

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In Re

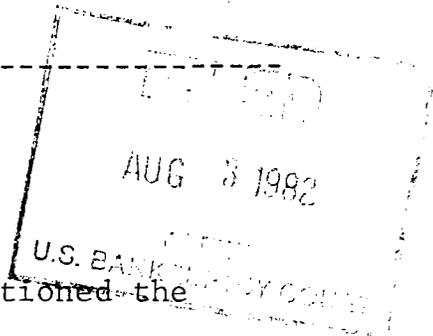
FRED JOHN BENDER

Debtor.

In Bankruptcy

No. WF7-82-00067

FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER



The above named debtor having petitioned the court herein for removal of a certain matter from the Circuit Court of Marathon County, Wisconsin, to this court, and the matter having come on for hearing before the court; and the debtor appearing in person and by Jon P. Peterson, his attorney, and Weldon Nelson, Assistant Corporation Counsel for Marathon County, having appeared on behalf of the agency in charge of said claim; and the court having heard the arguments of counsel, and having considered the briefs of the respective attorneys, and upon the statements furnished by counsel, FINDS:

1. That the above named debtor was divorced from Sharon Rae Bender on January 2, 1976, and that the judgment provided certain payments for support of the four minor children of the parties.

2. That it was determined in said court that as of December 31, 1980, the debtor was in arrears in the sum of \$6,875.00.

3. That on February 1, 1976, Sharon Rae Bender assigned to the State of Wisconsin all her rights to support received from the debtor on condition of receiving AFDC for said four children.

4. That the debtor filed a petition for relief under Chapter 7 in this court on the 19th day of January, 1982.

5. That the matter of arrearage and determination was heard on May 25, 1982, by the Marathon County Circuit Court, and at that time the matter was adjourned to July 20, 1982, pending resolution of Mr. Bender's application for removal to Bankruptcy Court.

6. That the issues raised and briefed by the respective counsel herein are:

(a) Should the court grant the debtor's application for removal to the Bankruptcy Court?

(b) Are the debtor's arrearages for child support assigned to the State of Wisconsin dischargeable in bankruptcy?

7. That debtor contends the matter should be referred to the Bankruptcy Court and that said court find the debts so assigned to be dischargeable in that it occurred prior to the 13th day of August, 1981, when Section 523 (a)(5) of the Bankruptcy Code was amended by Section 2334 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35. That said Act was to reinstate a provision of the Bankruptcy Code previously in effect declaring that a child support obligation assigned to a state as a condition of AFDC is not dischargeable in bankruptcy.

8. That debtor contends the law to be applied to the instant case is that in effect when the arrearage arose rather than at the time of the decision or the filing of the petition for relief herein.

9. That the State contends that said arrearage is not dischargeable, in that the petition was not filed prior to the 13th day of August, 1981, when said Act was amended.

10. It is not necessary to go through a review of all of the various cases in the matter. It is my determination that the law in effect at the time of the filing of the bankruptcy petition is the controlling law of the case and that said debt is not dischargeable.

CONCLUSIONS OF LAW

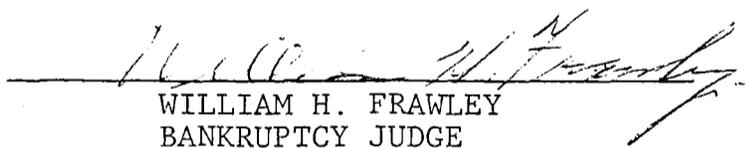
That an order be entered determining that said arrearages for child support assigned to the State of Wisconsin are not dischargeable in this bankruptcy, and the court abstains from any further determination as to the question of removal from the State Court.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the claim for arrearages in said matter be and the same is hereby determined to be nondischargeable in this proceedings, and further action is left to the determination of the Circuit Court of Marathon County, Wisconsin.

Dated: August 3, 1982.

BY THE COURT:


WILLIAM H. FRAWLEY
BANKRUPTCY JUDGE