UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

KEITH G. COWAN, *Debtor(s)*	:	Case No. 01-21222T
	:	

	:	
MARY ANDERSON, *Plaintiff(s)*	:	
	:	
v.		Adv. No. 02-2297
	:	
KEITH G. COWAN, *Defendant(s)*	:	
	:	

ORDER

AND NOW, this 2nd day of December, 2004, it is ORDERED that JUDGMENT on the complaint is ENTERED PARTIALLY in favor of PLAINTIFF and PARTIALLY in favor of DEFENDANT as follows:

(1) JUDGMENT ON THE COMPLAINT IS ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT on Plaintiff's claim that $21,219.00 of the total obligation owed to Plaintiff by Defendant[1] is nondischargeable under 11 U.S.C. §523(a)(5) as being in the nature of alimony as the court finds that this $21,219.00 obligation is in the nature of alimony

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1. See Notes of Testimony of February 25, 2004 trial ("N.T.") at 9, wherein Plaintiff testified that the total amount of the obligation owed to her by Defendant is $39,219.00.

and is nondischargeable under 11 U.S.C. §523(a)(5);[2] and

(2) JUDGMENT ON THE COMPLAINT IS ENTERED IN FAVOR OF DEFENDANT AND AGAINST PLAINTIFF on Plaintiff's claim that $18,000.00 of the obligation owed by Defendant to Plaintiff is nondischargeable as the court finds that this $18,000.00 obligation is in the nature of a property settlement and is dischargeable under 11 U.S.C. §523(a)(15).[3]

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2. Defendant concedes that this portion of the obligation he owes to Plaintiff is alimony and is therefore nondischargeable under 11 U.S.C. §523(a)(5). See N.T at 10-11; Defendant's Proposed Findings of Fact and Conclusions of Law at 1, ¶2.

3. Plaintiff argues that this $18,000.00 obligation is nondischargeable under both 11 U.S.C. §523(a)(5) and §523(a)(15). For the reasons that follow, we disagree.

Turning first to section 523(a)(5), we note that this section renders debts in the nature of alimony, support or maintenance nondischargeable. It is well established that the issue of whether an obligation is in the nature of alimony, support or maintenance under section 523(a)(5) is a question of federal, not state, law and that the plaintiff bears the burden of proof. Gianakas v. Gianakas (In re Gianakas), 917 F.2d 759, 761-62 (3rd Cir. 1990). Moreover, as stated by the Court of Appeals for the Third Circuit, "whether an obligation is in the nature of alimony, maintenance or support, as distinguished from a property settlement, depends on a finding as to the intent of the parties at the time of the settlement agreement." Id. at 762. To determine this intent, the Third Circuit has instructed that the following three indicators must be examined: (1) the language and substance of the agreement in the context of surrounding circumstances, using extrinsic evidence if necessary, (2) the parties' financial circumstances at the time of the settlement and (3) the function served by the obligation at the time of the settlement. Id. at 762-63. Having examined these indicators in the context of the facts before us in this case leads us to conclude that Plaintiff has not met her burden of proof and that this $18,000.00 obligation in issue is not in the nature of alimony, support or maintenance under section 523(a)(5).

To explain, unlike the portion of the state court judgment which deals with the alimony obligation, the portion of the state court judgment which deals with the $18,000.00 obligation does not contain provisions commonly associated with support and alimony obligations such as a provision requiring that the obligation terminate upon the remarriage or death of Plaintiff or a provision allowing for modification of the obligation based on changed circumstances. In addition, the state court refers to the $18,000.00 obligation as a property settlement. Moreover, the paragraph of the state court judgment which deals with the $18,000.00 obligation directs that Plaintiff quit claim her interest in the marital residence and that Defendant remain solely responsible for all debts associated with the marital residence. See Exhibit P-1. We find these facts are most consistent with a finding that the $18,000.00 obligation was intended to be in the nature of a property settlement and was not intended to be in the nature of alimony, maintenance or support. Therefore, we conclude that Plaintiff failed to meet her burden of establishing that the $18,000.00 obligation was intended as alimony, maintenance or support under section 523(a)(5). To the contrary, we find the $18,000.00 obligation to be dischargeable under section 523(a)(5) as being in the nature of a property settlement.

This does not end our inquiry, however, since we must next examine whether the $18,000.00

Reading, PA

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge

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obligation is dischargeable under section 523(a)(15). This section renders obligations in the nature of a property settlement dischargeable if either: (1) the debtor does not have the ability to pay the obligation from income or property not reasonably necessary for the support of himself or a dependent, 11 U.S.C. §523(a)(15)(A); or (2) discharging the obligation would result in a benefit to the debtor that outweighs the detrimental consequences of discharging the debt that would be suffered by the creditor, 11 U.S.C. §523(a)(15)(B). See Matter of Leonard, 231 B.R. 884, 887-88 (E.D. Pa. 1999). The burden of proving that either of these conditions exist and that the debt is therefore dischargeable is on the debtor. Id. at 888; Laddeck v. Laddeck (In re Laddeck), Nos. 99-32044DWS, 00-0426, 2001 WL 423026 at *6 (April 11, 2001). After reviewing the record before us, we find that Defendant met his burden of proving both that he does not have the ability to pay the obligation in issue from income or property not reasonably necessary to be expended for his maintenance and support and that discharging the obligation would result in a benefit to him that outweighs any detrimental consequences that would be suffered by Plaintiff.