UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 00-50394
	)	Chapter 7
JIMMY DEAN TINES	)	
d/b/a Tines Livestock	)	
Soc. Sec. No. 504-86-8180	)	
	)	
Debtor.	)	
SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES	)	Adv. No. 03-5014
Plaintiff,	)	
	)	DECISION RE: DISCHARGEABILITY OF CERTAIN CHILD-RELATED DEBT
-vs-	)	
	)	
JIMMY DEAN TINES	)	
Defendant.	)	

The matter before the Court, upon reference from the Sixth Judicial Circuit for the State of South Dakota, is a determination of whether a certain claim held by Plaintiff against Defendant-Debtor is nondischargeable and whether Plaintiff's request for this determination was timely. Both issues are core proceedings under 28 U.S.C. § 157(b)(2). This Decision and accompanying Order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that Plaintiff's request for a determination of dischargeability was timely. The Court further concludes that Plaintiff's claim against Defendant-Debtor is nondischargeable.

I.
Summary of Facts.

The parties have stipulated to the material facts. Jimmy Dean Tines is the father of a child that was born in September of 1998.

Through the Medicaid program (Title XIX), the South Dakota Department of Social Services paid medical expenses related to the child's birth and some illnesses through the end of January 1999. On March 11, 2000, a state court in Wyoming ordered Tines to repay the State of South Dakota for these expenses.

Tines filed a Chapter 7 petition in bankruptcy on September 1, 2000. The State of South Dakota presumed the debt was automatically nondischargeable; it did not file an adversary proceeding with the Bankruptcy Court seeking a declaration of nondischargeability. On April 24, 2003, the State of South Dakota commenced a small claims collection action in the state courts of South Dakota against Debtor. The magistrate judge presiding over the state court action, the Honorable Scott P. Myren, requested a determination of dischargeability from this Court. This Court requested and received from the parties stipulated facts, stipulated issues, and briefs. The matter was then taken under advisement.

The parties have presented two issues: (1) whether the State of South Dakota timely sought a determination of dischargeability; and (2) whether the subject debt is nondischargeable.

II.
Timeliness of Complaint.

APPLICABLE LAW. A determination of whether a particular claim is dischargeable may be sought "at any time" under the various

subsections of 11 U.S.C. § 523(a). Fed.R.Bankr.P. 4007(b). There are only four exceptions. When read together, 11 U.S.C. § 523(c) and Fed.R.Bankr.P. 4007(c) provide that a party seeking a determination of dischargeability under subsections (a)(2), (a)(4), (a)(6), or (a)(15) of § 523(a) must do so by a stated deadline, which is 60 days after the date first set for the § 341 meeting of creditors.

DISCUSSION. In this adversary proceeding, the parties are litigating whether a debt related to medical services provided to Debtor's child are nondischargeable. The governing Bankruptcy Code subsections are § 523(a)(5) and § 523(a)(18). These subsections of § 523(a) are *not* subject to the deadline established by § 523(c) of and Fed.R.Bankr.P. 4007(c). *Baird v. Long (In re Baird)*, 152 B.R. 636, 639 (D. Colo. 1993); *Dixon v. Dixon (In re Dixon)*, 280 B.R. 755, 758 (Bankr. M.D. Ga. 2002); and *Hutchison v. Birmingham (In re Hutchison)*, 270 B.R. 429, 435 (Bankr. E.D. Mich. 2001). Accordingly, pursuant to Fed.R.Bankr.P. 4007(b), the State of South Dakota is timely in making its request that its claim against Defendant-Debtor be declared nondischargeable under subsections 523(a)(5) and (a)(18).

Defendant-Debtor's laches argument is without merit. Rule 4007(b) is clear on its face. Further, Defendant-Debtor has not identified any prejudice occasioned by the Department's timing in

bringing this action. *Goodman v. McDonnell Douglas Corp.*, 606 F.2d 800, 809 n.17 (8th Cir. 1979)(cited in *Baker v. Veneman*, 256 F. Supp. 2d 999, 1007 (E.D. Mo. 2003)). There has been no loss of evidence, and Defendant-Debtor has not altered his position in the interim between his bankruptcy case and this adversary proceeding. Moreover, the United States is ordinarily not subject to this equitable defense. *Baker*, 256 F.Supp. at 1007 (cite therein).

III.
Dischargeability.

APPLICABLE LAW. Under 11 U.S.C. § 523(a)(5),[1] a debtor does not receive a discharge of debts owed to a spouse, former spouse, or

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[1] Section 523(a)(5) of the Bankruptcy Code provides:
(a) A discharge under section 727...of [the Bankruptcy Code] 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--

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support....

child for alimony, maintenance, or support in connection with a separation agreement, divorce decree, or other order of a court of record.

Whether a particular debt falls under § 523(a)(5) is a question of federal law. *Scholl v. McLain (In re McLain)*, 241 B.R. 415, 419 (B.A.P. 8th Cir. 1999); *Tatge v. Tatge (In re Tatge)*, 212 B.R. 604, 608 (B.A.P. 8th Cir. 1997). The Court must consider the question in light of all facts and circumstances relevant to the intent of the parties at the time the obligation was created, *not* at the time of the dischargeability trial. *Cummings v. Cummings (In re Cummings)*, 147 B.R. 747, 750 (Bankr. D.S.D. 1992)(citing *William v. Williams (In re Williams)*, 703 F.2d 1055, 1056 (8th Cir. 1983)). The claimant, by a preponderance of the evidence, has the burden to show that the debt falls within the limits of § 523(a)(5). *Grogan v. Garner*, 498 U.S. 279, 286-90 (1991).

Debts owed to a third party may be included under § 523(a)(5). *See Williams v. Kemp (In re Kemp)*, 242 B.R. 178, 181 (B.A.P. 8th Cir. 1999). The crucial issues are the intent of the parties and the function the award was to serve. *Tatge*, 212 B.R. at 608. Medical expenses related to a child's mother's pre-natal care and for child birth expenses are deemed to be child support that falls under § 523(a)(5). *See In re Seibert*, 914 F.2d 102, 105-07 (7th Cir. 1990)(citations therein).

Although statutory exceptions to discharge are subject to a narrow construction, the exception from discharge for a familial support debt receives a more liberal construction. *Holliday v. Kline (In re Kline)*, 65 F.3d 749, 750-51 (8th Cir. 1995)(citing *Werner v. Hofmann*, 5 F.3d 1170, 1172 (8th Cir. 1993); *Shine v. Shine*, 802 F.2d 583, 585 (1st Cir. 1986)). This exception to discharge favors enforcement of the support obligation over the debtor's fresh start. *Kemp*, 242 B.R. at 181.

Section 523(a)(18) of the Bankruptcy Code states:

> (a) A discharge under section 727 ... [of the Bankruptcy Code] does not discharge an individual debtor from any debt--
>
> ....
>
> (18) owed under State law to a State or municipality that is--
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> (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.*).

This subsection has two requirements. Under the first, a debt is in the "nature of support" if the basis of the debt benefitted the child. *Leibowitz v. County of Orange (In re Leibowitz)*, 217 F.3d 799, 803 (9th Cir. 2000)(cite therein). It may include funds that a debtor has been ordered to pay as a reimbursement. *Id.* at 803-04. The second requirement is that the debt must be enforceable under part D of title IV of the Social Security Act. It

encompasses the type of debts that states are instructed to enforce and collect under Title IV-D, which include debts for child support.

> Title IV-D of the Social Security Act was enacted in 1975 as the Child Support Enforcement Act. *See* Pub.L. No. 93-647, 88 Stat. 2351 (codified as amended at 42 U.S.C. §§ 651-669). Designed to reduce state and federal expenditures for child support, *see Commonwealth of Pennsylvania v. United States Dept. of Health and Human Services*, 80 F.3d 796, 799 (3d Cir. 1996), 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. *See* 42 U.S.C. §§ 651- 669.

Id. at 804. Unlike § 523(a)(5), a debt falling under § 523(a)(18) need not have been assigned to the state to be collectable. *Id.* at 806 (cites therein). Indeed, the nondischargeable debt may even have accrued before the debtor, as an absent parent, has been ordered to support the child. *See Pitts v. State of Missouri (In re Pitts)*, 262 B.R. 482, 495-99 (Bankr. W.E. Mo. 2001)(cites therein). Essentially, the Code amendment in 1996, that added subsection (a)(18) was "designed to eliminate any question as to the nondischargeability of state and municipal claims against support obligors." COLLIER ON BANKRUPTCY, ¶ 523.24. at 523-109 (15th Rev.Ed. 1998)(cited in *Hardin v. State of South Carolina (In re Hardin)*, 257 B.R. 912, 915 n.3 (Bankr. E.D. Ark. 2001)).

DISCUSSION. As indicated by the statutes and case law discussed above, and as discussed in the Department's excellent brief, the

Department's claim against Debtor is not dischargeable under either § 523(a)(5) or § 523(a)(18). Debtor essentially does not dispute that conclusion. Instead, he argues that he

> only be obligated to reimburse the Department his pro rated share of child support, or $1,775.00; or in the alternative that the debt be pro rated between the parties. Finally, the Defendant argues that the Department is only entitled to reimburse [sic] for their actual costs, i.e. the monies paid by the Department, and not the administrative costs and postage that is being requested by the Department in addition to their actual costs.

The Bankruptcy Court's only role with family support obligations is to determine whether the subject debt is nondischargeable, not to set the amount owed. *See* 11 U.S.C. § 362(b)(2). If Defendant-Debtor disputes the amount of the support debt he has been ordered to pay, he will have to bring that grievance before the appropriate state court.

An order and judgment for the Department will be entered.

Dated this 21st day of November, 2003.

BY THE COURT:

Irvin N. Hoyt
Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: _____
Deputy Clerk

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

NOV 21 2003

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

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

NOV 21 2003

Charles L. Nail, Jr., Clerk
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By_____

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