matters under advisement. Both parties have filed with the Court post-trial briefs addressing the issues.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

## II. FACTS

Mr. Bower and Ms. Deickler were married in 1982 and divorced in 1994. See Ex. 2, Decree of Divorce dated May 25, 1994 (hereinafter “Divorce Decree”). Pursuant to the Divorce Decree, Mr. Bower was awarded primary physical custody of the couple’s two minor children. See id. ¶ 2.B. In addition to weekend and holiday visitation, Ms. Deickler was awarded visitation during the summer. See id. ¶ 3. Ms. Deickler was ordered to pay weekly child support to Mr. Bower during the school year. See id. ¶ 5. Neither party was awarded alimony. See id. ¶ 4.

In the divorce, Mr. Bower was awarded the marital home. See id. ¶ 14. Ms. Deickler was ordered to vacate the premises, to execute a quitclaim deed to the marital home, and to place the quitclaim deed in escrow until the monies owed to her by Mr. Bower under paragraphs 14 and 15 of the Divorce Decree were paid. Mr. Bower was ordered to pay Ms. Deickler “\$10,814.50 less her share of taxes owed to plaintiff for her interest in the marital home and real estate.” Id. at ¶ 14. The parties agree that \$2,260.29 is the amount each party owed for the outstanding real estate taxes. See Ex. 13, Decree on Petition to Modify Custody and Support dated December 30, 1997 (hereinafter “Custody Modification Decree”) ¶ 5. In addition, as a further property award, Mr. Bower was ordered to pay Ms. Deickler \$4,150, representing her one-half share of Mr. Bower’s mineral inventory valued at \$4,300 and an IRA in the amount of \$4,000. See id. ¶ 15. Accordingly, the amount owed to Ms. Deickler by Mr. Bower under the Divorce Decree was \$12,704.21 (\$10,814.50 minus \$2,260.29 plus \$4,150).

In 1995, Ms. Deickler filed a motion in the divorce court to modify custody. See Ex. 6, Plaintiff’s Petition for Modification of Permanent Custody of the Parties’ Minor Children and Request for Evaluations dated April 27, 1995 (hereinafter “Custody Modification Petition”). The Custody Modification Petition was

denied by the divorce court on December 30, 1997. See Custody Modification Decree. In the Custody Modification Decree, the divorce court awarded Mr. Bower his attorney's fees for his effort to retain custody of the children. See id. ¶ 1. The amount of these fees has not yet been determined by any court. Mr. Bower testified at trial that these fees total \$13,753.93. The divorce court further awarded Mr. Bower his attorney's fees in the amount of \$615 related to a motion to compel compliance with discovery requests plus attorney's fees in the additional amount of \$150 related to a subsequent motion for contempt and to compel payment and fees. See id. ¶ 4; Ex. 8, Decree on Motion to Compel dated April 22, 1996 (awarding Mr. Bower reasonable attorney's fees incurred with respect to the motion to compel compliance with discovery). The divorce court also ruled that Mr. Bower was entitled to a lien against monies he owes Ms. Deickler as part of the property settlement, for \$765 in attorney's fees and for real estate taxes of \$2,260.29, which Ms. Deickler owes Mr. Bower. See Custody Modification Decree ¶ 6.

### **III. DISCUSSION**

#### **A. Attorney's Fees Related to Post-Divorce Custody Dispute**

Mr. Bower requests that the Court find the attorney's fees owed by Ms. Deickler, relating to the Custody Modification Petition, non-dischargeable pursuant to 11 U.S.C. § 523(a)(5) or, in the alternative, pursuant to 11 U.S.C. § 523(a)(15).<sup>1</sup> Section 523(a)(5) provides that a debt is excepted from discharge if it is "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 a court of record, but not to the extent that . . . such debt includes a liability designated as alimony, maintenance or support, unless such liability is actually in the nature of alimony, maintenance or support." Several circuit courts of appeals have ruled on the issue of whether attorney's fees related to a child custody dispute are excepted from discharge under section 523(a)(5). The majority of courts have ruled that such fees are non-dischargeable. See Peters v. Hennenhoeffler (In re Peters), 964 F.2d 166 (2<sup>d</sup> Cir. 1992) (fees of

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<sup>1</sup> Unless otherwise noted, all section references or references to the Bankruptcy Code hereinafter are to Title 11 of the United States Code.

attorney appointed to represent a Chapter 7 debtor's minor son in a custody dispute are non-dischargeable under section 523(a)(5) as being "in the nature of support"); Dvorak v. Carlson (In re Dvorak), 986 F.2d 940 (5<sup>th</sup> Cir. 1993) (fees of husband's attorney and guardian ad litem incurred in a custody dispute are non-dischargeable under section 523(a)(5) because the fees were incurred during a court custody hearing that was for the child's benefit and support); Beaupied v. Chang (In re Chang), 163 F.3d 1138 (9<sup>th</sup> Cir. 1998) (fees and expenses for neutral experts, health professionals, and guardian ad litem in custody action were non-dischargeable under section 523(a)(5) as they were in the nature of the child's support); Jones v. Jones (In re Jones), 9 F.3d 878 (10<sup>th</sup> Cir. 1993) ("Since determination of child custody is essential to the child's proper 'support,' attorney fees incurred and awarded in child custody litigation should likewise be considered as obligations for 'support,' at least in the absence of clear indication of special circumstances to the contrary."); Strickland v. Shannon (In re Strickland), 90 F.3d 444 (11<sup>th</sup> Cir. 1996) (attorney fees award arising from a post-dissolution custody action constitute "support" for the former spouse under section 523(a)(5) where the award is based on an ability to pay); see also Wedgel & Shpall, P.C. v. Ray (In re Ray), 143 B.R. 937 (D. Col. 1992) ("public policy supports the non-dischargeability of debts for attorney fees in custody and visitation proceedings"); Dellapa v. Vasquez (In re Vasquez), 92 B.R. 533 (S.D. Fla. 1988) (attorney's fees incurred by a spouse in post-dissolution proceedings on issues of visitation are non-dischargeable under section 523(a)(5)); Brennan, Fabriani & Novensterm v. Akamine (In re Akamine), 217 B.R. 104 (S.D.N.Y. 1998) (agreeing that an award to a debtor's former spouse of attorney's fees incurred in custody litigation is "support" within the meaning of section 523(a)(5)). At least one circuit court of appeals has ruled, however, that such fees are dischargeable. See Adams v. Zentz, 963 F.2d 197 (8<sup>th</sup> Cir. 1992) (holding that in deciding whether to characterize an award as maintenance or support "the crucial issue is the function the award was to serve" and indicating that in making its decision the court did not focus on the child's welfare but rather upon how the mother's conduct impaired the father's ability to maintain a relationship with his daughter). The Court of Appeals for the First Circuit has not ruled on the issue.

The Court finds the rationale of the majority persuasive. The issue of child custody is necessarily tied to the issue of a child's support. In the absence of any indication to the contrary, the Court will find that the attorney's fees incurred by Mr. Bower in the child custody litigation should be considered support under section 523(a)(5). See In re Sinewitz, 166 B.R. 786, 788 (Bankr. D. Mass. 1994) (“[T]he classification of ancillary obligations, such as attorneys’ fees, should follow the classification of the primary obligation in determining their nature for dischargeability purposes.”) (quoted in In re Macy, 192 B.R. 802 (Bankr. D. Mass. 1996)). For that reason, Ms. Deickler’s obligation for Mr. Bower’s attorney’s fees under paragraph 1 of the Custody Modification Decree are non-dischargeable under section 523(a)(5) of the Bankruptcy Code. Accordingly, the Court does not reach the issue of dischargeability under section 523(a)(15).

The divorce court did not liquidate its award of “reasonable attorney’s fees and costs” in the post-divorce custody litigation. Ms. Deickler has not objected to this Court’s liquidation of the award of “reasonable attorney’s fees and costs” nor to the amount of attorney’s fees and costs sought by Mr. Bower. Under New Hampshire law, the award of attorney’s fees and costs in a divorce action is within the court’s authority and discretion. See Stephenson v. Stephenson, 11 N.H. 189, 196 (1971). However, such authority and discretion is to be exercised with reasonable restraint. See Kuo v. Kuo, 108 N.H. 460, 461 (1968).

At trial, Mr. Bower submitted copies of bills he received from his attorney for fees and costs related to post-divorce custody litigation as well as other matters. See Ex. 20. The bills, which have been redacted to remove matters not related to the post-divorce custody litigation, cover a period from May 1, 1995 through January 12, 1998 and altogether seek payment of \$13,620.50 in attorney’s fees and \$133.43 in costs. Ms. Deickler filed the Custody Modification Petition in early May 1995. The divorce court issued its decree in late December 1997. During the interim, Mr. Bower filed a motion to dismiss, the parties litigated whether a guardian ad litem should be appointed, and the parties conducted discovery. The divorce court also held several pretrial hearings and ruled on a motion to compel discovery. In addition, the parties

apparently attempted to work out some agreement during 1997 to modify visitation. See Ex. 11. Counsel's work on the case culminated in a trial that was held during October 1997.

Overall, the itemized bills show that the case was active and that the parties were in frequent communication. Given the two and one-half years that the Custody Modification Petition was pending before the divorce court and the extent of the litigation that occurred during this time, the Court finds that the attorney's fees and costs requested are reasonable with two exceptions. First, the Court finds that two entries on the itemized bills appear unrelated to the custody/support issues and therefore they will be disallowed: (a) fees for time spent on May 17, 1996 reviewing letters regarding the Lynn Ladder suit (.2 hour at \$150 per hour or \$30); and (b) fees for time spent on May 22, 1996 reviewing Peterborough Savings Bank records, USAA Life records, UNIPAC records, VISA records and Lease Agreement (1.0 hour at \$150 per hour or \$150). Second, it appears that the total attorney's fees and costs of \$13,753.93 includes attorney's fees and costs related to the motion to compel and motion for contempt discussed below. Accordingly, the amount of \$765.00 is disallowed as being duplicative. Thus, taking into account these adjustments, the amount of attorney's fees and costs that shall be excepted from Ms. Deickler's discharge is \$12,808.93.

#### **B. Attorney's Fees for Post-Divorce Motions**

Mr. Bower also seeks to have Ms. Deickler's obligation to pay attorney's fees in the amount of \$765.00, related to a motion to compel discovery and a motion for contempt for Ms. Deickler's failure to pay child support, declared non-dischargeable by the Court pursuant to 11 U.S.C. § 523(a)(5) or, in the alternative, 11 U.S.C. § 523(a)(15). These fees were incurred during court proceedings dealing with the issue of child support. The law of the First Circuit is clear that "attorneys' fees incurred by a former spouse in the course of seeking to enforce support-related payments required by a divorce decree are properly non-dischargeable under 11 U.S.C. 523(a)(5)." Macy v. Macy, 114 F.3d 1 (1<sup>st</sup> Cir. 1997). Accordingly, the Court holds that Ms. Deickler's obligation to pay attorney's fees in the amount of \$765.00 is non-dischargeable under section 523(a)(5). Again, the Court does not reach the issue of dischargeability under section 523(a)(15) of the Bankruptcy Code.

### **C. Real Estate Taxes**

Mr. Bower requests that the Court find that there is no separate debt owed by Ms. Deickler to him with regard to the property taxes on the marital home. Mr. Bower argues that the amount owing for property taxes at the time of the divorce should be subtracted from the amount Mr. Bower owes Ms. Deickler for her equity in the marital home, which simply reduces the amount Mr. Bower owes Ms. Deickler pursuant to the property settlement outlined in the Divorce Decree.

A plain reading of the Divorce Decree supports Mr. Bower's position. It states:

[Mr. Bower] shall pay \$10,814.50 less her share of taxes owed to [Ms. Deickler] for her interest in the marital home and real estate.

Divorce Decree ¶ 14. Despite the clarity of the Divorce Decree, the subsequent Custody Modification Decree suggests that Ms. Deickler's share of the outstanding real taxes may be a separate obligation of Ms. Deickler to Mr. Bower. The Custody Modification Decree states:

The child support arrearage, after credit for payments made by [Ms. Deickler], totals \$14,680.05 as of May 9, 1997 plus \$308.06 outstanding medical bills reimbursement and payment due from [Ms. Deickler], plus \$2,260.29 as her share of real estate taxes through June 26, 1994 for a total owing from [Ms. Deickler] in the amount of \$17,248.40.

Custody Modification Decree ¶ 5 (emphasis added). It is also possible that the divorce court's Custody Modification Decree was not intended to be a modification of the original Divorce Decree with respect to the treatment of the outstanding real estate taxes on the marital home. The New Hampshire Supreme Court has recently held that a final property settlement is not subject to judicial modification absent fraud, undue influence, deceit, misrepresentation or mutual mistake. See Sommers v. Sommers, No. 97-299, 1999 WL 446095 (N.H. July 2, 1999). No such allegations or requests for modification of property settlement were made in the post-divorce custody dispute. Accordingly, the Court finds that, under the terms of the property settlement in paragraph 14 of the original Divorce Decree, Ms. Deickler's share of the real estate taxes on the marital home was not a separate debt of \$2,260.29, but rather a reduction in the amount to be paid by Mr. Bower.

### **D. Objection to Debtor's Claim of Exemption**

Mr. Bower objects to Ms. Deickler's claim that the property settlement he owes her pursuant to the Divorce Decree in the amount of \$14,964.50 is exempt under RSA 480:1.<sup>2</sup> The Divorce Decree property settlement consists of three items:

1. Ms. Deickler's one-half interest in the equity of the homestead (\$10,814.50);<sup>3</sup>
2. Ms. Deickler's one-half interest in Mr. Bower's IRA (\$2,000);<sup>4</sup> and
3. Ms. Deickler's one-half interest in Mr. Bower's mineral rights (\$2,150).

New Hampshire's homestead exemption statute provides:

Every person is entitled to \$30,000 worth of his homestead, or of his interest therein, as a homestead. The homestead right created by this chapter shall exist in manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person but shall not exist in the land upon which the manufactured housing is situated if that land is not also owned by the owner of the manufactured housing.

RSA 480:1. Although "homestead" is not defined by the statute, the term is commonly understood to refer to a dwelling and the real property on which it is located. See In re Kiedaisch, Bk. No. 95-11726-MWV (Bankr. D.N.H. April 22, 1996) (refusing to expand the definition of homestead to include personal property, such as debtor's boat, until the legislature amends the homestead exemption statute). Ms. Deickler's one-half interest in her former husband's IRA and his mineral rights is a personal property right

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<sup>2</sup> In Schedule C of the Bankruptcy Petition, Ms. Deickler claimed, pursuant to RSA 480:1, New Hampshire's homestead exemption statute, an exemption in "[p]roperty settlement owed to Debtor by former husband from Divorce Decree in the amount of \$14964.50 which husband refuses to pay and debtor uses homestead exemption to retain." Schedule C to Bankruptcy Petition filed April 17, 1998.

<sup>3</sup> "[Mr. Bower] shall pay \$10,814.50 less her share of taxes owed to [Ms. Deickler] for her interest in the marital home and real estate." Divorce Decree ¶ 14. This \$10,814.50 amount does not include the reduction of \$2,260.29 based on Ms. Deickler's share of the real estate taxes. See Custody Modification Decree ¶ 5.

<sup>4</sup> As a further property award and in recognition of the parties' entitlement to an equal share of the marital assets which includes in addition to the marital home, [Mr. Bower's] mineral inventory valued at \$4300.00 (excluding collection) and the IRA (\$4000.00) cashed in by [Mr. Bower], [Mr. Bower] shall pay over to [Ms. Deickler] the sum of \$4150.00 which represents approximately one-half of the values of these items in accordance with [Mr. Bower's] financial affidavit and testimony.

Divorce Decree ¶ 15.



that is unrelated to Ms. Deickler's former or current dwelling. For this reason, the Court holds that the debtor has not properly asserted an exemption in her interest in Mr. Bower's IRA and mineral rights.

An issue remains, however, as to whether Ms. Deickler can assert a homestead exemption in her share of the equity in the marital home awarded to her in the Divorce Decree. Pursuant to the Divorce Decree property settlement provisions, Ms. Deickler was ordered to vacate the marital home<sup>5</sup> and was awarded her share of the marital home's equity. Ms. Deickler has not lived in the marital home since on or about June 25, 1994, and the parties do not dispute that Ms. Deickler did not reside at the marital home at the time of or immediately preceding her bankruptcy filing on April 17, 1998.

The issue before the Court was previously decided in In re Eckols, 63 B.R. 523 (Bankr. D.N.H. 1986). In Eckols, Judge Yacos held that a spouse could claim a valid homestead exemption where he was involuntarily separated from occupancy of the homestead by order of the divorce court and had no intent to repossess the property in view of an agreement to split the equity in the property. Id. at 527. Judge Yacos acknowledged that the claim of homestead was weak under these circumstances, but he was persuaded by family policy considerations<sup>6</sup> to allow the claim of exemption. In accordance with the reasoning of Eckols, the Court holds that Ms. Deickler is entitled to an exemption in her share of the equity in the marital home pursuant to RSA 480:1. Ms. Deickler may claim a valid homestead exemption in a portion of the monies due her from Mr. Bower in an amount equal to her share of the equity in the marital home or \$10,814.50. Although her share of the real estate taxes is not a separate debt due from her to Mr. Bower, the value of her homestead is equal to her share of the equity in the house as determined by the divorce court before any adjustment for obligations between the parties.

#### **E. Setoff**

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<sup>5</sup> “[Ms. Deickler] shall vacate the marital home no later than 30 days from the date hereof at which time child support shall be become payable in accordance with paragraph 5 hereof.” Divorce Decree ¶ 14.

<sup>6</sup> Judge Yacos relied upon the reasoning of the decision in In re Smith, 57 B.R. 81 (Bankr. W.D.N.Y. 1985), where the court stated that disallowing the homestead exemption “would encourage, if not require, the often hostile parties to a matrimonial dispute to continue to share the marital abode on penalty of loss of property rights.” Eckols, 63 B.R. at 527 (quoting Smith).

Mr. Bower asks this Court to permit the setoff of his property settlement obligations to Ms. Deickler outlined in the Divorce Decree against Ms. Deickler's obligations to him for attorney's fees related to post-divorce disputes, which were set forth in the Custody Modification Decree. Ms. Deickler contends that no setoff should be permitted that would impair her homestead exemption or her ability to use that exemption as a setoff against the final amount of any child support arrearage which she concedes is non-dischargeable.

The Bankruptcy Code setoff section, 11 U.S.C. § 553(a), provides in relevant part:

[T]his title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case.

Courts routinely have held that section 553(a) is not an independent source of setoff rights; rather, there must be some non-bankruptcy federal or state law that provides that right. See Public Serv. Co. of New Hampshire v. New Hampshire Elec. Coop. (In re Public Serv. Co. of New Hampshire), 884 F.2d 11 (1<sup>st</sup> Cir. 1989). In New Hampshire, RSA 515:7 provides:

If there are mutual debts or demands between the plaintiff and defendant at the time of the commencement of the plaintiff's action, one debt or demand may be set off against the other.

Since none of the obligations from Ms. Deickler to Mr. Bower involved in this proceeding are dischargeable, the Court does not need to determine if the setoff provisions of section 553(a) conflict with the discharge provisions of section 524(a)(2). However, the Court notes that the majority of courts that have considered this issue have held that the right of setoff can be applied against debts discharged in the bankruptcy proceeding. See Carolco Television Inc. v. Nat'l Broadcasting Co. (In re De Laurentis Entertainment Group, Inc.), 963 F.2d 1269, 1277 (9<sup>th</sup> Cir. 1992) (allowing a valid setoff claim against a discharged obligation); U.S. v. Continental Airlines (In re Continental Airlines), 134 F.3d 536, 541 (3<sup>d</sup> Cir. 1997) (recognizing a right of setoff, but requiring the holder of the setoff claim to exercise the claim in a timely fashion).

Ms. Deickler has not alleged that Mr. Bower has not timely raised his setoff claim and the Court does not see any basis for such a claim. Therefore, section 553(a) of the Bankruptcy Code and RSA 515:7 appear to provide Mr. Bower with the statutory authority necessary to setoff his claim.<sup>7</sup> However, Ms. Deickler has advised the Court that the divorce court's determination of the child support arrearage is under appeal to the New Hampshire Supreme Court and is not yet final. Accordingly, this Court shall consider the right of setoff on the remaining claims and obligations of the parties.

The Court finds that the obligations between the parties arising from the Divorce Decree, the Custody Modification Decree, and this opinion are as follows:

Bower Obligations to Deickler

Equity in Marital Home (Divorce Decree ¶ 14)	\$10,814.50
Less: Real Estate Tax (Custody Modification Decree ¶ 5)	(\$ 2,260.29)
Share in Personal Property (Divorce Decree ¶ 15)	<u>\$ 4,150.00</u>
TOTAL	\$12,704.21

Deickler Obligations to Bower

Atty's Fees in Custody Dispute (Section III.A above)	\$12,808.93
Atty's Fees in Motion to Compel (Section III.B above)	<u>\$ 765.00</u>
TOTAL	\$13,573.93

After the setoff of these obligations, Ms. Deickler remains indebted to Mr. Bower in the amount of \$869.72. To the extent that a court finally determines that there is a child support arrearage, Ms. Deickler shall add that amount to her current obligation of \$869.72 to Mr. Bower. As a result of the setoff, Mr. Bower is no longer indebted to Ms. Deickler.

**F. Quitclaim Deed**

Mr. Bower asks this Court to order Ms. Deickler to record her quitclaim deed to the marital home.

The Divorce Decree provides:

Within 30 days of the date of this decree, [Ms. Deickler] shall execute a Quitclaim Deed in favor of [Mr. Bower] to be held in escrow by her attorney until such time as [Mr. Bower] pays monies owing to her under the [property settlement paragraphs of the Divorce Decree].

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<sup>7</sup> The automatic stay does not prevent immediate setoff as Ms. Deickler's discharge was entered on July 29, 1998. See 11 U.S.C. §§ 362(a)(7) and (c)(2)(C).

Divorce Decree ¶ 14. The Bankruptcy Court has limited jurisdiction over the parties' divorce and post-divorce issues; the Court's jurisdiction in this proceeding is limited to deciding whether Ms. Deickler's divorce debts are dischargeable under the Bankruptcy Code, whether her claim of homestead exemption is valid, and whether the parties are entitled to setoff their obligations to each other. Mr. Bower is free to seek an order from the divorce court regarding the recording of Ms. Deickler's quitclaim deed to the marital home.

#### IV. CONCLUSION

For the reasons set forth above, the Court holds:

- A. Ms. Deickler's obligation to Mr. Bower for attorney's fees related to the post-divorce custody dispute in the amount of \$12,808.93 is non-dischargeable under section 523(a)(5) of the Bankruptcy Code.
- B. Ms. Deickler's obligation to Mr. Bower for attorney's fees related to post-divorce motions in the amount of \$765.00 is non-dischargeable under section 523(a)(5) of the Bankruptcy Code.
- C. Ms. Deickler's share of the real estate taxes on the marital home was not a separate debt to Mr. Bower, but rather a reduction in the amount to be paid by Mr. Bower under the Divorce Decree's property settlement provisions.
- D. Ms. Deickler has not properly asserted an exemption in her interest in Mr. Bower's IRA and mineral rights. Ms. Deickler may claim a valid homestead exemption in her share of the equity in the marital home or \$10,814.50.
- E. Mr. Bower is entitled to setoff his property settlement obligations to Ms. Deickler outlined in the Divorce Decree against Ms. Deickler's obligations to him for attorney's fees related to post-divorce disputes, which were set forth in the Custody Modification Decree. Accordingly, after setoff, Ms. Deickler remains indebted to Mr. Bower in the amount of \$869.72. This does not include any child support arrearage that may be owed by Ms. Deickler to Mr. Bower.
- F. The Court will not order Ms. Deickler to record her quitclaim deed to the marital home. Mr. Bower is free to seek an order from the divorce court requesting that Ms. Deickler be ordered to record the deed.

This opinion and order constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

DATED this 22<sup>nd</sup> day of July, 1999, at Manchester, New Hampshire.

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J. Michael Deasy  
Bankruptcy Judge