United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

Linda M. Friske, Plaintiff, v. Daniel R. Friske, Defendant
(In re Daniel R. Friske, Debtor)
Bankruptcy Case No. 92-50616-7, Adv. Case. No. A92-5089-7

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

December 7, 1992

James T. Runyon, for the plaintiff.
Richard J. Olson, for the debtor-defendant.

Thomas S. Utschig, United States Bankruptcy Judge.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

This matter comes before the Court on an adversary proceeding filed by the plaintiff, Linda M. Friske. The debtor-defendant is Daniel R. Friske, the plaintiff's former husband. The plaintiff seeks a determination that certain obligations due her under the terms of a state court divorce judgment are nondischargeable in the debtor's bankruptcy. The plaintiff is represented by James T. Runyon; Richard J. Olson is representing the debtor-defendant.

The facts are as follows. The parties in this action were granted a divorce judgment in the circuit court of Lincoln County, Wisconsin. The findings of fact, conclusions of law and judgment were signed on February 21, 1990, by the Honorable J. Michael Nolan. The divorce decree includes the parties' stipulation as to such items as child support, maintenance and property division. Paragraph 4 of the final stipulation is entitled "Maintenance" and provides as follows:

> Each party shall receive the sum of $1.00 per year maintenance from the other, solely to provide for the payment of the tax obligation as set forth in paragraph 6. In the event either party fails to pay the tax obligation as set forth therein, the other party may apply to the court for maintenance to offset the liability for state and federal income taxes which may be incurred by the failure of the other to pay the same. At the time a party completely pays his tax obligation, the right of the other party to receive maintenance from him or her shall cease.

In re Friske, No. 88-FA-155 at 4 (Cir. Ct. Lincoln County, January 5, 1990). The referenced paragraph 6 is entitled "Debts" and provides in relevant part:

> A. The parties estimate that they owe between $4,800 and $9,600 to the IRS and approximately $750 to $1,000 to the Wisconsin Department of Revenue for 1986, 1987 and 1988 income taxes. The parties agree that each

shall be responsible for one-half of the final amount of taxes due as determined by both the Internal Revenue Service and the Wisconsin Department of Revenue, and shall hold the other harmless for payment of the part of the obligation assumed by them. Any tax refunds due to either party withheld and applied to the parties' joint tax obligation shall, as between the parties, be credited to the one-half interest assumed by the paying party. Either party may negotiate with the IRS or the WDR to arrange for payment of that party's share only. If either party pays more than one-half of the tax obligation, that party shall be entitled to apply to the court for maintenance in an amount equal to the amount of excess taxes paid, as contemplated by paragraph 4 of this agreement.

Id. In apparent reliance on these provisions, the plaintiff paid $1,288.51 to the Wisconsin Department of Revenue on September 11, 1990. That was the amount of the parties' joint Wisconsin income tax obligation. The plaintiff also paid the parties' total joint federal income tax obligation in the amount of $8,086.25. In addition, the plaintiff paid a Mastercard bill of $700.00 and various medical bills and health insurance premiums for the parties' two children.

Linda Friske then returned to the circuit court of Lincoln County and sought enforcement of the aforementioned provisions of that court's divorce judgment. A hearing was held on November 19, 1991. This hearing resulted in a court order dated February 27, 1992, which ordered the debtor-defendant to make the following payments to the plaintiff:

1) $ 350.00 -- ″ of the Mastercard bill;

2) $5,333.24 -- ″ of the state and federal income tax obligations, plus interest;

3) $ 83.18 -- ″ of the children's medical bills;

4) $ 139.08 -- ″ of the medical insurance premium.

The total amount to be paid by Daniel Friske was thus $5,905.50. This sum was to be paid in 48 equal monthly installments of $149.49, at 9.9% interest.

The debtor-defendant filed his chapter 7 bankruptcy petition on February 24, 1992 -- three days before the aforementioned order of the circuit court of Lincoln County was signed. The debtor listed the plaintiff on schedule F of his bankruptcy petition for the entire amount due her -- $6,255.00.

The relevant bankruptcy code provision is 11 U.S.C. § 523(a)(5). That section provides in relevant part:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title 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 a 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 . . . .

11 U.S.C. § 523(a)(5) (West 1992).

The debtor notes in his brief that he is seeking to discharge only that portion of the debt to his former wife representing his share of the Mastercard bill and the income tax obligation. He does not seek to discharge the child support obligation.

The plaintiff's principal argument is that the divorce decree unequivocally stated that any portion of the income tax obligation paid by either party above and beyond that party's one-half share would constitute a maintenance obligation of the non-paying party. The plaintiff notes that she relied on that provision and paid the joint tax obligations at issue here. In further reliance on the divorce decree, she states that she returned to the circuit court of Lincoln County and obtained the aforementioned court order directing the debtor to pay the sum of $5,905.50. The plaintiff asserts that it would result in a great injustice and inequity to her "[i]f the Bankruptcy Court would now find that the maintenance language upon which she had relied and upon which the Circuit Court ordered for her very protection was . . . found to be null and void and [the] debts dischargeable."

The Court has considered the plaintiff's arguments and the defendant's response to them. The Court holds that the sums representing the defendant's share of the Mastercard bill and the state and federal income tax obligations are dischargeable in his bankruptcy.

The equitable considerations of this case are admittedly strong. Nevertheless, a central tenet of bankruptcy precedent pertaining to § 523(a)(5) is that "[l]abels in [a] divorce decree are not determinative of whether the award is nondischargeable in bankruptcy as alimony, maintenance or support." Vande Zande v. Vande Zande, 22 B.R. 328, 329 (Bankr. W.D. Wis. 1982); See, e.g., Messnick v. Messnick, 104 B.R. 89, 92 (Bankr. E.D. Wis. 1989); Bailey v. Bailey, 20 B.R. 906, 909 (Bankr. W.D. Wis. 1982). Thus even though the state court judge approved the parties' stipulation which explicitly labeled the relevant obligations "maintenance," this Court is not bound by such labels. Rather, this Court must apply federal bankruptcy law and examine the true nature of the divorce decree awards.

As noted by the debtor in his brief, the aforementioned Messnick court provided a list of factors to be considered when determining whether a given obligation constitutes property division or maintenance. Those factors are:

1. Whether a maintenance award is also made for a spouse.

2. Whether there was a need for support at the time of the divorce and whether support would be inadequate absent the obligation in question.

3. Whether the court intended to provide for support by the obligation in question.

4. Whether the debtor's obligation terminated at the death or remarriage of the recipient spouse.

5. Whether the amount or duration of payments can be altered upon a change of circumstances.

6. The age, health, educational level, work skills, earning capacity and other financial resources of the parties independent of the obligation in question.

7. Whether payments are extended over time or are in a lump sum.

8. Whether the debt is characterized as property division or support under state law.

9. Whether the obligation balances disparate incomes of the parties.

10. Tax treatment of payments.

11. Whether one party relinquished a right to support under state law in exchange for the obligation in question.

Messnick, 104 B.R. at 92-93.

When examining the divorce decree at issue here in light of these factors, it is very clear that the obligations were part of a division of property and debts and not maintenance. This is in spite of the explicit "maintenance" label specified by the parties in their stipulation approved by the state court in its original divorce decree. The relevant Messnick factors which support this result are as follows: First, aside from the child support ordered, there is no indication that the state court considered the plaintiff's need for support in approving the "maintenance" provisions at issue here. The fact that the "maintenance" could apply to either spouse depending on which one paid the obligation supports this consideration. Second, the obligation to pay the $5,905.50 specified in the court order of February 24, 1992, does not terminate at the plaintiff's death or remarriage. Third, there is no provision whereby the amount or duration of payments can be altered upon a subsequent change of circumstances. Fourth, there is no indication that the payments were to balance disparate incomes of the parties. Fifth, there is likewise no indication that the state court considered the age, health, education, work skills or earning capacity of the plaintiff in approving the "maintenance" scheme at issue. The only factor which works in favor of a finding of maintenance is the fact that the obligation was ultimately ordered to be paid over time and not in one lump sum. This factor alone, however, is insufficient to warrant a finding that the obligations at issue constitute maintenance. When stripped of their labels, it is clear that those obligations were part of a division of property and debts among the parties. As such, the Mastercard obligation and the state and federal income tax obligation are dischargeable in the debtor's bankruptcy. The amounts constituting the debtor's share of the medical bills and insurance premiums for the parties' children, however, are found to be support obligations. As such, they are nondischargeable.

Finally, plaintiff requested reimbursement of her actual attorney fees, costs and disbursements. That request is denied.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.