

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

U. S. BANKRUPTCY COURT SOUTHERN DISTRICT OF MISSISSIPPI FILED NOV 03 1994 CHARLENE J. PENNINGTON, CLERK BY _____ DEPUTY
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IN RE: JAMES A. MCCASKILL

CASE NO. 94-00909JEE

JAMES A. MCCASKILL

PLAINTIFF

VS.

ADVERSARY NO. 9400112JEE

SUSAN D. MCCASKILL

DEFENDANT

John A. Allen  
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Attorney for Plaintiff

Harlon Varnado  
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Attorney for Defendant

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This adversary proceeding is before the Court on the *Complaint to Determine Dischargeability* filed by the Debtor, James A. McCaskill, against his former wife, Susan D. McCaskill. Mr. McCaskill is seeking a determination that certain debts which he is required to pay under a Judgment of Divorce are in the nature of a property settlement, and therefore are dischargeable in his bankruptcy. After considering the evidence presented at trial along with arguments of counsel, the Court holds that the debts which are the subject matter of the Debtor's complaint are in the nature of support, and therefore, are not dischargeable pursuant to

11 U.S.C. § 523(a)(5)<sup>1</sup>. In so holding, the Court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

James and Susan McCaskill were married in 1971 and have two teenage daughters. The McCaskills separated in 1992, and on December 6, 1993 a *Judgment of Divorce - Fault Grounds* was entered in the Chancery Court of Rankin County, Mississippi. The judgment of divorce found that Mrs. McCaskill was entitled to a divorce from Mr. McCaskill on the grounds of uncondoned adultery and granted custody of the couple's two daughters to Mrs. McCaskill.

Among other matters, the judgment of divorce provided that Mr. McCaskill pay monthly child support in the amount of \$800 per child and alimony in the amount of \$800 per month. The judgment also awarded possession of the marital home to Mrs. McCaskill and ordered Mr. McCaskill to pay the house payment of \$ 1,474 per month. The judgment of divorce further ordered that Mr. McCaskill pay the debt on a 1991 Chevrolet Blazer driven by his daughter; the debt on a 1988 Mazda driven by Mrs. McCaskill; all medical, health, dental and optical insurance for the minor children and all out of pocket expenses not covered by the insurance; all medical and health insurance for Mrs. McCaskill and one-half of out of pocket expenses not covered by insurance; all marital debts of the parties incurred prior to the separation of

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<sup>1</sup> Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

the parties; \$5,000 attorney's fees for Mrs. McCaskill's attorney; and all court costs.

On March 28, 1994, Mr. McCaskill filed his petition for relief under Chapter 7 of the Bankruptcy Code. On May 17, 1994 he commenced this adversary proceeding against his former wife seeking to have the following debts, which Mr. McCaskill was ordered to pay under the judgment of divorce, declared dischargeable under § 523(a)(5) as being in the nature of a property settlement:

1. \$90,000 debt to Deposit Guaranty Mortgage Company payable in monthly installments of \$1,474, secured by a deed of trust on the marital home.
2. \$5,000 debt to Deposit Guaranty National Bank secured by the 1988 Mazda automobile driven by Mrs. McCaskill.
3. \$1,200 debt to Arlon Crockett d/b/a Sunshine Pools.
4. \$670 debt to Louis B. Guy, Jr.
5. Any and all marital debts incurred prior to the separation of Mr. and Mrs. McCaskill.
6.
  - a. \$5,000 debt to Harlon Varnado, Esq.
  - b. \$5,000 attorney's fees payable to Mrs. McCaskill.<sup>2</sup>
7. \$5,500 to R. Conner McAllister, Esq.
8. Any and all court costs associated with any legal proceeding prior to Mr. McCaskill's filing chapter 7.

In her post-trial brief, Mrs. McCaskill states that the

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<sup>2</sup> Although separately listed in the complaint, these two items appear to be a duplication. The judgment of divorce simply orders, "Defendant be, and he is, hereby ordered to pay to the plaintiff the sum of Five Thousand Dollars (\$5,000) as reasonable attorney's fees within thirty (30) days."

debt to Louis Guy has been paid by Mr. McCaskill; that Mr. McCaskill does not owe Harlon Varnado for attorney fees, he owes her \$5,000 to cover her debt to Harlon Varnado; and that she does not contest the dischargeability of any debt to R. Conner McAllister.

Mr. McCaskill is employed by KLLM, a trucking company and has been for approximately four and one half years. At the time the judgment of divorce was entered he earned an annual salary of \$60,000 at KLLM. Also at the time the judgment of divorce was entered, he owned two restaurants, Two Sisters Kitchen and George Street Grocery.

Mrs. McCaskill has been employed by Mississippi College for ten years and earns approximately \$33,000 per year. She has custody of the couple's two teenage daughters. At trial, Mrs. McCaskill testified that prior to the parties separation, she was responsible for paying the family bills. The McCaskills had a joint checking account into which both the KLLM and the Mississippi College paychecks were placed and out of which the family bills were paid. Mrs. McCaskill further testified that both paychecks were necessary to maintain the family household. Mrs. McCaskill knew that other bank accounts existed for the two restaurants, but she had no control over or connection with these accounts.

#### CONCLUSIONS OF LAW

Section 523 of the Bankruptcy Code sets forth a list of certain debts that are excepted from a discharge in bankruptcy.

Section 523(a)(5) specifically excepts from discharge a debt for alimony and child support, providing in pertinent part as follows:

11 USC § 523

§ 523. Exceptions to discharge.

(a) A discharge under section 727 . . . 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 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 liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

The determination of whether a debt constitutes alimony, maintenance or support, and therefore, is nondischargeable under § 523(a)(5) is a matter of federal bankruptcy law, not state law. Grogan v. Garner, 498 U.S. 279, 284, 111 S.Ct. 654,658, 112 L.Ed.2d 755 (1991); Dennis v. Dennis (Matter of Dennis), 25 F.3d 274, 277 (5th Cir. 1994).

"Bankruptcy courts must therefore look beyond the labels which state courts - and even parties themselves - give obligations which debtors seek to have discharged." Dennis v. Dennis (Matter of Dennis), 25 F.3d 274, 277, (5th Cir. 1994). "Thus, we must place substance over form to determine the true nature and purpose

of the award, regardless of the label used." Joseph v. J. Huey O'Toole, P.C. (Matter of Joseph), 16 F.3d 86, 88 (5th Cir. 1994).

The debts Mr. McCaskill is seeking to have discharged are debts to third party creditors which he was ordered to pay in the judgment of divorce, Mrs. McCaskill's claim against him for payment of those debts, and amounts Mr. McCaskill owes Mrs. McCaskill directly pursuant to the judgment of divorce. An obligation incurred pursuant to a judgment of divorce to pay a debt to a third party may constitute a nondischargeable debt if the function of the debt is to provide support within the meaning of § 523(a)(5). See Joseph v. J. Huey O'Toole, P.C. (Matter of Joseph), 16 F.3d 86, 88 (5th Cir. 1994); Rump v. Rump (In re Rump), 150 B.R. 450, 453 (Bankr. E.D. Mo. 1993); Mohn v. Mohn (In re Mohn), 118 B.R. 51 (Bankr. E.D. Va. 1990); Brand v. Brand (In re Brand), 108 B.R. 319, 321 (Bankr. N.D. Ala. 1989).

The Fifth Circuit Court of Appeals has set forth a nonexhaustive list of factors to be considered by the court in determining whether a particular debt is nondischargeable, stating:

An . . . award granted pursuant to a divorce decree does not elude discharge because it tangentially relates to an award of support and maintenance; rather, the . . . award is deemed nondischargeable if the award itself reflects a balancing of the parties' financial needs. Considerations such as the disparity in earning power of the parties, their relative business opportunities, the physical condition of the parties, their probable future need for support, the educational background of the parties, and the benefits they would have received had the marriage continued, inform this inquiry.

Joseph v. J. Huey O'Toole, P.C. (Matter of Joseph), 16 F.3d 86, 88 (5th Cir. 1994)(citations omitted).

In considering the foregoing factors, the Court finds that with the exception of the debt to Louis B. Guy, and the debt to R. Conner McAllister, both of which are not in dispute, the remaining debts set forth in Mr. McCaskill's *Complaint to Determine Dischargeability* are in the nature of support and therefore, are nondischargeable under § 523(a)(5).

After awarding possession of the marital home to Mrs. McCaskill, the judgment of divorce ordered Mr. McCaskill to pay the monthly note of \$1,474 on the home. This award was clearly in the nature of support as it was to provide a place for Mrs. McCaskill and the couple's two daughters to live. Likewise, the provision in the judgment of divorce that Mr. McCaskill pay the debt on the 1988 Mazda automobile was to provide transportation for Mrs. McCaskill and their daughters. The debt to Arlon Crockett was a marital debt incurred prior to the separation of the parties. The judgment of divorce provides that Mr. McCaskill is to pay all marital debts incurred prior to the separation of the parties, and this Court finds that, in the present case, payment of joint marital debts is in the nature of support rather than a property settlement. Finally, the judgment of divorce ordered Mr. McCaskill to pay to Mrs. McCaskill \$5,000 for attorney's fees and also to pay all costs of court. The Court finds that in considering the parties relative positions, the award of attorney's fees and costs of court is also in the nature of support. At the time the judgment of divorce was

entered Mr. McCaskill's income from KLLM was roughly twice that of Mrs. McCaskill, in addition to the fact that he owned two restaurants. Mrs. McCaskill has custody of the two children which she must support in addition to herself.

In finding that the foregoing debts are in the nature of support for Mrs. McCaskill and the parties' two children and, therefore, are nondischargeable under § 523(a)(5), this Court makes no findings regarding the rights of parties that have not been served with process or participated in this adversary proceeding.

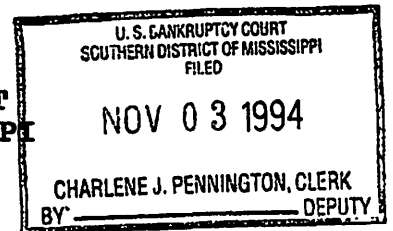
A separate judgment consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

THIS the 3<sup>rd</sup> day of November, 1994.

  
UNITED STATES BANKRUPTCY JUDGE



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE: JAMES A. MCCASKILL

CASE NO. 94-00909JEE

JAMES A. MCCASKILL

PLAINTIFF

VS.

ADVERSARY NO. 9400112JEE

SUSAN D. MCCASKILL

DEFENDANT

FINAL JUDGMENT

Consistent with the Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the following debts which the Debtor was ordered in the judgment of divorce entered on December 6, 1993 in the Chancery Court of Rankin County, Mississippi, to pay to his former wife, Susan D. McCaskill, or on behalf of Susan McCaskill are nondischargeable pursuant to 11 U.S.C. § 523(a)(5):

1. \$90,000 debt to Deposit Guaranty Mortgage Company payable in monthly installments of \$1,474, secured by a deed of trust on the marital home.
2. \$5,000 debt to Deposit Guaranty National Bank secured by the 1988 Mazda automobile driven by Mrs. McCaskill.
3. \$1,200 debt to Arlon Crockett d/b/a Sunshine Pools.
4. Any and all marital debts incurred prior to the separation of Mr. and Mrs. McCaskill.
5. \$5,000 attorney's fees payable to Susan McCaskill.

6. Any and all court costs associated with any legal proceeding prior to Mr. McCaskill's filing chapter 7.

IT IS FURTHER ORDERED that this Court makes no findings regarding the rights of parties that have not been served with process or participated in this adversary proceeding.

This judgment constitutes a final judgment pursuant to Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

SO ORDERED this the 3<sup>rd</sup> day of November, 1994.

  
UNITED STATES BANKRUPTCY JUDGE