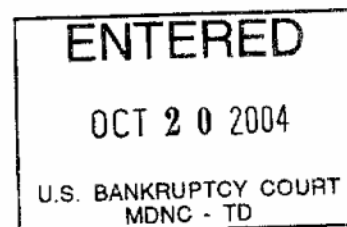


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION



In re:)	
)	
MARION SPENCER CARPENTER and)	Case No. 02-53515-C7
CATHY LYNN WALLER CARPENTER,)	
)	
Debtors.)	
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CHERYL A. CANIFORD,)	
)	
Plaintiff,)	
)	Adversary Proceeding No.
vs.)	03-6093
)	
MARION SPENCER CARPENTER,)	
)	
Defendant.)	
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MEMORANDUM OPINION

This adversary proceeding came on before the Court on September 28, 2004. Daniel C. Bruton appeared on behalf of the Plaintiff and Robert E. Price, Jr., appeared on behalf of the Defendant. After considering the evidence on record and the arguments of counsel, this Court makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure:

JURISDICTION

This Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I) which this court may hear and determine.

FACTS

The Debtor, along with his current spouse, filed for Chapter 7 bankruptcy protection on December 23, 2002. On May 27, 2003, the Plaintiff timely filed the complaint that initiated this adversary proceeding. The Plaintiff seeks a ruling that finds that monies owed to her by the Defendant are nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

The Plaintiff and the Defendant married on March 17, 1990. After more than nine years of marriage, the two were divorced on December 21, 1999. Subsequent to the divorce, the Family Court for the State of Delaware entered a judgment dividing the marital property and settling claims of alimony (the “Judgment”). The Judgment provided that the Defendant owed the Plaintiff \$25,000 as a settlement of their marital affairs (the “Debt”).

Prior to his marriage to the Plaintiff, the Defendant fathered a son in previous marriage. Beginning in 1993, the Defendant’s son lived with the Plaintiff and the Defendant and continues to live with the Defendant currently.¹ The Defendant receives no support from his son’s biological mother. The Defendant’s son will reach age eighteen within two years.

Subsequent to his marriage to the Plaintiff, the Defendant married his current wife (the “Debtors”). The Debtors have one daughter that is currently less than three years old. The Debtors are in the process of separating. Under a negotiated agreement, the Defendant has physical custody of his daughter between twelve and fifteen days per month. Additionally, the Defendant pays his wife \$400 per month in child support.

The Defendant is currently employed by National Starch & Chemical Co. (“National Starch”). The Defendant is employed full-time and grosses approximately \$44,000 per year.

¹The Plaintiff has maintained a relationship with the Defendant’s son and continues to assist with clothing and dental expenses.

The defendant's gross monthly income is \$3,666 and net monthly income is \$2,485. The Defendant testified that the immediate prospect of increasing his income is slim. The Defendant's supervisor from National Starch, Mr. Joey Melton, testified that, despite the Defendant being an above average employee in all regards, it would take a minimum of one to three years for the defendant to attain any significant increase in income. Even then, the Defendant's income would increase less than \$2,000 per year.

The Defendant provided evidence that his normal monthly expenses include \$525 in rent; \$160 in utilities; \$80 for telephone; \$45 for cable; \$15 for garbage collection; \$60 for home maintenance and repair; \$500 for food; \$100 for clothing; \$20 for medical and dental expenses; \$210 on transportation; \$50 on recreation; \$16 in charitable contributions; \$15 for renter's insurance; \$5 for life insurance; \$94 for car insurance; \$400 for the child support noted above; \$129 for 401(k) deductions; \$20 in 401(k) loan repayments; and \$40 for a restricted stock purchase plan. The Defendant's total monthly expenses, excluding his 401(k) deductions, equal \$2,355. The evidence shows that the Defendant's monthly income does not exceed the Defendant's monthly expenses.²

The Defendant possesses limited assets. The Defendant rents a mobile home. The Defendant's home furnishings are largely borrowed or secondhand. For instance, the Defendant borrows the stove, refrigerator, and microwave in his home. The Defendant owns a 1994 Dodge Truck that, at the time of the hearing, was not in proper working order. In short, the evidence shows that the Defendant's assets are of inconsequential value.

The Plaintiff is currently employed as a mortgage broker. She started this job

²This estimate is based upon a yearly average of the Defendant's income. Due to the irregular nature of the Defendant's weekly work schedule, the Defendant's monthly income varies. In certain months, the Defendant's income would be lower than his expenses. In other months, the Defendant's income would be higher than his expenses.

approximately six months before the hearing date. The Plaintiff is paid by commission for her work. Through the first six months of employment, her commissions have averaged approximately \$1,000 per month. While not currently using such, the Plaintiff also possesses a valid realtor's license. The Plaintiff is married and her husband earns approximately \$2,400 per month.

The Plaintiff provided evidence that her and her husband's monthly expenses include \$1,101 for mortgage; \$190 in utilities; \$65 for telephone; \$110 for cable; \$20 for garbage collection; \$540 for food; \$100 for clothing; \$208 for medical insurance; \$375 on transportation; \$180 on pet food; \$286 for household items; \$100 for car insurance; and \$50 in miscellaneous expenses. Additionally, the Plaintiff's husband is a debtor in a Chapter 13 bankruptcy case and makes payments of \$520 per month.

The Plaintiff and her husband own limited assets. The Plaintiff and her husband own their residence. After accounting for debt on their property, the Plaintiff and her husband have approximately \$11,000 in equity in their residence. The Plaintiff also owns a 1994 vehicle. While not of great value, the evidence shows that the Plaintiff owns assets of some value.

DISCUSSION

The Plaintiff alleges that the Debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(15). Section 523(a)(15) provides that a debt, which is not of the type referred to by § 523(a)(5), incurred in connection with a divorce, separation agreement, or other order of a court of record shall not be dischargeable. Sections 523(a)(15)(A) and (B) provide two exceptions to this rule. First, if the debtor does not have the ability to pay the debt, then such debt can be discharged. Second, if discharging the debt would result in a greater benefit to the debtor than the detriment caused to the former spouse, then the debt can be discharged.

Neither party alleges that the Judgment created a debt referred to by § 523(a)(5).

Additionally, the parties stipulated that the Debt constitutes a debt incurred in connection with an order of a court of record. Therefore, the Court is left to decide whether (i) the Defendant has the ability to pay the Debt; or (ii) discharging the Debt would result in a greater benefit to the Defendant than a detriment to the Plaintiff. Unless the Court finds that one of the exceptions has been met, the Debt cannot be discharged. The parties agree that the Defendant bears the burden to prove, by a preponderance of the evidence, that the Defendant meets one of the exceptions. See In re Campbell, 198 B.R. 467 (Bankr. D.S.C. 1996).

A. The Defendant's Ability to Pay

Specifically, § 523(a)(15)(A) provides that the Debt cannot be discharged unless “the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependant of the debtor...” The Plaintiff does not allege that the Defendant has property to pay the Debt. The only method by which the Debtor can pay the Debt is through monthly payments from his income.

When considering the Defendant's ability to pay, the Court examines the Defendant's ability to pay the Debt from his income after deducting all reasonably necessary expenses. 11 U.S.C. § 523(a)(15)(A); see In re Metzgar, 232 B.R. 658 (Bankr. E.D. Va. 1999); In re Foto, 258 B.R. 567 (Bankr. S.D.N.Y. 2000). As noted above, the Defendant's monthly income does not meet the Defendant's monthly expenses. After reviewing the evidence, the Court concludes that the Defendant's expenses are reasonable and necessary for the support and maintenance of the Defendant and his dependants. There is no evidence of a luxurious lifestyle or of frivolous expenses. Rather, the preponderance of the evidence shows that the Defendant is trying

desperately to provide a modest lifestyle for himself and his children. After payment of reasonable monthly expenses, the Defendant has no ability to pay the Debt.

In addition to the Defendant's current financial situation, the Court also examines the Defendant's future financial outlook. Id. There is little potential that the Defendant's income will increase. As both the Defendant and Mr. Melton testified, it would take a minimum of one year for the Debtor to receive a raise. Even if the Defendant did receive this raise, the Defendant's salary would be raised by less than \$2,000 per year. The Defendant's future expenses are difficult to predict. In two years, the Defendant's son will reach adulthood. This will reduce the Defendant's legal obligations to his son. However, the Defendant is currently involved in another divorce. The ramifications of this divorce on the Defendant's expenses have yet to be determined. However, it appears unlikely that the Defendant's expenses will decrease due to his divorce. Additionally, the Defendant's custody of his youngest child has yet to be determined. While the Defendant anticipates the current arrangement of joint custody to remain, this is by no means a certainty. Finally, the Court notes that the Defendant is not paying for many of the items necessary to provide a functional home for the children. If the Defendant were forced to pay for the stove, refrigerator, and other appliances in his home, it would undoubtedly increase the Defendant's expenses.

When considering the Defendant's current income in excess of his reasonable expenses, the Court finds that the Defendant meets the exception to nondischargeability provided by §523(a)(15)(A) in that the Defendant does not have the ability to pay the Debt. Further, the Court finds that the Defendant's financial outlook is unlikely to improve to the extent that would be necessary to pay the Debt.

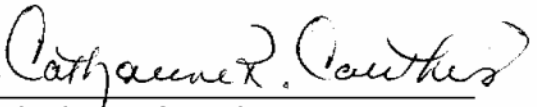
B. The Balancing of the Benefit and Detriment

Given the above discussion, it is unnecessary for the Court to consider the exception to nondischargeability provided by § 523(a)(15)(B).

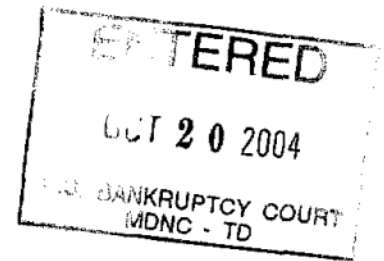
CONCLUSION

For the reasons stated above, the Court concludes that the Debt is dischargeable. An Order consistent with this Memorandum Opinion shall be entered by the Court.

This 20 day of October, 2004.


Catharine R. Carruthers
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION



In re:

MARION SPENCER CARPENTER and
CATHY LYNN WALLER CARPENTER,

Debtors.

CHERYL A. CANIFORD,

Plaintiff,

vs.

MARION SPENCER CARPENTER,

Defendant.

Case No. 02-53515-C7

Adversary Proceeding No.
03-6093

ORDER

Pursuant to the Memorandum Opinion filed contemporaneously herewith, Judgment is entered for the Defendant.

This the 20 day of October 2004.

Catharine R. Carruthers
United States Bankruptcy Judge