

FILED

JUL 08 1986

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

CLERK
U.S. BANKRUPTCY COURT

In re:

Case Number:

EUGENE LILBURN DAVIS,
CAROL C. DAVIS,

WF7-85-01757

Debtors.

GENE & CAROL DAVIS,

Plaintiffs,

Adversary Number:

v.

86-0082-7

WISCONSIN HIGHER EDUCATION
CORPORATION,

Defendant.

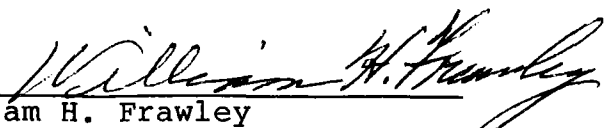
ORDER

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 obligations of Eugene Davis and Carol Davis are hereby
discharged.

Dated: July 8, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

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MEMORANDUM OPINION,
FINDINGS OF FACT, AND CONCLUSIONS OF LAW

The debtors, by Richard Bisbee, filed this complaint pursuant to 11 U.S.C. § 523(a)(8) and Bankruptcy Rule 4007 seeking to discharge their guaranteed student loan obligations. The Wisconsin Higher Education Corporation (WHEC) appears by Lloyd Blaney and objects to the complaint. A hearing was held on this matter on June 18, 1986.

The debtor Eugene Davis was indebted for guaranteed student loan obligations in the amount of \$3,017.06 as of June 18, 1986. He incurred these obligations in pursuit of a technical education in welding. Eugene was not able to complete this educational

program. It appears that even if he could have completed the program it would be difficult for him to obtain employment. Eugene has basically been unemployed for the past several years. He has diligently sought gainful employment but his efforts have not proved fruitful. The debtor has occasionally found temporary employment.

The debtor Carol Davis was indebted for guaranteed student loan obligations in the amount of \$5,772.39 as of June 18, 1986. She incurred these obligations in pursuit of a clerk-typist degree. She has received her diploma but has received no benefit from it.

The debtors' primary source of income is from Carol's employment as a waitress. She works about 30 hours a week and earns \$2.25 an hour plus tips. Her tips average about \$35.00 to \$40.00 a week. Hence, the debtors' weekly income amounts to about \$105.00. The debtors also receive approximately \$94.00 a month from AFDC and about \$134.00 a month in food stamps.

The debtors' monthly expenses are:

Rent	\$180.00
Gas	50.00
Lights	37.59
Thorp	30.00
Penney's	20.00
Child support	132.00
Food	250.00
Incidentals	100.00
Car gas	60.00
TOTAL	\$859.59

Eugene is responsible for two child support payments that total \$132.00 per month (listed above). The debtors also have one

dependent child living at home. It is apparent that the debtors' monthly expenses substantially exceed their income.

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 made under any program funded in whole or in part 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.

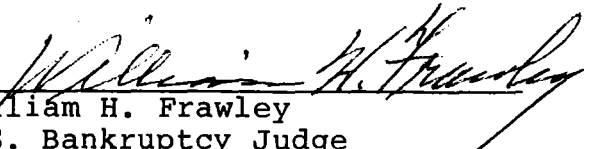
The determination of whether "undue hardship" exists is necessarily a question of fact for the trial court to determine.

To an extent, the court is required to determine how much hardship a debtor must be required to endure before the hardship should be considered "undue." In the instant case, Eugene is unemployed and his prospects of obtaining gainful employment in the near future are remote. Carol is employed; however, her income is not sufficient to support them. The debtors have one dependent child at home and Eugene is obligated to provide support payments for two other children. The income of the debtors is not sufficient to cover their necessary expenses. They do not have any money to make monthly payments for student loan obligations. If their loan obligations were excepted from discharge, the debtors still would not be financially capable of making the monthly payments. To except these loan obligations from discharge would be inconsistent with the fresh start policy of the Bankruptcy Code. It would be unreasonable and unconscionable to except these loan obligations from discharge. It is the conclusion of the court that the guaranteed student loan obligations of the debtors should be discharged.

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

Dated: July 8, 1986.

BY THE COURT:


William H. Frawley
U.S. Bankruptcy Judge