

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

JUL 31 1986.

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

BRIAN D. DOBSON
LORI J. DOBSON

EF7-85-01349

Debtors.

BRIAN D. DOBSON and
LORI J. DOBSON,

Plaintiffs,

Adversary Number:

v.

85-0326-7

STATE OF WISCONSIN HIGHER
EDUCATIONAL AIDS BOARD,

Defendant.

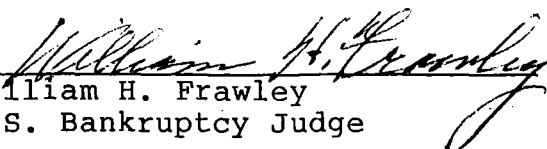
ORDER

The court having this day entered its memorandum opinion,
findings of fact, and conclusions of law;

NOW, THEREFORE, IT IS ORDERED that the guaranteed student
loan obligation owed by the debtor to the State of Wisconsin
Higher Educational Aids Board is hereby discharged.

Dated: July 31, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney Alan Moeller
Attorney William Olson

FILED

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

JUL 31 1986

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

BRIAN D. DOBSON
LORI J. DOBSON

EF7-85-01349

Debtor.

BRIAN D. DOBSON and
LORI J. DOBSON,

Plaintiffs,

Adversary Number:

v.

85-0326-7

STATE OF WISCONSIN HIGHER
EDUCATIONAL AIDS BOARD,

Defendant.

MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The debtor, Lori Dobson, appears by Alan Moeller and has filed this complaint pursuant to 11 U.S.C. § 523(a)(8) and Bankruptcy Rule 4007 seeking to discharge her guaranteed student loan obligation. The defendant, the State of Wisconsin Higher Educational Aids Board, appears by William Olson and objects to the complaint. A hearing was held in this proceeding on July 24, 1986.

The debtor borrowed \$2,500.00 in August of 1983, under the Wisconsin Guaranteed Student Loan Program to help her finance the pursuit of a technical degree in nursing. The balance due on this loan as of July 24, 1986, was \$2,940.55. The debtor was not able to complete her education program because she began to

suffer from rheumatoid arthritis. The debtor has not received any benefit from the education she received. The debtor has twice obtained employment to help support her family; however, she has been forced to resign such employment due to her health condition. It is not likely that the debtor will be able to maintain employment with her health problem. The cost of the medication that the debtor takes for her health condition is covered by medical assistance.

The debtor is married to co-debtor Brian Dobson and has two dependent daughters, ages 8 and 9. The debtors have been receiving AFDC payments. These payments have been terminated because of Brian Dobson's recent increase in income. Brian Dobson was employed as a school bus driver and earning \$147.00 every two weeks. Recently he has obtained seasonal employment as a farm laborer. The debtors' farm labor income amounts to \$600.00 a month before taxes. The debtors' only other source of income is from a food stamp program. The debtors receive approximately \$211.00 worth of food stamps monthly.

The debtors' monthly expenses for the family of four are:

Rent	\$100.00	
Electricity	115.00	
Phone	25.00	
Food	300.00	(includes food stamps)
Clothing	50.00	
Car payment	50.00	
Car insurance	20.00	
Car maintenance	90.00	(includes gas, oil, minor repairs, etc.)
Miscellaneous family expenses	<u>50.00</u>	
Total:	<u>\$800.00</u>	

The debtors receive medical assistance and this provides for their family medical costs. It is clear from the debtors' very conservative budget that they barely earn enough income for the family of four to survive. In fact, the debtors require both medical and food stamp assistance in order to maintain a minimum standard of living.

Generally, filing for relief under Chapter 7 of the Bankruptcy Code does not discharge guaranteed student loan obligations.

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt--

...

(8) for an educational loan made, insured, or guaranteed by a governmental unit or a nonprofit institution, unless--

(A) such loan first became due before five years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

11 U.S.C. § 523(a)(8). However, if a debtor can prove that excepting such a debt from discharge would cause "undue hardship" to the debtor and the debtor's dependents, then the debt must be discharged. The debtor must do more than simply demonstrate that excepting the debt would cause hardship; it must be shown that such hardship would be "undue." Matter of Tobin, 18 B.R. 560 (Bankr. W.D. Wis. 1982). The amount of hardship is "undue" when such hardship rises to the level of unreasonable or unconscionable. Id. at 562.

In re Davis, (Bankr. W.D. Wis. 86-0082, July 8, 1986). "The determination of whether 'undue hardship' exists is necessarily a question of fact for the trial court to determine." Id. The debtor in this matter suffers from rheumatoid arthritis. The uncontradicted evidence indicates that she is not able to maintain employment because of her health condition. Brian Dobson's employment income is not sufficient to provide for the family of four. The debtors require medical assistance and food stamp assistance simply to remain at a level of subsistence. Clearly the debtors do not earn a sufficient income to make any payments on the guaranteed student loan obligation.

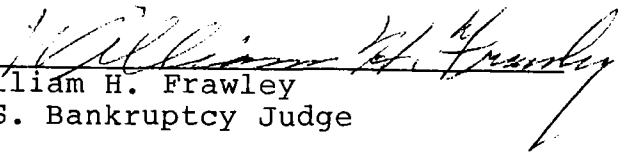
If this guaranteed student loan obligation were excepted from discharge, the debtors would not be financially capable of tendering any payments to reduce the obligation. To except such a debt from discharge is clearly contrary to the fresh start policy of the Bankruptcy Code. In re Dietrich, (Bankr. W.D. Wis. 85-0355, July 9, 1986). It is unreasonable and unconscionable to deny the discharge of a guaranteed student loan obligation when the debtor has no ability to pay the obligation. Hence, it constitutes an "undue hardship" within the meaning of 11 U.S.C. § 523(a)(8)(B) to except a guaranteed student loan obligation from discharge when the debtor is simply not capable of paying the debt. In re Tobin, 18 B.R. 560 (Bankr. W.D. Wis. 1982).

It is the conclusion of the court that excepting this debt from discharge would impose an undue hardship on the debtor and her family and, therefore, this debt should be discharged.

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

Dated: July 31, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge