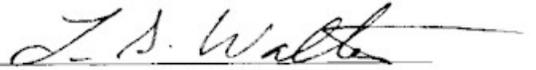


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: May 08, 2006


Lawrence S. Walter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

In re: MARK A. VONDERHUEVEL,

Debtor

Case No. 05-38447

Adv. No. 05-3419

SHARON MARIE BARNES,

Plaintiff

Judge L. S. Walter
Chapter 7

v.

MARK A. VONDERHUEVEL,

Defendant

DECISION DENYING DEBTOR-DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334, and the standing General Order of Reference in this District. This matter is before the court on the motion for summary judgment filed by Debtor-Defendant Mark A. Vonderhuevel [Adv. Doc.

16]; and the responsive memorandum filed in opposition by Plaintiff Sharon Marie Barnes [Adv. Doc. 21]. No reply was timely filed.

SYNOPSIS

Plaintiff Sharon Marie Barnes (“Barnes”) filed a complaint in this adversary proceeding to determine the dischargeability of obligations owed by Debtor-Defendant Mark A. Vonderhuevel (“Debtor”) pursuant to the parties’ divorce decree. Barnes asserts in the complaint that the obligations are in the nature of spousal support and nondischargeable pursuant to 11 U.S.C. § 523(a)(5). Following the filing of his answer, the Debtor filed a motion for summary judgment arguing that the language of the divorce decree clearly states that no spousal support is to be awarded and, consequently, the undisputed facts support that the obligations are dischargeable.

The court concludes that the language in the divorce decree is ambiguous regarding whether the obligations are in the nature of spousal support. Furthermore, the labeling of an obligation as something other than spousal support is not conclusive. Pursuant to *Calhoun* and other Sixth Circuit precedent, the court must look behind the language of the divorce decree to determine whether the obligations are actually in the nature of support even if they are not clearly labeled as such in the divorce decree. For these reasons, the court denies the Debtor’s motion for summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Barnes and Debtor were divorced in June of 2004 by Judgment Entry and Decree of Divorce (“Decree”) entered in the Shelby County Ohio Common Pleas Court. [Adv. Doc. 16, Ex. 1.] The pertinent language of the Decree regarding spousal support states as follows:

A. Spousal Support

No spousal support shall be awarded to either party, however, the issue of spousal support shall remain under the continuing jurisdiction of the Court. The Plaintiff [Debtor]

acknowledges that the Defendant [Barnes] has accepted the provisions of this Agreed Judgment Entry, which includes the refinancing of the mortgage by Plaintiff and the payments by Plaintiff to Defendant as a property settlement agreement. The parties agree that these provisions are made in lieu of spousal support which would otherwise be required for the support of the Defendant. In agreeing to the provisions for a property division, the parties specifically intend that the Defendant will have those assets as set forth in this Agreed Judgment Entry. The parties also specifically intend that the Defendant will be free of those liabilities which have been assumed by the Plaintiff in this agreement. The effect of this agreed allocation of assets and liabilities is in part to provide for the maintenance and support of the Defendant. If for any reason the Defendant does not receive those assets as agreed, or for any reason she must pay any of the debts assigned to Plaintiff, the parties recognize that the effect will be to cause Defendant to be in need of spousal support. It is the specific intention of the parties that the obligations of the Plaintiff as set forth in this Agreed Entry are actually in the nature of alimony, maintenance, and support for bankruptcy purposes for the Defendant and thus are not intended by them to be dischargeable in bankruptcy. However, if Plaintiff abides by the terms of this Agreed Entry, then the payments made by the Plaintiff are a property settlement agreement and not subject to income tax by the Defendant. The parties agree that the issue of spousal support shall be subject to the continuing jurisdiction of the court for the purposes of establishment, termination or modification in both amount and duration, in the event that Plaintiff obtains relief in any bankruptcy court from any obligation due directly or indirectly to Defendant, or obtains relief from any debt which the Defendant must as a result pay, or modifies the property division between the parties to which the Defendant is entitled by virtue of this Agreed Judgment Entry, thus affecting the need for support by the Defendant.

[*Id.*, Section A.] Later sections of the Decree provide more detail as to the Debtor's obligation to make payments to Barnes and his obligation to refinance a mortgage mentioned in Section A. Specifically, Section C of the Decree requires the Debtor to refinance two mortgages with Bank One and release Barnes from all obligations relating to same. [*Id.*, Section C.] In Section L, the Decree addresses the Debtor's business assets and interests in A.R.M.S., Inc. and Freistuhler & Vonderhuevel Enterprises, Ltd. [*Id.*, Section L.] The Decree awards the Debtor "all right, title and interest in these business interests." [*Id.*] In exchange, the Debtor is to pay Barnes the sum of \$75,000, in three \$25,000 payments, as a "property settlement" representing Barnes's equitable interests in the businesses. [*Id.*]

On August 19, 2005, Debtor filed a Chapter 7 bankruptcy petition listing the remaining \$50,000 of his debt to Barnes as an unsecured debt. [Case # 05-38447, Doc. 1, Schedule F.] The

Debtor further scheduled a \$26,781.48 debt to Bank One as an unsecured debt. [*Id.*] On October 26, 2005, Barnes filed her amended complaint in this adversary proceeding to determine both the \$50,000 debt owed directly to her and the \$26,781.48 debt owed to Bank One nondischargeable obligations pursuant to 11 U.S.C. § 523(a)(5).

SUMMARY JUDGMENT STANDARD

The appropriate standard to address the Debtor's motion for summary judgment filed in this adversary proceeding is contained in Fed. R. Civ. P. 56(c) and incorporated in bankruptcy adversary proceedings by reference in Fed. R. Bankr. P. 7056. Rule 56(c) states in part that a court must grant summary judgment to the moving party if:

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). In order to prevail, the moving party, if bearing the burden of persuasion at trial, must establish all elements of its claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). If the burden is on the nonmoving party at trial, the movant must: 1) submit affirmative evidence that negates an essential element of the nonmoving party's claim; or 2) demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Id.* at 331-32. Thereafter, the opposing party "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citations omitted); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-251 (1986). All inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *Matsushita*, 475 U.S. at 586-88.

LEGAL ANALYSIS

Marital debts in the nature of support are nondischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(5). A debt falls within the parameters of 11 U.S.C. § 523(a)(5), if it is a 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 a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.

11 U.S.C. § 523(a)(5).

Under this provision, the burden is on the non-debtor spouse to prove that the debt is a nondischargeable support obligation. *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397, 401 (6th Cir. 1998). Unlike other dischargeability provisions under § 523(a), the nondischargeability provision of § 523(a)(5) is construed broadly to promote the Congressional policy that favors enforcement of obligations for spousal and child support. *Luman v. Luman (In re Luman)*, 238 B.R. 697, 704 (Bankr. N.D. Ohio 1999).

When a state court clearly labels an obligation as support in a divorce decree, the bankruptcy court is to give that label deference. *Sorah*, 163 F.3d at 401. Specifically, when that label is coupled with other traditional state law indicia of support, the obligation should be “conclusively presumed to be a support obligation by the bankruptcy court.” *Id.*

However, when an obligation is not clearly labeled as support, the lack of such a label does not conclusively establish a non-support obligation or property settlement. Instead, the bankruptcy court “must look behind the award that is made under state law and make an independent inquiry to determine whether the award is actually in the nature of support.” *Harvey*

v. McClelland (In re McClelland), 247 B.R. 423, 426 (Bankr. N.D. Ohio 2000). Sixth Circuit cases, beginning with *Calhoun*, describe a four-step inquiry to determine whether an obligation not clearly labeled as support is actually in the nature of support. *See Long v. Calhoun*, 715 F.2d 1103 (6th Cir. 1983). *See also Fitzgerald v. Fitzgerald (In re Fitzgerald)*, 9 F.3d 517 (6th Cir. 1993). The inquiry is fact intensive and includes determining whether the state court or parties intended to create an obligation to provide support for the non-debtor spouse and whether the obligation actually has the effect of providing support. *See Calhoun*, 715 F.2d at 1109.

On summary judgment, the Debtor argues that the language of the Decree conclusively establishes that no support was to be awarded to Barnes. The Debtor focuses on the first sentence of Section A of the Decree which states, “[n]o spousal support shall be awarded to either party, however, the issue of spousal support shall remain under the continuing jurisdiction of the Court.” [Doc. 16, Ex. 1, Section A.] That sentence, however, is only the first of a long paragraph. Other sentences within the same paragraph indicate that the Debtor’s \$75,000 obligation owed to Barnes and the refinancing of the Bank One mortgage debt may have been intended as support by the parties and the state court. Section A of the Decree further states:

The Plaintiff [Debtor] acknowledges that the Defendant [Barnes] has accepted the provisions of this Agreed Judgment Entry, which includes the refinancing of the mortgage by Plaintiff and the payments by Plaintiff to Defendant as a property settlement agreement. **The parties agree that these provisions are made in lieu of spousal support which would otherwise be required for the support of the Defendant.**

* * *

The effect of this agreed allocation of assets and liabilities is in part to provide for the maintenance and support of the Defendant. If for any reason the Defendant does not receive those assets as agreed, or for any reason she must pay any of the debts assigned to Plaintiff, the parties recognize that the effect will be to cause Defendant to be in need of spousal support. It is the specific intention of the parties that the obligations of the Plaintiff as set forth in this Agreed Entry are actually in the nature of alimony, maintenance, and support for bankruptcy purposes for the Defendant and thus are not intended by them to be dischargeable in bankruptcy. However, if Plaintiff abides by the terms of this Agreed Entry, then the payments made

by the Plaintiff are a property settlement agreement and not subject to income tax by the Defendant. The parties agree that the issue of spousal support shall be subject to the continuing jurisdiction of the court for the purposes of establishment, termination or modification in both amount and duration, in the event that Plaintiff obtains relief in any bankruptcy court from any obligation due directly or indirectly to Defendant, or obtains relief from any debt which the Defendant must as a result pay, or modifies the property division between the parties to which the Defendant is entitled by virtue of this Agreed Judgment Entry, thus affecting the need for support by the Defendant.

[*Id.*, emphasis added.] At the very least, this language creates ambiguity regarding whether the Debtor's obligations are intended as and are in the nature of support and that ambiguity must be resolved at trial using the four-step inquiry discussed in *Calhoun* and its progeny.

CONCLUSION

Because genuine issues of material fact exist regarding whether the Debtor's obligations in the Decree are in the nature of support, the court **DENIES** the Debtor's motion for summary judgment.

SO ORDERED.

cc:

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