

UNITED STATES BANKRUPTCY COURT
for the
DISTRICT OF NEW HAMPSHIRE

In re:

Bk. No. 99-13074-MWV
Chapter 7

Charles E. Weeden,
Debtor

Ruth Nash Weeden,
Plaintiff

v.

Adv. No. 00-1001-MWV

Charles E. Weeden,
Defendant

MEMORANDUM OPINION

The Court has before it the complaint of Ruth Nash Weeden (“Plaintiff”) against the Debtor-Defendant, Charles Weeden (“Defendant”) alleging that a certain obligation of the Defendant to the Plaintiff is excepted from the Defendant’s discharge pursuant to section 523(a)(5) of the Bankruptcy Code.

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).

DISCUSSION

I. 523(a)(5).

The basic facts are not in dispute and are reprinted here from the parties’ assented-to pretrial statement:

The parties were married July 18, 1987. The parties were separated on or before June 25, 1989, and the parties’ Divorce became final on June 1, 1990. No children were involved and as a result, no child support was involved. The parties’ Divorce Decree states that no support is to be paid. At all times relevant, the Plaintiff owned her home in Concord, New

Hampshire; the Defendant never held any title interest in the home. At the time of the Divorce, a home equity loan existed in the approximate amount of \$37,000.00. The divorce stipulation created an obligation for the Defendant to pay one half of the home equity loan to Plaintiff.

(Assented Pretrial Statement, court doc. #34).

What is in dispute is whether the Defendant's obligation to pay one-half of the home equity loan is in the nature of support or alimony. The parties rights and responsibilities under the divorce decree are memorialized in the "Permanent Stipulation." Pertinent paragraphs of the Permanent Stipulation are as follows:

4. The home equity loan secured by the 13 Rumford Street, Concord, New Hampshire property, shall be divided equally between the parties with the defendant owing the plaintiff the sum of \$18,560 to be repaid to the plaintiff at an interest rate consistent with the rate charged by the bank on the original equity loan.

. . . .

10. There shall be no support paid by either party for the benefit of the other.

(Plaintiff's Ex. 1).

Section 523(a)(5) of the Bankruptcy Code excepts from discharge a debt to a former spouse in the nature of alimony or support that arises from a valid separation agreement or divorce decree. This court has had the opportunity on many occasions to determine whether particular obligations fall under § 523(a)(5) or whether they should be deemed a property settlement or some other type of debt. The Court's analysis is as follows:

Whether a particular debt is an obligation for support or a property settlement is a question of federal bankruptcy law. Thus, this Court is empowered to go beyond the formal labeling of certain terms of the divorce decree to ascertain what then was the substance of the parties' and court's intent. Any inability to revisit the parties' intent and recharacterize the marital debt would cripple a bankruptcy court's power to give a debtor a "fresh start," since the filing of a bankruptcy petition is, most certainly, a changed circumstance which warrants a re-examination of the divorce decree at the time it was entered. I note especially that subsequent transactions or changes in conditions effecting the parties will not affect my decision under section 523(a)(5).

O'Leary v. Christo (In re Christo), Bk. No. 97-10312-MWV, Adv. No. 97-1141-MWV (Bankr. D.N.H. Aug. 25, 1998)(internal citations and quotations omitted). Therefore, what this Court must determine is

whether the parties intended, at the time of the divorce, that the Defendant's obligation to repay one-half of the equity loan was in the nature of alimony or support. For the reasons stated below, the Court finds that this obligation is not in the nature of alimony or support and is thus discharged.

The testimony of both the Plaintiff and the Defendant at trial make it absolutely clear that at the time of the divorce:

1. Neither party was represented by counsel;
2. The Defendant had a severe problem with alcoholism that prohibited him from functioning naturally and adequately contributing to the marriage;
3. The Plaintiff, at the time of the divorce, knew that the Defendant contemplated filing bankruptcy, which, in fact, was one of the reasons for the divorce since she did not want to be included in a bankruptcy.¹

The Defendant further testified that he agreed to the repayment because it was the easy way out and the right thing to do. On the other hand, as a result of the divorce, the Plaintiff retained her home in Concord, New Hampshire, where she both resided and ran her business in holistic health.

The home equity loan in question was, in fact, arranged by the Plaintiff prior to the marriage and did not require the Defendant to be obligated on the note. While there is a dispute as to the exact use of the loan proceeds, it appears that the benefit to the Defendant was minimal.

Based on all of the above, it is impossible for this Court to believe that either party, at the time of the divorce, intended that the repayment obligation was in the nature of support or alimony. The fact is, at the time of the divorce, the Defendant was an alcoholic, his ability to keep a job impaired, and he intended to file bankruptcy. Accordingly, the Plaintiff's complaint must be denied.

II. Attorney's fees.

¹The Defendant did, in fact, file bankruptcy in August of 1990, but did not list his former wife, the Plaintiff herein, as a creditor in that proceeding. This is the Defendant's second bankruptcy.

The Court previously reserved its ruling on the Defendant's second request for fees and costs associated with Plaintiff's initial counsel's mismanagement of this adversary proceeding. Although this Court is aware that the action of Plaintiff's initial counsel may have led to unnecessary hearings and delay, the Court will not penalize the Plaintiff at this time, who the Court believes acted in good faith. Accordingly, the request for fees and costs is denied.

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate final judgment consistent with this opinion.

DATED this 8th day of February, 2001, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge