

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
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August 2, 2001

Laura J. Howard
P.O. Box 9574
North Amherst, Massachusetts 01059

Thomas E. Lee, Esq.
P.O. Box 610
Fort Pierre, South Dakota 57532-0610

Subject: **Howard v. Abbott**
(In re John Michael and Roberta Fae Abbott)
Adversary No. 01-3005
Chapter 7; Bankr. No. 01-30028

Dear Ms. Howard and Mr. Lee:

The matter before the Court is Plaintiff Laura J. Howard's ("Plaintiff") motion for summary judgment.¹ This is a core proceeding under 28 U.S.C. § 157(b)(2)(I). This letter decision and accompanying Order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that summary judgment shall be entered for Plaintiff and that her claim against Defendant-Debtor John Michael Abbott ("Debtor") shall not be discharged herein.

Facts. Plaintiff and Debtor were married on September 21, 1985. They had one child, a daughter, who was born on November 5, 1980. In March 1998, citing "serious and irreconcilable differences," Plaintiff and Debtor entered into a separation agreement.

Pursuant to the terms of that agreement, Plaintiff did not request that Debtor pay her child support. However, Plaintiff and Debtor agreed to share equally their daughter's uninsured medical and dental expenses. Both further agreed that if their daughter chose to attend college, each would bear one-half of the expenses

¹ Pursuant to the Court's June 26, 2001 Order, Plaintiff's June 25, 2001 letter was treated as a motion for summary judgment.

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for her college education. Plaintiff and Debtor agreed that the separation agreement would be incorporated in any judgment of divorce and would also survive "as a separate and independent binding contract."

Plaintiff and Debtor were divorced on July 13, 1998. Their daughter did in fact choose to attend college. Debtor paid his share of her college expenses for the first three semesters (Fall 1999, Spring 2000, and Fall 2000). He did not pay his share of her college expenses for the next semester.

On January 19, 2001, Plaintiff filed a Complaint for Contempt with the Franklin Probate and Family Court for the Commonwealth of Massachusetts. On February 27, 2001, that court entered a Judgment of Contempt against Debtor, pursuant to which Debtor was found to owe Plaintiff the sum of \$1,648.85 for his share of their daughter's tuition expenses and uninsured medical expenses and was ordered to pay that sum, by income assignment, at the rate of \$75.00 per week.

On March 28, 2001, Debtor and his current spouse filed for relief under chapter 7 of the bankruptcy code. On April 17, 2001, Plaintiff filed a letter-complaint against Debtor, objecting to the discharge of the debt owed to her by Debtor. On May 17, 2001, Debtor filed his answer, in which he alleged that Plaintiff's complaint failed to state a cause of action, that Plaintiff had mischaracterized the nature of the debt, and that Plaintiff had not "complied with the requirements of enforcement of a foreign court in the State of South Dakota."

On June 25, 2001, Plaintiff filed her motion for summary judgment, supported by copies of the parties' separation agreement, the Probate and Family Court Judgment of Contempt, and the Probate and Family Court's Order for Support, Health Insurance and Income Assignment.² On July 27, 2001, Debtor filed his response to Plaintiff's motion, supported by his affidavit. The matter was then taken under advisement.

² Plaintiff also offered a letter from her doctor, describing her health problems. However, as discussed below, the parties' relative hardships are not relevant to a determination of dischargeability under 11 U.S.C. § 523(a)(5).

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Summary Judgment. Summary judgment is appropriate when "there is no genuine issue [of] material fact and . . . the moving party is entitled to a judgment as a matter of law." F.R.Bankr.P. 7056 and F.R.Civ.P. 56(c). An issue of material fact is *genuine* if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394, 395 (8th Cir. 1992) (quotes therein). A genuine issue of fact is *material* if it might affect the outcome of the case. *Id.* (quotes therein).

The matter must be viewed in the light most favorable to the party opposing the motion. *F.D.I.C. v. Bell*, 106 F.3d 258, 263 (8th Cir. 1997); *Amerinet, Inc. v. Xerox Corp.*, 972 F.2d 1483, 1490 (8th Cir. 1992) (quoting therein *Matsushita Elec. Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587-88 (1986), and citations therein). Where motive and intent are at issue, disposition of the matter by summary judgment may be more difficult. *Cf. Amerinet*, 972 F.2d at 1490 (citation omitted).

The movant meets his burden if he shows that the record does not contain a genuine issue of material fact and he points out that part of the record that bears out his assertion. *Handeen v. LeMaire*, 112 F.3d 1339, 1346 (8th Cir. 1997 (quoting therein *City of Mt. Pleasant v. Associated Electric Coop*, 838 F.2d 268, 273, (8th Cir. 1988)). No defense to an insufficient showing is required. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 156 (1970) (citation therein); *Handeen*, 112 F.3d at 1346.

If the movant meets his burden, however, the non movant, to defeat the motion, "must advance specific facts to create a genuine issue of material fact for trial." *Bell*, 106 F.3d at 263 (quoting *Rolscreen Co. v. Pella Products of St. Louis, Inc.*, 64 F.3d 1202, 1211 (8th Cir. 1995)). The non movant must do more than show there is some metaphysical doubt; he must show he will be able to put on admissible evidence at trial proving his allegations. *Bell*, 106 F.3d 263 (citing *Kiemele v. Soo Line R.R. Co.*, 93 F.3d 472, 474 (8th Cir. 1996), and *JRT, Inc. v. TCBY System, Inc.*, 52 F.3d 734, 737 (8th Cir. 1995)).

Nondischargeability. A chapter 7 debtor is not entitled to a discharge of any debt "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

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or other order of a court of record . . .” 11 U.S.C. § 523(a)(5).

In deciding whether a particular obligation is for “support” and thus not dischargeable, a bankruptcy court is not bound by state laws that define an obligation as either maintenance or a property settlement, nor is it bound to accept a divorce decree’s characterization of an award as either maintenance or a property settlement. *Williams v. Williams*, 703 F.2d 1055, 1057 (8th Cir. 1983). Instead, the court must determine what the parties intended when they entered into the agreement. See *Draper v. Draper*, 790 F.2d 52, 54 (8th Cir. 1986); *Boyle v. Donovan*, 724 F.2d 681, 683 (8th Cir. 1984); *Williams*, 703 F.2d at 1057-58.

Discussion. In the instant case, the only evidence of Plaintiff’s and Debtor’s intent is provided by the separation agreement itself. That agreement expressly provides that Plaintiff did not request child support. However, it also provides in subsequent paragraphs that Plaintiff and Debtor would “share equally the uninsured medical and dental expenses” of their daughter and that Plaintiff and Debtor would “continue to support [emphasis added] their child during her college education, through her 24th birthday.”

It thus appears that notwithstanding Plaintiff’s waiver of “child support,” Plaintiff and Debtor clearly intended that Debtor would continue to provide support for their daughter by sharing in her medical, dental, and college expenses. Debtor has not offered any other explanation of these provisions, nor has he offered specific facts that would support any other interpretation.

The Court therefore finds that Debtor’s obligation was intended as support and is in the nature of support. See *Williams*, 703 F.2d at 1057 (“[P]rovisions to pay expenditures for the necessities and ordinary staples of everyday life’ may reflect a support function.”) (citations omitted); *Boyle*, 724 F.2d at 683 (“[T]he debtor agreed to pay the expenses as they came due, which suggests that the agreement was more in the nature of support.”). This finding is amply supported by controlling authority. See *Draper*, 790 F.2d at 54 (“[A]ppellant’s obligations [to pay his children’s educational, medical, and dental expenses] are nonetheless not dischargeable in bankruptcy because they are support obligations”); *Boyle*, 724 F.2d at 683 (“The college expense

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Draper, 790 F.2d at 54 (“[A]ppellant’s obligations [to pay his children’s educational, medical, and dental expenses] are nonetheless not dischargeable in bankruptcy because they are support obligations”); *Boyle*, 724 F.2d at 683 (“The college expense agreement, accordingly, could be considered as providing for the economic safety of the sons during their college years, and hence the agreement is ‘in the nature of support.’”).

Conclusion. Plaintiff has met her burden of showing that the record does not contain a genuine issue of material fact. Debtor has not advanced specific facts to create a genuine issue of material fact for trial.³ Under the facts of this case and in light of controlling authority, Debtor’s obligation to pay one-half of his daughter’s uninsured medical and dental expenses and one-half of her college expenses is in the nature of support. That obligation is therefore nondischargeable under 11 U.S.C. § 523(a)(5).

For the foregoing reasons, Plaintiff’s Motion for Summary Judgment is granted, and judgment shall be entered for Plaintiff. Plaintiff’s claim against Defendant-Debtor shall not be discharged herein. The Court will enter an appropriate order.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

AUG 02 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By 

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

AUG 02 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

INH:sh

cc: adversary file (docket original in adversary; serve copies on counsel)

³ In his response to Plaintiff’s motion for summary judgment, the only issues of fact to which Debtor refers have to do with the “hardship of debtor as well as claimant.” While such issues might be genuine, they are not material, as the question of hardship is not relevant to a determination of nondischargeability under § 523(a)(5). See *Draper*, 790 F.2d at 54 (“[W]e reject the relevancy of a ‘needs’ test in determining whether obligations are ‘actually in the nature of . . . support’ and thus nondischargeable under 11 U.S.C. § 523(a)(5).”) (citations omitted).

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Total notices mailed: 2

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Aty Lee, Thomas E. PO Box 610, Ft. Pierre, SD 57532-0610