

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

IN RE: MARIA RUIZ,

CASE NO. 00-44294M
CHAPTER 7

Debtor.

MARIA RUIZ

PLAINTIFF

VS.

AP NO. 00-4157

SALLIE MAE SERVICING CORPORATION

DEFENDANT

MEMORANDUM OPINION

The issue in this case can be stated simply: Can a single mother of two children who is an Arkansas school teacher repay approximately \$66,000.00 in student loans over a reasonable period of time without undue hardship?

On September 25, 2000, Maria Ruiz (“Debtor”) filed a voluntary petition for relief under the provisions of chapter 7. On October 30, 2000, the Debtor filed a complaint against Sallie Mae Servicing Corporation (“Sallie Mae”) seeking a hardship discharge of educational loan debts pursuant to the provisions of section 523(a)(8) of Title 11 of the United States Code. Trial was held in Little Rock, Arkansas, on August 6, 2001, and the matter was taken under advisement. As assignee of Sallie Mae, Educational Credit Management Corporation (“ECMC”) served as defendant.

The matter before the Court is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) (1994), and the Court has jurisdiction to enter a final judgment in this case. The following

constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

FACTS

The Debtor is a 35-year-old single mother who lives in Russellville, Arkansas. Born in Mexico, she is not a United States citizen, but is apparently a legal resident of this country. She moved from Mexico to Danville, Arkansas, with her family when she was 15 years old and subsequently completed high school and was married. The Debtor has been married and divorced twice and has two sons by her first marriage who are 16 and 17 years old. Although she has custody of her children, she does not receive any regular child support or other financial assistance from the father of the children.

During her second marriage, the Debtor decided it was in her best interest to go to college to get a degree in order to obtain a better job. She attended Arkansas Tech University in Russellville for two and one-half years during which time she received a degree with a major in Spanish in 1994. The Debtor also attended Capital City Business College for nine months and obtained a computer operator diploma. The Debtor received student loans to pay for her higher education.

The record does not indicate the rate interest accrues on the student loan indebtedness or the monthly payment demanded by ECMC. The Debtor testified that she initially made payments on her student loans of \$79.00 per month, but that when the payment escalated to almost \$500.00 per month, she was unable to continue paying.

The Debtor currently teaches Spanish at Russellville High School. She also has part-time jobs at a local movie theater and at Arkansas Tech University, where she teaches one course in Spanish each semester.

The Debtor drives a 1992 Lexus with 130,000 miles that was purchased in her boyfriend's name. She stated she pays \$324.00 a month to the Bank of Dardanelle, which has a security interest in the car.

The bankruptcy schedules reflect that the Debtor does not own any real property and that the total value of her personal property is \$9,600.00. This total includes a \$7,500.00 debt owed to her by her ex-husband that the Debtor thinks is uncollectible. Unsecured liabilities scheduled total \$64,673.38. Of that number, ECMC's claim is scheduled at \$59,991.86, or about 93% of total unsecured debt.

The Debtor's schedules reflect a net monthly income of \$1,489.00, but the schedules were obviously filled out incorrectly because the net and gross income figures are identical and do not account for federal and state withholding, insurance premiums, or other deductions typically subtracted from gross income to derive a net income amount.

The responses to discovery requests filed by ECMC reflected only a slight increase in available net income. The Debtor's federal income tax returns demonstrate that her gross income in 1997, 1998, and 1999 was \$21,843.00, \$24,210.00, and \$28,813.00, respectively. Her federal income tax liability for 1997 was \$1,174.00; for 1998 it was \$681.00 and for 1999 it was \$2,009.00. The Debtor reported gross income of \$31,948.00 for

the year 2000, and she paid federal income tax in the amount of \$2,481.00. For the year 2000, her gross monthly income averaged \$2662.00.

As to the Debtor's living expenses, she submitted into evidence an estimate of her total monthly expenditures of \$2,092.35. These were itemized as follows:

Rent	\$ 355.00
Insurance	\$ 20.00
Car	\$ 324.72
Car Insurance	\$ 51.75
Car Maintenance	\$ 50.00
Electricity	\$ 100.00
Water	\$ 25.00
Gas/Heat	\$ 35.00
Telephone	\$ 60.00
Cable	\$ 41.38
Medical	\$ 50.00
Fitness Center	\$ 49.51
Children/School Expenses	\$ 200.00
Auto-Gas	\$ 80.00
Groceries	\$ 500.00
Household Supplies	<u>\$ 150.00</u>
TOTAL:	\$2,092.36

On cross-examination, ECMC's counsel analyzed the checks that cleared the Debtor's bank account in recent months and the amounts varied from a low of \$896.00 to a high of \$2,001.00. The average of the number examined was \$1,542.67.

The Debtor testified that she thought some of the funds she received for her education were in the form of grants, not loans. As to the nature of the documents that she signed to receive funds, she testified that she relied on the representations of her husband, who was also attending college during the same time. She stated that she now believes some

of the indebtedness to ECMC was incurred by her husband for his education and for family support, but she offered no convincing evidence to corroborate her testimony.

DISCUSSION

The Bankruptcy Code provides in relevant part:

A discharge under section 727 . . . does not discharge an individual debtor from any debt . . . for an educational . . . loan . . . made . . . or . . . funded . . . by a governmental unit . . . unless 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)(1994).

In an opinion issued by the Eighth Circuit Bankruptcy Appellate Panel, Judge Kressel, in his very thorough discussion, pointed out that “there is wide disparity among treatments of student loans under § 523(a)(8).” Andresen v. Nebraska Student Loan Program, Inc. (In re Andresen), 232 B.R. 127, 129 (B.A.P. 8th Cir. 1999). Although several tests for undue hardship have been formulated, the Eighth Circuit Court of Appeals seems to favor the “totality of the circumstances” approach. Andrews v. South Dakota Student Loan Assistance Corp. (In re Andrews), 661 F.2d 702, 704 (8th Cir. 1981). Under this view, circumstances to be considered include the debtor’s past, present, and future income; reasonable living expenses of the debtor and the debtor’s dependents; and any other relevant facts and circumstances. In re Andrews, 661 F.2d at 704; Svoboda v. Educational Credit Management Corp. (In re Svoboda), 264 B.R. 190, 194 (B.A.P. 8th Cir. 2001); Cline v. Illinois Student Loan Assistance Ass’n (In re Cline), 248 B.R. 347, 349 (B.A.P. 8th Cir. 2000); Morgan v. United States (In re Morgan), 247 B.R. 776, 782 (Bankr. E.D. Ark. 2000).

In establishing undue hardship, the Debtor has the burden of proof by a preponderance of the evidence. Woodcock v. Chemical Bank (In re Woodcock), 45 F.3d 363, 367 (10th Cir. 1995).

In considering the Debtor's income and living expenses, the Court is guided by In re Cline, which is factually similar to the instant case. In re Cline, 248 B.R. 349. In that case, the debtor was a highly educated social worker with student loans of about \$53,000.00 and an income of about \$25,000.00. A single woman with no dependents, she incurred only reasonable living expenses and had very little excess income with which to make a student loan payment. The court found that requiring the debtor to pay the debt would result in undue hardship.

Here, the Debtor's expenses are moderate and reasonable by any standard. Her children are nearing college age, and it is reasonable to assume their economic needs will result in increased expenses in the future.

The Debtor, by working at her regular job and two part-time jobs, grossed \$31,948.00 in 2000. The compensation paid to public school teachers has historically been relatively low in the State of Arkansas, even though the nature of the job requires a substantial amount of higher education. Thus, the Debtor cannot anticipate significantly higher earnings in the future as a result of her college degree, even though her expenses will likely increase because of her children's needs.

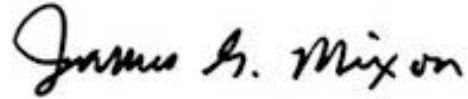
Reviewing the Debtor's income and expenses and assuming only modest increases in both, the Court cannot find the Debtor has excess income to pay \$500.00 a month or any significant amount toward her student loans.

Other factors to consider include the fact that the Debtor made payments on the student loan of \$79.00 per month for a year, which weighs in her favor since it demonstrates a good faith effort to repay the loan at a rate she could afford. On the other hand, the student loan is by far the greatest debt listed in the Debtor's schedules. All circumstances considered, this is the only factor weighing against a determination of undue hardship.

The record does not explain why the Debtor's student loan obligation is so large, especially in view of the fact that she earned her degree in only two and one-half years. The student loans were consolidated into two loans in the amounts of \$4,846.01 and \$60,747.47. If the loans had not been consolidated, the Court would be required to apply the undue hardship standard to each loan individually. In re Andresen, 232 B.R. at 137 (ruling that undue hardship test must be applied to each loan when debtor has multiple student loans). However, the only two loans the Court may properly consider in this case are the claims for \$60,747.47 and \$4,846.01. Under the totality of circumstances test, there is no realistic possibility that the Debtor will be financially able to pay the total claim of \$60,747.47. She does, however, have the ability to repay the smaller loan amount.

Therefore, the Court finds that the claim for \$4,846.01 is nondischargeable and the claim for \$60,747.47 is dischargeable because of undue hardship.

IT IS SO ORDERED.



JAMES G. MIXON
U.S. BANKRUPTCY JUDGE

DATE: 12-02-01

cc: M.. Randy Rice, Trustee
James Dunham, Esq.
Rick Taylor, Esq.
Debtor