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

IN RE: WILLIAM HAROLD WATSON, Debtor. CASE NO. 2:04-bk-10488M CHAPTER 7

WILLIAM HAROLD WATSON PLAINTIFF

VS. AP NO. 2:04-ap-1166

STATE OF ARKANSAS, OFFICE OF CHILD SUPPORT ENFORCEMENT DEFENDANT

MEMORANDUM OPINION

On January 14, 2004, William Harold Watson ("Debtor") filed a voluntary petition for relief under the provisions of chapter 7 of the United States Bankruptcy Code. On his schedules, the Debtor listed assets consisting only of personal property valued at $1,660.00, all of which was claimed as exempt. The Debtor's only scheduled liabilities are unsecured debts owed to the Office of Child Support Enforcement for the State of Arkansas ("OCSE"). The Debtor's schedules further reflect that the Debtor and his spouse are unemployed and that the couple have six children listed as dependents. The family's income is $764.00 a month from food stamps and unemployment payments that are paid to the Debtor's wife.

On April 23, 2004, the Debtor filed a complaint against OCSE pursuant to 11 U.S.C. § 523(a)(5) to determine the dischargeability of the debt owed to OCSE by the Debtor. The complaint alleges that the debt owed to OCSE is not a debt that is in the nature of support of the Debtor's children and is, therefore, dischargeable.

The OCSE filed an answer alleging that the debt should be determined to be

nondischargeable because it arose from an obligation for support during a period when the Debtor had been adjudicated to be the father of two children in paternity proceedings.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) (2000), and the Court has jurisdiction to enter a final judgment in this case. The following shall constitute the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

FACTS

The facts presented to the Court were stipulated by the parties as follows:

1. The Debtor is a non-custodial parent in two child support state court cases wherein OCSE is the plaintiff

2. A final judgment against the Debtor and in favor of OCSE for a child support arrearage in the amount of $8511.50 was entered in Cross County Case No. E-1995-173 on April 23, 2003, after the Debtor was excluded as the father of Chassity Smith.

3. A final judgment against the Debtor and in favor of OCSE for child support arrearage in the amount of $10,700.00 was entered in Crittenden County Case No. E-1995-1019 on January 5, 2004, after the Debtor was excluded as the father of Shameka Scott.

4. The custodial parents in both cases assigned all rights of child support to OCSE pursuant to Ark. Code Ann. § 20-76-410.[1]

[1]The Court believes this code citation stipulated by the parties contains a typographical error and that the stipulation submitted by the parties should have cited Arkansas Code Annotated § 20-76-401. That section grants an eligible person extended support services conditioned, where applicable, on the person's application for child support services with a local child support enforcement office and compliance with requirements of the office, including assignment of benefits.

5. OCSE incurred court costs, service fees and administrative fees during the course of case management in the amounts of $232.00 for the Crittenden County case and $48.00 for the Cross County case that have been charged to the Debtor.

6. OCSE was granted a judgment in the amount of $3639.22 in the Cross County case by judgment and decree filed February 16, 1996, in the amount of $3395.47 for lying-in expenses and medical expenses expended by the State of Arkansas for the birth of a child and to be paid by the Debtor.

7. After the entry of the judgments against him, the Debtor was ultimately excluded as the father in both cases by DNA paternity testing.

DISCUSSION

The Bankruptcy Code provides that a debt is not dischargeable if owed to a child of the debtor for support incurred in connection with an order of a court of record. 11 U.S.C. § 523(a)(5) (2000). Bankruptcy law determines whether the particular debt is in the nature of support. Madden v. Staggs (In re Staggs), 203 B.R. 712, 717 (Bankr. W. D. Mo. 1996) (quoting In re Williams, 703 F.2d 1055, 1056 (8th Cir. 1983)).

The parties have stipulated that the Debtor, who was originally adjudicated to be the father of two children in paternity proceedings, was eventually excluded as the father of the children. The relevant facts of this case are similar to those in another case decided by this Court. See In re White, 253 B.R. 253 (Bankr. W. D. Ark. 2000). In the White case, as here, the Debtor was originally adjudicated the father of two children and then subsequently determined not to be the biological father.

State law holds that even though one is erroneously adjudicated to be the father of a child, he is nevertheless liable for accrued unpaid child support due the child until a subsequent determination that he is not the biological father. Ark. Code Ann. § 9-10-115(f) (Michie 2002) (providing that if an adjudicated father is later excluded by scientific paternity testing, the court shall set aside the previous finding of paternity and relieve him of any future obligation of support). See Littles v. Flemings, 333 Ark. 476, 485, 970 S.W.2d 259, 264 (1998)(adjudicated father who proved through blood tests that he was not the biological father was not entitled to relief from a support obligation already accrued).

This Court held in White that under bankruptcy law, the state may have had a valid claim for child support, but it was dischargeable because the claim did not result from a debt for the support of a "child of the debtor" in accordance with 11 U.S.C. § 523(a)(5).

OCSE seeks to distinguish the present case from White by pointing out that the state is the assignee of the custodial parent's rights to receive child support payments in accordance with the federal Social Security Act and Arkansas state law. Because of this circumstance, OCSE urges the Court to apply 11 U.S.C. § 523(a)(18). This Code section provides that a chapter 7 debtor is not discharged from any debt "owed under State law to a State . . . that is -- (A) in the nature of support, and (B) enforceable under part D of Title IV of the Social Security Act (42 U.S.C. § 601, et seq) . . . ." 11 U.S.C. § 523 (a)(18) (2000).

The same law that enacted section 523(a)(18) added section 656(b) of Title IV-D to the Social Security Act. It provides: "A debt . . . owed under State law to a State . .. . that is in the nature of support and that is enforceablee under this part is not released by a discharge in bankruptcy . . . " 42 U.S.C. § 656 (b) (2000). Thus, the Social Security Act provides for an

exception to discharge of the same type of debt referred to by section 523 (a)(18) of the Bankruptcy Code.

Title IV-D "creates a framework for the development of state programs to assist custodial parents in obtaining and enforcing support obligations, locating absent parents, and establishing paternity. . . . It also authorizes the appropriation of money to assist states in their efforts . . . ." Leibowitz v. Orange County (In re Leibowitz), 217 F.3d 799, 804 (2000). As stipulated, the rights to child support of the two children were assigned to OCSE pursuant to Arkansas law. OCSE was established to administer the state's child support enforcement plan that is required by Title IV, part D of the federal Social Security Act. Ark. Code Ann. § 9-14-206(a)(Michie 2002). Title IV-D requires states to prohibit retroactive modification of "any payment or installment of support under any child support order . . . on and after the date it is due." 42 U.S.C. § 666(a)(9)(C)(2000).

There appears to be no dispute that the debts at issue arise from judgments rendered pursuant to state law for child support accruing before the Debtor was excluded as the father of the two children. Further, the debts were assigned to OCSE pursuant to state law and are thus owed to a state entity and enforceable under part D of Title IV of the Social Security Act, which prohibits retroactive modification of support. The only question remaining is whether the debts at issue are "in the nature of support."

The editors of a leading treatise on bankruptcy have commented on the language of section 523(a)(18) as follows:

> Both sections 523(a)(18) of the Bankruptcy Code and the comparable amendment to the Social Security Act appear to overlap section 523(a)(5)(A) of the Code, which has, since 1981, excepted from discharge support obligations that were assigned to a state or a political subdivision of a state. There is no legislative

> history to further illuminate the purpose of this apparently redundant legislation. In light of the substantial delegation of authority from the federal government to the states in the area of public welfare and assistance, perhaps section 523(a)(18) is designed to eliminate any question as to the nondischargeability of state and municipal claims against support obligors.

5 Collier on Bankruptcy ¶ 523.24 (Alan N. Resnick & Henry J. Sommer, et al. eds, 15th ed. rev. 1993).

In short, it is the editors' opinion that section 523(a)(18) provides the state the same relief as does section 523(a)(5).

However, OCSE argues that the text of section 523(a)(18) differs from that of section 523(a)(5), which makes nondischargeable those debts for support of a child of the debtor. OCSE contends that section 523(a)(18) excepts from discharge any debt that is in the nature of support if owed to a state under state law and enforceable under Title IV-D of the Social Security Act. OCSE emphasizes that, while the debts at issue are not owed to a child of the Debtor, the debts are nevertheless in the nature of support and, thus, are encompassed by the section 523(a)(18) discharge exception.

OCSE cites the case of In re Alter in support of its argument. Alter v. Ill. Dept. of Public Aid (In re Alter), 301 B.R. 300 (Bankr. C.D. Ill. 2003). The court in Alter construed section 523(a)(18) to determine that a debt owed to the state for child support was nondischargeable even though the debtor was determined by scientific evidence not to be the father in subsequent paternity proceedings. The court in Alter found that as required by section 523(a)(18), the debt was owed under state law, to a state, and enforceable under Title IV-D of the Social Security Act. The only issue to be resolved was whether the debt satisfied the statute as being in the nature of support.

The court in Alter found that by virtue of the phrase "in the nature of support," section 523(a)(18) is a broader exception to discharge than the section 523(a)(5) exception for debts owed "to a . . . child of the debtor." In re Alter, 301 B.R. at 303-304. The court stated that the fact that the debtor was later excluded as the father did not "work a transformation" of the original nature of the debt, which remained a debt for support. In re Alter, 301 B.R. at 304.

Moreover, the court stated that the Social Security Act "requires states to implement procedures for contested paternity cases, including the issuance of a temporary support order pending a final determination upon a showing of paternity by clear and convincing evidence." In re Alter, 301 B.R. at 304 (citing 42 U.S.C. § 666(a)(5)(2000)). The court then pointed out that the Social Security Act prohibits retroactive modification of "any payment or installment of support under any child support order . . . on or after the date it is due." In re Alter, 301 B.R. at 304 (quoting 42 U.S.C. § 666(a)(9)(C)). The court thus made the point that the Social Security Act forbids retroactive modification of orders for support, including temporary support orders that might later be subject to change based on evidence excluding paternity. Therefore, the court concluded that Congress clearly intended that debts for child support could not be retroactively modified or excepted from discharge, notwithstanding any subsequent disproving of paternity.

Because the state and federal statutes are so decisively and cohesively written, the Court must concur with the Alter court's conclusion, despite the harsh outcome that will result in this case. Here, the Debtor and his wife are unemployed and have six dependents. Yet the law prohibits the Debtor from excepting from discharge more than $19,000.00 in debt owed under an erroneous adjudication of paternity. The debt, being in the nature of support of two children,

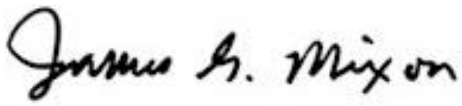
satisfies every requirement of section 523(a)(18).

The Debtor further argues that he should be allowed to except from discharge the court costs, service fees, and administrative fees in the total amount of $280 and lying-in and medical expenses of $3395 because these amounts are not in the nature of child support. The Social Security Act defines child support as "amounts required to be paid under a judgment, decree, or order . . . for support and maintenance of a child . . . which provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees . . . ." 42 U.S.C. § 659(i)(2)(2000). To the extent that the costs and fees were included in the Cross and Crittenden County judgments referred to in the stipulations, they are "amounts . . .required to be paid . . . for support . . . of a child" under the definition for child support and, thus, are in the nature of support and nondischargeable.

Similarly, the judgment for lying-in and medical expenses for the birth of the child resulted in a debt that is the nature of support because it was a judgment for reimbursement for health care that benefitted the child. In accord with this ruling are the cases decided under section 523(a)(5) which hold that birth expenses are in the nature of support. Madsen v. Kimbrell (In re Kimbrell), 201 B.R. 521, 522 (Bankr. E.D. Ark. 1996) (citing Matter of Seibert, 914 F.2d 102 (7th Cir. 1990); Mullally v. Carter, 67 B.R. 535 (N.D. Ill. 1986), aff'g 56 B.R. 271 (Bankr. N.D. Ill. 1985); Wood County Dept. Of Human Services v. Oberley (In re Oberley), 153 B.R. 179 (Bankr. N.D. Ohio 1993); Fisher v. Valls (In re Valls), 79 B.R. 270 (Bankr. W.D. La. 1987); Balthazor v. Winnebago County (In re Balthazor), 36 B.R. 656 (Bankr. E.D. Wis. 1984); Cain v. Isenhower (In re Cain), 29 B.R. 591 (Bankr. N.D. Ind. 1983); Stelly v. Breaux (In re Breaux), 8 B .R. 218 (Bankr. W.D. La. 1981)).

For the reasons stated, the debts owed pursuant to the Cross and Crittenden County judgments are nondischargeable in accordance with section 523(a)(18).

IT IS SO ORDERED.



THE HONORABLE JAMES G. MIXON
U. S. BANKRUPTCY JUDGE

DATED: 11/16/04

cc: U. S. Trustee
Danny G. Glover, Esq.
Paul E. Hopper, Esq.
Debtor