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FILED

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

MAY 28 1986

CLERK  
U.S. BANKRUPTCY COURT

In re:

Case Number:

GERALD RAYMOND MORGAN

EF7-85-00593

Debtor.

GERALD RAYMOND MORGAN,

Plaintiff,

Adversary Number:

v.

FIRST SAVINGS ASSOCIATION OF  
WISCONSIN, UNIVERSITY OF  
WISCONSIN - RIVER FALLS, WISCONSIN  
HIGHER EDUCATION CORPORATION, and  
PIERCE COUNTY CHILD SUPPORT AGENCY,

85-0278-7

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND  
OPINION AND ORDER

The debtor, by D. Peter Seguin, has initiated this adversary proceeding to have the court determine the dischargeability of three debts pursuant to 11 U.S.C. § 523 and Bankruptcy Rule 4007. The University of Wisconsin Systems (UWS) appears by Patricia Hodulik, the Wisconsin Higher Education Corporation appears by William Olson and the Pierce County Child Support Agency (Pierce County) appears by the letter of John Corey dated November 27, 1985. A hearing was held on this matter on April 15, 1986.

The debtor has been suffering from financial difficulties for the last several years. The debtor is currently employed as an orderly for the River Falls Area Hospital. He earns an hourly wage of \$5.17. The debtor's approximate monthly gross income and expenses are:

<u>Income</u>		
Average gross pay		\$884.23
Average Federal withholding	(94.14)	
Average FICA withholding	(62.99)	
Average State withholding	(30.78)	
		<u>(187.91)</u>
Average monthly income		<u>\$696.32</u>
<u>Expenses</u>		
Rent and utilities	410.00	
Food	75.00	
Clothing	5.00	
Laundry and cleaning	5.00	
Newspapers and periodicals	8.00	
Doctor and medical	10.00	
Recreation	15.00	
Transportation	60.00	
Insurance	<u>20.60</u>	
Total living expenses		\$608.60
Child support payment	75.00	
Credit union payment	100.00	
Attorney fees	<u>100.00</u>	
		<u>275.00</u>
Total expenses		<u>\$883.60</u>

The debtor was divorced on August 22, 1978. He has a monthly child support obligation of \$75.00 for the support of his 12-year old daughter. The debtor is also indebted to the United and Children's Hospital Credit Union in an amount in excess of \$500.00 for funds he borrowed on August 23, 1985, for living expenses.

The debtor has been earnestly seeking more lucrative employment, but has been unsuccessful in this effort. The debtor is

only a few credits away from obtaining his Bachelor of Science degree in Sociology with an emphasis in social work and psychology. The debtor has been unable to take the remaining required classes because of a time conflict with his work schedule.

The debtor is indebted to Pierce County to the extent of \$1,128.00 for unpaid child support payments to his ex-wife which have been assigned to Pierce County. The debtor asks to have this debt discharged. 11 U.S.C. § 523(a)(5)(A). It is the conclusion of the court that this is the type of debt that has been clearly listed as a non-dischargeable obligation.

The debts to WHEC and UWS both became due within the last five years. These debts fall under the classification of § 523(a)(8) and may only be discharged if excepting them from discharge will impose an undue hardship on the debtor and the debtor's daughter. 11 U.S.C. § 523(a)(8)(B).

The debtor is indebted to UWS by reason of National Defense/ Direct Student Loans that were incurred for educational purposes. The principal amount of this indebtedness is \$4,433. The amount of indebtedness including principal and interest up to the filing of the debtor's bankruptcy petition on April 4, 1985, is \$4,499.44.

The debtor is indebted to the Wisconsin Higher Education Corporation for guaranteed student loans incurred for educational purposes in the principal amount of \$7,005. The amount due on these loans, including principal and interest, to the date of the filing of the debtor's bankruptcy petition is \$7,528.29.

The issue is whether the hardship the debtor would suffer by not having these debts discharged would be undue. 'Some hardship may be expected by the statute; it is the "undue", unreasonable, unconscionable hardship which the debtor is not expected and required to bear.' In re Tobin, 18 B.R. 560, 562 (Bankr. W.D. Wis. 1982) "In deciding whether the repayment of a student loan would constitute undue hardship, the court is to consider the facts and circumstances of each individual debtor to determine whether there are such unique circumstances as to render it less likely, or likely only with extreme difficulty, or unlikely at all that the bankrupt will within the foreseeable future be able to honor his commitment." Id. at 561 (citations omitted). The court, as a court of equity, can fashion a remedy to fit the circumstances of a case, including: extend the terms of the loan, declare only a portion of the debt dischargeable, or retain jurisdiction to ensure fairness. In re Theiss (Bankr. W.D. Wis. 83-0876 June 20, 1985).

In the instant case, the debtor's projected income is less than his projected expenses. An issue arises with respect to the reasonableness of the debtor's expenses. It might be possible for the debtor to reduce the \$410 per month that he claims to spend on rent and utilities. However, even if the debtor is able to reduce the amount of his expenses there would be little or no money to make payments on his educational loans. It is the conclusion of the court that the court should retain jurisdiction of this matter in order to fashion an equitable remedy.

This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

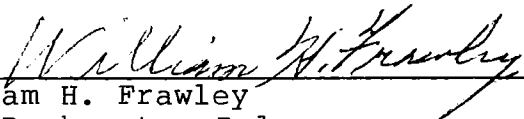
ORDER

NOW, THEREFORE, IT IS ORDERED THAT, the debt to the Pierce County Child Support Agency is not discharged.

IT IS FURTHER ORDERED THAT, the matters regarding the dischargeability of the educational loans shall be adjourned for six months from the date of this order.

Dated: May 28, 1986.

BY THE COURT,

  
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William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney D. Peter Seguin  
Attorney Patricia Hodulik  
Attorney William Olson  
Attorney John F. Corey