

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

In re:

Bk. No. 00-10078-JMD  
Chapter 7

Raymond E. Bilodeau,  
Debtor

Linda Bilodeau,  
Plaintiff

v.

Adv. No. 00-1050-JMD

Raymond E. Bilodeau,  
Defendant

**MEMORANDUM OPINION AND ORDER**

**I. INTRODUCTION**

This matter came before the Court on a Motion for Summary Judgment filed by the Plaintiff Linda Bilodeau, and a Cross-Motion for Summary Judgment filed by the Defendant/Debtor Raymond E. Bilodeau. A hearing was not held on these motions, as the parties submitted them to the Court on the pleadings. Upon consideration of the memoranda filed, the record of the case, and the applicable law, the Court will deny the Plaintiff's Motion for Summary Judgment and deny the Defendant's Motion for Summary judgment for the reasons hereinafter stated.

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

The Debtor filed a Petition for Relief under Chapter 7 of the Bankruptcy Code on January 13, 2000. The Debtor sought to, among other things, discharge a \$23,949.83 debt owed to the Plaintiff, the Debtor's ex-wife. The debt arises from a stipulation incorporated into the parties divorce decree entered on August 12, 1998 by the Coos County Superior Court. Paragraph eighteen of the stipulation required the Debtor to pay the Plaintiff \$500.00 per month until the marital homestead was sold. Upon sale of the home the Plaintiff was to receive from the proceeds \$60,000.00 minus the monthly payments already made by the Debtor. If there was not \$60,000.00 in proceeds to distribute to the Plaintiff after the sale of the home, the Debtor was to continue to pay the Plaintiff \$500.00 per month until the total of \$60,000.00 was reached. The paragraph states that the payments were a property settlement intended to provide shelter for the Plaintiff. After sale of the home, the Plaintiff was still owed \$23,943.83 from the Debtor.

The Plaintiff has filed this adversary proceeding to determine the dischargeability of the debt. The Plaintiff claims that under 11 U.S.C. § 523(a)(5) the debt is not dischargeable because it is maintenance or spousal support. The Debtor claims that the debt was a property settlement and not support or maintenance, and is, therefore, dischargeable. Simply put, the issue before this Court is whether paragraph eighteen of the parties divorce decree was a property settlement or an obligation of support.

## III. DISCUSSION

Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, a summary judgment motion should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "Genuine," in the context of Rule 56(c), "means that the evidence is such that a reasonable jury could resolve the point in favor of the nonmoving party." Rodriguez-Pinto v. Tirado-Delgado, 982 F.2d 34, 38 (1<sup>st</sup> Cir. 1993)(quoting United States v. One Parcel of Real Property, 960

F.2d 200, 204 (1<sup>st</sup> Cir. 1992)). “Material,” in the context of Rule 56(c), means that the fact has “the potential to affect the outcome of the suit under applicable law.” Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1<sup>st</sup> Cir. 1993). Courts faced with a motion for summary judgment should read the record “in the light most flattering to the nonmovant and indulg[e] all reasonable inferences in that party’s favor.” Maldonado-Denis v. Castillo-Rodriguez, 23 F.2d 576, 581 (1<sup>st</sup> Cir. 1994).

The United States District Court for the District of New Hampshire has ruled, “the intention of the state court and the parties in claims based upon 11 U.S.C. § 523(a)(5) is a fact to be found rather than a legal conclusion to be drawn.” See Coe v. Johnson, Civil 92-500-B (D.N.H. May 10, 1993); see also Chaney v. Chaney, 229 B.R. 266 (Bankr. D.N.H. 1999). Thus, the ultimate question before this Court is a disputed material fact and both the motion for summary judgment and the cross-motion for summary judgement must be denied.

#### **IV. CONCLUSION**

For the reasons set forth in this Memorandum Opinion and Order, the Plaintiff’s Motion for Summary Judgment is denied and the Debtor’s Cross-Motion for Summary Judgment is denied. 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 September, 2000, at Manchester, New Hampshire.

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J. Michael Deasy  
Bankruptcy Judge