UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of:	:	Chapter 7
ROBERT TODD GILBERT,	:	
Debtor	:	Case No. 99-52633 RFH
KAREN GILBERT,	:	
Plaintiff	:	
vs.	:	
ROBERT TODD GILBERT,	:	
Defendant	:	Adversary Proceeding No. 99-5129

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Plaintiff:
FRED H. HODGES, JR.
401 Cherry Street, Suite 602
Macon, Georgia 31201

For Defendant:
DANNY L. AKIN
Post Office Box 1773
Macon, Georgia 31202-1773

MEMORANDUM OPINION

Karen Gilbert, Plaintiff, filed on October 12, 1999 a Complaint to Determine Discharge of Debt. Robert Todd Gilbert, Defendant, filed a response on October 27, 1999. A trial was held on February 22, 2000. The Court, having considered the evidence presented and the arguments of counsel, now publishes this memorandum opinion.

FINDINGS OF FACT

Plaintiff and Defendant were married in 1981. Plaintiff and Defendant were divorced in September of 1998. Plaintiff and Defendant were both represented by counsel in the divorce proceeding. Plaintiff and Defendant personally negotiated most of the terms of their Settlement Agreement.

Plaintiff's gross monthly income was $3,806. Defendant's gross monthly income was $5,083. Plaintiff received custody of their two minor children. Defendant was to pay monthly child support of $1,200. This represented 23.6 percent of Defendant's gross income. The state child support guidelines called for Defendant to pay between 23 and 28 percent of his gross income. In setting the child support award, the state court noted the existence of a special

circumstance, namely, an unusually high debt structure.

Plaintiff received possession of the marital residence and was responsible for the taxes, insurance, maintenance, and mortgages on the residence. Plaintiff was required to refinance the mortgages and place the new indebtedness in her name. Plaintiff was required to pay $10,000 to Defendant's mother upon the refinance. Plaintiff must pay Defendant's mother $15,000 if the marital residence is sold. This amount, $25,000, represents funds that Defendant's mother had loaned to Plaintiff and Defendant.

Plaintiff and Defendant were to receive their respective vehicles, bank accounts, and personal property.

The Settlement Agreement, in Item 11-Debts, states that Plaintiff and Defendant each were to pay $37.00 per month towards a NationsBank overdraft obligation of $3,040.55. Plaintiff was to be responsible for obligations owed to First Card Mastercard, Sears, and Parisian. Defendant was to be responsible for obligations owed to NationsBank VISA, Household Finance Corporation, MBNA VISA, VISA Gold, and certain medical bills.

Plaintiff did not request or receive an award designated as alimony, maintenance, or support. Plaintiff testified that alimony was not discussed.

Defendant testified that he was unable to meet his financial obligations at the time of the divorce. Defendant

testified that he was able to pay his child support obligations because he paid other bills late.

Defendant filed a petition under Chapter 7 of the Bankruptcy Code on July 15, 1999. Household Finance Corporation, MBNA VISA and NationsBank VISA have called upon Plaintiff to pay the obligations that Defendant was to pay under the Settlement Agreement.

CONCLUSIONS OF LAW

Plaintiff contends that Defendant's obligation to pay Household Finance Corporation, MBNA VISA, and NationsBank VISA is in the nature of alimony, maintenance, or support. Plaintiff contends that Defendant's obligation is nondischargeable under section 523(a)(5)(B) of the Bankruptcy Code.[1] This section provides as follows:

> **§ 523. Exceptions to discharge**
>
> **(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

[1] 11 U.S.C.A. § 523(a)(5)(B) (West 1993).

> 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.A. § 523(a)(5)(B) (West 1993).

Plaintiff has the burden of proving all facts necessary to support her objection to dischargeability by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 112 L. Ed. 755, 111 S. Ct. 654 (1991).

In Harrell v. Sharp (In re Harrell),[2] the Eleventh Circuit Court of Appeals stated:

> The language used by Congress in § 523(a)(5) requires bankruptcy courts to determine nothing more than whether the support label accurately reflects that the obligation at issue is "actually in the nature of alimony, maintenance, or support." The statutory language suggests a simple inquiry as to whether the obligation can legitimately be characterized as support, that is, whether it is in the nature of support. The language does not suggest a precise inquiry into financial circumstances to determine precise levels of need or support; nor does the statutory language

[2] 754 F.2d 902 (11th Cir. 1985).

> contemplate an ongoing assessment of need as circumstances change.
>
> . . . .
>
> Considerations of comity reinforce our interpretation. Debtor's attempt to expand the dischargeability issue into an assessment of the ongoing financial circumstances of the parties to a marital dispute would of necessity embroil federal courts in domestic relations matters which should properly be reserved to the state courts.
>
> We conclude that Congress intended that bankruptcy courts make only a simple inquiry into whether or not the obligation at issue is in the nature of support. This inquiry will usually take the form of deciding whether the obligation was in the nature of support as opposed to being in the nature of a property settlement. Thus, there will be no necessity for a precise investigation of the spouse's circumstances to determine the appropriate level of need or support. It will not be relevant that the circumstances of the parties may have changed, e.g., the spouse's need may have been reduced at the time the Chapter VII petition is filed. Thus, limited to its proper role, the bankruptcy court will not duplicate the functions of state domestic relations courts, and its rulings will impinge on state domestic relations issues in the most limited manner possible.

754 F.2d at 906-07.

"[W]hether a particular debt is a support obligation or part of a property settlement is a question of federal bankruptcy law, not state law." In re Harrell, 754 F.2d at 905.

"[J]oint [marital] obligations assumed by the debtor

as a part of a separation or divorce settlement must be 'actually in the nature of' alimony or support in order to be excepted from discharge." Long v. Calhoun (In re Calhoun), 715 F.2d 1103, 1107 (6th Cir. 1983). See also Gibson v. Gibson (In re Gibson), 219 B.R. 195, 199 (Bankr. 6th Cir. 1998).

"The determinative issue is generally whether or not the parties intended the assumption of the debts to be in lieu of alimony or support payments or rather just a means of dividing property upon divorce." Rooker v. Cooley (In re Rooker), Ch. 7 Case No. 85-30375, Adv. No. 86-3001 (Bankr. M.D. Ga. July 7, 1986). See also Frey v. Frey (In re Frey), 212 B.R. 728, 736 (Bankr. N.D.N.Y. 1996) (assumption of credit card debt was a dischargeable property settlement); Smith v. Edwards (In re Smith), 207 B.R. 289, 291-92 (Bankr. M.D. Fla. 1997) (assumption of credit card debt was not in the nature of support); Rooker v. Rooker (In re Rooker), 116 B.R. 415, 417 (Bankr. M.D. Pa. 1990) (obligation in a divorce decree that divides the marital debt is dischargeable).

Turning to the case at bar, the issue before the Court is whether Defendant's obligation is, under federal bankruptcy law, actually in the nature of alimony, maintenance, or support. The obligation at issue is contained in Item 11-Debts of the Settlement Agreement. The obligation requires, in relevant part, that Defendant pay the joint

marital obligations owed to Household Finance Corporation, MBNA VISA, and NationsBank VISA.

The evidence presented shows that, at the time of their divorce, Plaintiff's gross monthly income was $3,806 and that Defendant's was $5,083. Plaintiff received custody of their two minor children. Defendant was to pay monthly child support of $1,200. After payment of the child support, Plaintiff's and Defendant's incomes were nearly equal.

Plaintiff received possession of the marital residence and was responsible for the mortgage, taxes, insurance, and maintenance. Plaintiff and Defendant received their respective vehicles, bank accounts, and personal property.

Plaintiff and Defendant never discussed an award of alimony. Defendant was unable to meet his financial obligations at the time of the divorce. The Court is persuaded that Defendant was not financially able to pay alimony.

Plaintiff and Defendant, under the terms of the Settlement Agreement, each were responsible for certain credit card obligations. The Court is persuaded that Plaintiff and Defendant simply were dividing the marital obligations rather than providing alimony or support. Since the obligation at issue is not in the nature of support, it is dischargeable in bankruptcy.

An order in accordance with this memorandum opinion will be entered this date.

DATED the 30th day of March 2000.

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ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court