

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
KEVIN S. BROWN,	:	BANKRUPTCY CASE
	:	NO. 03-17171-WHD
Debtor.	:	
-----	:	
	:	
SIMONE BROWN,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 03-1022
v.	:	
	:	
KEVIN S. BROWN,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the complaint to determine dischargeability and objecting to discharge, filed by the Plaintiff, Simone Brown (hereinafter the "Plaintiff") against the Defendant, Kevin Brown (hereinafter the "Debtor"). Following a trial on the complaint, the Court took the matter under advisement. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(I) and (J).

PROCEDURAL HISTORY

On April 25, 2003, the Plaintiff filed the instant complaint, in which she alleged that certain debts owed by the Debtor are nondischargeable under § 523(a)(5) and (15) of the

Bankruptcy Code. The complaint also objected to the entry of the Debtor's discharge pursuant to § 727. The Plaintiff filed a motion for summary judgment on August 1, 2003. On October 7, 2003, the Court granted the Plaintiff's motion in part, finding that an award of alimony made by the Superior Court of Coweta County was nondischargeable pursuant to § 523(a)(5). On February 24, 2004, the Court held a trial on the remainder of the Plaintiff's complaint.

FINDINGS OF FACT

1. The Plaintiff and the Debtor were divorced, pursuant to a Final Judgment and Decree entered by the Superior Court of Coweta County, Georgia, on December 12, 2002. In 1996, the Plaintiff was diagnosed with Hepatitis C. The Plaintiff is not currently employed. The Debtor is an aircraft mechanic, employed by Delta Airlines and earns approximately \$71,500 per year.

2. Pursuant to the terms of the parties' divorce:

-the Debtor was awarded the marital residence, located at 60 Emerald Hills Lane, Newnan, Georgia (hereinafter the "Property").

-the Plaintiff was ordered to vacate the Property within thirty days from the execution of the final decree.

-the Debtor was ordered to pay 50% of the "net equity" to the Plaintiff within ninety days from the date that the Plaintiff moved out of the Property.¹

¹ The Final Judgment and Decree directs that the Debtor "shall immediately obtain a residential market analysis from a licensed real estate agent for the actual present condition of the property as situated, present wear and tear included." The amount of the "net equity" is to be derived by deducting the "current secured mortgage indebtedness" from the "fair market value established by the real estate agent."

-the Debtor was ordered to pay periodic alimony to the Plaintiff in the amount of \$1250 per month for thirty-six months and to carry COBRA health insurance on the Plaintiff for thirty-six months, at an expected cost of \$250 per month.

-the Debtor was ordered to maintain \$50,000 of term life insurance on his life, with the Plaintiff as the designated beneficiary.

-The Debtor was made liable for payment of the balance on a Capital One Visa, issued in the Plaintiff's name, and all credit cards issued in his name, and the Plaintiff was made liable for payment of the balances on all credit cards issued in her name, other than the Capital One Visa card.

-The Debtor was ordered to pay the outstanding balance of the Plaintiff's attorneys' fees.

3. The Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on January 30, 2003. In connection with the petition, the Debtor filed the customary schedules and statement of financial affairs, all of which the Debtor signed under penalty of perjury on January 30, 2003.

4. On Schedule A (Real Property), the Debtor listed the Property and valued it at \$165,000. On Schedule B (Personal Property), the Debtor listed a 1995 Chevrolet Tahoe, a 1976 Ford Mustang, a 2002 Yamaha TT-R225, and a utility trailer, which were assigned a collective value of \$5900, and tools valued at \$2,000. On Schedule C (Exemptions), the Debtor claimed an exemption of \$2500 for the Tahoe, \$1,000 for the Ford Mustang, \$2000 for the Yamaha, \$400 for the trailer, and \$2,000 for the tools.

5. On Schedule E (Unsecured Priority Claims), the Debtor listed a debt owing to the Plaintiff in the amount of \$54,000 (thirty-six months of alimony payments at \$1550 per month). On Schedule F (Unsecured General Claims), the Debtor listed a debt owing to the Plaintiff in the amount of \$8,368.40 for "final divorce decree non-alimony," a \$3,000 debt

owing to Patrick J. Fox, the Plaintiff's attorney, for the Plaintiff's attorneys' fees, and a debt of \$1502.82 to Larry Melnick for legal fees.

6. On Schedule J (Expenses), the Debtor's estimated monthly expenses included: \$972.90 for rent/mortgage payment, \$318.09 for electricity/heat, \$15.42 for water and sewer, \$56.14 for telephone, \$58.42 for cable, internet, and sanitation, \$180 for home maintenance and upkeep, \$400 for transportation, \$600 for charitable contributions, \$104.89 for real estate taxes, and \$2000 for attorneys' fees owed to Larry Melnick (\$1500) and Patrick Fox (\$500).

7. The Debtor owns a 1976 Ford Mustang. Prior to the filing of his bankruptcy case, the Debtor had invested approximately \$9,000 to restore the car, including \$2,500 to have the car painted. At the time of the filing, the car did not run and was worth no more than \$5,000.

8. At the time the Debtor filed his petition, the Debtor had been awarded possession and ownership of the Property. In September 2001, the appraised value of the Property was \$200,000. At the time the parties divorced, the Debtor obtained a comparative market analysis of the Property from a certified real estate appraiser that indicated that the Property had a value of \$165,000.

9. In September 2001, the Debtor refinanced the Property by obtaining a loan in the amount of \$150,000 and paid off the existing lien of \$95,623. At that time, the Debtor gave the Plaintiff \$30,000, which represented the Plaintiff's separate funds that she used as a down payment to purchase the Property.

10. Pursuant to the terms of the parties' divorce decree, the Plaintiff vacated the Property on January 30, 2003.

11. After the Plaintiff vacated the Property, the Debtor returned to the Property and removed some chandeliers, \$200 worth of marble, and \$600 worth of laminate flooring, which the parties had been in the process of using to remodel the Property. The Debtor then surrendered the Property to the secured creditor in payment of the mortgage on the Property.

12. At the time the Debtor filed his petition, he had been living with his parents for approximately ten months. The Debtor did not pay rent to his parents, but continued to make the mortgage payment on the Property of \$972.90 per month, with the exception of the mortgage payment for the month of January 2003. The Debtor also continued to make substantially regular payments for the utilities at the Property up until the time he filed his petition.

13. The Debtor's current wife, Mary Tresa Brown, is an ordained minister who operates a charitable ministry known as Child's Cry International, Inc. Child's Cry International, Inc. is a Georgia non-profit corporation.² The Debtor regularly makes a contribution of approximately \$600 per month either to Child's Cry International, Inc. or the Church of the Harvest International.

² The Debtor testified that donations made to Child's Cry International, Inc. are tax deductible. Additionally, Child's Cry International, Inc. appears on the Internal Revenue Service's list of § 501(c)(3) charities. See <http://www.irs.gov/app/cgi-bin/eosearch.cgi> (last visited July 20, 2004).

DISCUSSION

I. Section 523

The only remaining issues with regard to the dischargeability of any particular debts owed by the Debtor to the Plaintiff are: 1) whether the Debtor's obligation to pay the Plaintiff's attorney's fees is dischargeable; and 2) whether the Debtor's obligation to pay the Plaintiff one-half of the equity of the Property is dischargeable. Both of these obligations were imposed upon the Debtor by the parties' divorce decree.

A. *The Debtor's Obligation to Pay the Plaintiff's Attorneys' Fees*

Regarding the dischargeability of divorce obligations such as these, the Bankruptcy Code provides that "a discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . to a . . . former spouse . . . of the debtor, for alimony to, maintenance for, or support of such spouse . . . in connection with a separation agreement, divorce decree, or other order of a court of record." 11 U.S.C. § 523(a)(5). Although not payable directly to the former spouse, a debt owed to a third party, such as attorneys' fees, may constitute support. *See In re Edwards*, 33 B.R. 942 (Bankr. N.D. Ga. 1983) (Drake, J.); *In re Robinson*, 193 B.R. 367, 373 (Bankr. N.D. Ga. 1996) (Drake, J.). In determining whether an obligation to pay a former spouse's attorney's fees is in the nature of support within the meaning of § 523(a)(5), the court should look to the intent of the obligation's maker, which, in this case, is the divorce court. *Robinson*, 193 B.R. at 373. To divine the

intent of the divorce court, this Court has previously held that a bankruptcy court should consider the function of the fee award by focusing upon the relative financial positions of the two former spouses at the time of the award. *Id.* at 374. In that manner, if it appears that the divorce court ordered the debtor to pay the former spouse’s attorney’s fees because the debtor was in a better financial position than the former spouse, the court would likely find the award to be in the nature of support. Additionally, the Court concluded that an inquiry should also be made into the “nature of the underlying litigation.” *Id.* For example, an award of attorney’s fees made following a dispute over alimony or child support would likely be found to be in the nature of support, while an award arising from “a court battle solely over property division or custody of a child may not.” *Id.* “Those fees which may be viewed as ‘inextricably intertwined’ with the litigation for nondischargeable support are said themselves to qualify for nondischargeability under section 523(a)(5).” *Id.* (footnote omitted).

In this case, considering both the function of the award and the underlying litigation, the Court must conclude that the state court intended the award of fees as part of the Plaintiff’s support. At the time of the divorce, the Plaintiff was unemployed, did not have a history of stable employment, and suffered from Hepatitis C, which impacted her ability to obtain and retain employment. Although she indicated to the state court that she was actively seeking employment, it was uncertain that the Plaintiff would have gained steady employment with which to support herself after the divorce became final. Further, the state

court had ordered her to leave the marital residence within thirty days. The Debtor had been employed as an aircraft mechanic for over ten years, was earning approximately \$70,000 per year, and, other than the Plaintiff, had no dependents to support. In and of itself, the presence of this financial disparity provides strong indicia of an intent by the divorce court to make a fee award that would provide additional support to the Plaintiff. Additionally, the nature of underlying litigation supports the conclusion that the fee award was intended as support. Although the parties' divorce decree encompassed issues of property division and support, the attorney's fees at issue were not incurred solely for the purpose of litigating a property settlement. Under all of the facts of this case, it is reasonable to conclude that the state court awarded attorneys' fees to the Plaintiff because of the wide discrepancy between the parties' current and future abilities to support themselves. Accordingly, the Court concludes that the Debtor's obligation to pay the Plaintiff's attorney's fees is nondischargeable under § 523(a)(5).³

B. The Debtor's Obligation to Pay the Plaintiff One-Half of the Net Equity of the Property

As noted above, obligations that constitute "alimony, maintenance, or support," within the meaning of § 523(a)(5) are nondischargeable. Whether a debt to a former spouse is nondischargeable support turns upon federal rather than state law. *Gianakas v. Gianakas*

³ Because § 523(a)(15) does not apply to obligations found to be support within the meaning of § 523(a)(5), the Court need not consider the Debtor's contentions that § 523(a)(15) renders this debt dischargeable. *See* 11 U.S.C. § 523(a)(15).

(In re Gianakas), 917 F.2d 759, 762 (3d Cir. 1990); *Sylvester v. Sylvester*, 865 F.2d 1164, 1166 (10th Cir. 1989). Thus, the label placed upon an obligation by the consent agreement or court order that created it will not determine whether it is dischargeable in bankruptcy. *Joseph v. O'Toole (In re Joseph)*, 16 F.3d 86, 88 (5th Cir. 1994); *Sampson v. Sampson (In re Sampson)*, 997 F.2d 717, 722 (10th Cir. 1993). Rather than relying upon such labels, bankruptcy courts will look to factors such as:

- (1) Whether the obligation under consideration is subject to contingencies, such as death or remarriage;
- (2) Whether the payment was fashioned in order to balance disparate incomes of the parties;
- (3) Whether the obligation is payable in installments or a lump sum;
- (4) Whether there are minor children involved in a marriage requiring support;
- (5) The respective physical health of the spouse and the level of education;
- (6) Whether, in fact, there was a need for spousal support at the time of the circumstances of the particular case.

See In re Bowsman, 128 B.R. 485, 487 (Bankr. M.D. Fla. 1991); *see also In re Edwards*, 33 B.R. 942, 944 (Bankr. N.D. Ga. 1983). The critical and principal inquiry is whether the intent of the divorce court and the parties was to provide support or to divide marital property and debts. *In re Hosler*, 309 B.R. 540 (Bankr. C.D. Ill. 2004); *Cummings v. Cummings*, 244 F.3d 1263 (11th Cir. 2001). Ultimately, as the party objecting to discharge of the debt in question, the marital creditor must carry the burden of proving the debt's nondischargeability. *See* FED. R. BANKR. P. 4005; *see also Gianakas*, 917 F.2d at 761; *In re Long*, 794 F.2d 928, 930 (4th Cir. 1986).

Having considered the facts of the case, the Court concludes that the Plaintiff has

failed to meet her burden of establishing that the Debtor's obligation to pay her one-half of the equity of the Property is in the nature of support. The terms of the Final Judgment and Decree do not clearly express the state court's intention to award a further source of support or, instead, to simply divide the marital property. However, this obligation is addressed in the section of the Final Judgment and Decree labeled "Real Property," rather than the section labeled "Alimony." Although the Court is not bound by the labels used by the state court, the labels used provide some evidence of the court's intent. *See In re Catron*, 43 F.3d 1465 (4th Cir. 1994) ("Though the label affixed to a debt arising from divorce or separation is not dispositive of its 'nature,' a label affixed by the parties themselves in a settlement agreement is persuasive evidence of their intent, and the agreement erects a 'substantial obstacle' for the party seeking to overcome it."). In the Final Judgment and Decree, the state court noted that the court was awarding the Property to the Debtor because the Plaintiff would probably not be able to afford the Property in the long run. The court also noted that allowing the Debtor to retain the Property, rather than selling the Property, would avoid the necessity of paying a real estate commission and would provide more money to the Plaintiff. These statements could arguably support either the Debtor's or the Plaintiff's interpretation.

Nonetheless, given the facts and circumstances of this case, it seems to the Court that, had the state court wished to provide the Plaintiff with an additional source of support, the Court would have allowed the Plaintiff to remain in the Property for a longer period of time and would have ordered the Debtor to continue making the mortgage payments. This would

have provided the Plaintiff with a place to live for a period of time. Instead, the state court chose to award the Property to the Debtor, with the hope that the Debtor could maintain the debt service on the Property and provide the Plaintiff with her share of any equity in the Property through the payment of a lump-sum amount. This method of payment is not generally consistent with an award of support. Although the Court is cognizant of the fact that, at the time of the parties' divorce, the Plaintiff required support, the Court is persuaded that the state court intended the payment of \$1250 per month alimony, the continued payment of her health insurance, and the award of attorneys' fees to be the extent of that support, and that the equity equalization payment was intended as a method of dividing the marital property. Accordingly, this obligation is not nondischargeable pursuant to § 523(a)(5).

Although the Debtor's obligation to pay the Plaintiff for the equity in the Property does not fall within the discharge exception of § 523(a)(5), this obligation is of the type that is excepted from discharge pursuant to § 523(a)(15), as it is an obligation that arose in connection with a divorce decree. Section 523(a)(15) provides that a discharge does not discharge any debt that is "not of the kind described in [§ 523(a)(5)] that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record . . . unless – (A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependant of the debtor

and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or (B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to the spouse, former spouse, or child of the debtor.” 11 U.S.C. § 523(a)(15). As the creditor, the Plaintiff has the burden of establishing that the obligation arose in connection with the divorce decree. There is no dispute as to that fact, and, therefore, the burden shifts to the Debtor to establish that the exceptions found within either subsection A or B apply. *See Cleveland v. Cleveland (In re Cleveland)*, 198 B.R. 394, 397 (Bankr. N.D. Ga. 1996) (Drake, B.J.).

First, the Court must determine the amount of the obligation. The Debtor has indicated in his post-trial brief that the amount of the equity payment to the Plaintiff is \$8,600. The Plaintiff has not suggested otherwise. Pursuant to the Final Judgment and Decree, the Debtor is obligated to pay one-half of the net equity in the Property. The Final Judgment and Decree further instructs that the net equity is to be calculated by subtracting the current secured indebtedness from the fair market value of the Property, as indicated by the comparative market analysis that the Debtor was ordered to obtain. The Court’s understanding from the parties’ testimony is that the fair market value of the Property, indicated by the comparative market analysis, was \$165,000. The Court assumes that the amount of the secured indebtedness at that time was \$147,800, leaving net equity of \$17,200. Accordingly, as the Debtor submits, the amount of the obligation at issue is

\$8,600.

Second, the Court must determine whether the Debtor has the means to pay this obligation. “Given the similarity in the language of 11 U.S.C. § 1325(b)(2) to § 523(a)(15)(A), courts apply the Chapter 13 disposable income analysis to (a)(15)(A).” *In re Johnson*, 2004 WL 764668 (Bankr. N.D. Iowa Feb. 12, 2004). “This requires a two step analysis: (1) whether the debtor's essential and discretionary expenditures are reasonably necessary; and (2) whether the debtor has sufficient disposable income to pay the debt within a reasonable time.” *Id.* In determining what is reasonably necessary, “[a] debtor is not required to 'live by bread alone,' but is 'allowed some latitude regarding discretionary spending for items such as recreation, clubs, entertainment, newspapers, charitable contributions and other expenses in [the] budget.’” *Id.* Further, a “debtor may not simply rely upon a ‘snapshot’ of his financial abilities at the time of filing.” *Id.* at 398; *see also Humiston v. Huddelston (In re Huddelston)*, 194 B.R. 681, 687-88 (Bankr. N.D. Ga.1996) (Drake, B.J.). The debtor’s ability to pay is to be determined by reference to the totality of the debtor’s financial circumstances. *See id.* “Section 523(a)(15)(A) calls for an expanded scope of inquiry and, as such, courts must give attention to a panoply of relevant considerations, including: (1) the debtor's ‘disposable income’ as measured at the time of trial; (2) the presence of more lucrative employment opportunities which might enable the debtor to satisfy fully his divorce-related obligations; (3) the extent to which the debtor's burden of debt will be lessened in the near term; and 4) the extent to which the debtor

previously has made a good faith effort to fully employ towards satisfying the debt in question.” *Id.* Additionally, “when supplemental income from a new spouse or live-in companion serves to alter the debtor's financial prospects, the Court must factor that consideration into its evaluation of his ‘ability to pay.’” *Id.* (holding that without consideration of the debtor’s spouse’s income, the court cannot determine “exactly what quantum of the debtor's own income truly is ‘necessary’ for the support of himself”).

The Debtor earns a gross monthly salary of \$5959 per month. The parties disagree as to the amount of the Debtor’s net salary. The Plaintiff contends that the deduction for his payroll taxes, insurance, and his tool account is \$1081.14 per month, but the Debtor claims that the Plaintiff has erroneously reduced his gross pay by only one-half of his payroll expenses. Accordingly, the Debtor submits that his current payroll deductions are actually \$2162.28. The Debtor’s schedules reflect payroll taxes and social security deductions of \$1953 per month, which is almost exactly double the figure used by the Plaintiff. Accordingly, the Court concludes that the Debtor is correct, and his payroll deductions total \$2162.28 per month, leaving take-home pay of approximately \$3797 per month. No evidence was submitted as to the financial contribution made by the Debtor’s new wife, other than the statement made by the Debtor that she is an ordained minister and that she is paid sporadically by Child’s Cry International, Inc. Accordingly, the Court cannot accurately gauge the total amount of income available for payment of the Debtor’s household expenses.

The parties also do not agree as to the correct amount of the Debtor's current monthly expenses. The Plaintiff contends that the Debtor's expenses total \$2613.49 and include: 1) \$400 for food; 2) \$100 for clothing, laundry/dry cleaning, and medical/dental expenses; 3) \$400 for transportation (not including vehicle payment); 4) \$25 for recreation and entertainment; 5) \$138.49 for insurance (homeowner's and auto); 6) \$1500 for alimony; and 7) \$50 for attorney's fees owed to the Plaintiff's attorney.⁴ Therefore, even without considering the Debtor's wife's contributions to the budget, the Debtor would have \$1183.51 per month disposable income with which to pay his debt to the Plaintiff. However, the Debtor contends that the Plaintiff has understated his monthly expenses by failing to include expenses of \$975 for rent, \$150 for electricity, \$30 for telephone, \$150 for gas, and his \$600 charitable contribution. Accordingly, the Debtor submits that his expenses are actually \$4,518.49, and he is actually operating at a deficit of \$721 per month.

While the Court does not doubt that the Debtor must pay some amount for rent and utilities, the actual amount of the additional rent and utility expenses are not supported by any admissible evidence because the Debtor never testified under oath as to these amounts. That being said, even if the Court were to find that the Debtor's expenses exceed his take-home pay, the Court would still conclude that the Debtor has failed to carry his burden of proving that he lacks the ability to repay this debt. First, the Debtor presented no evidence

⁴ The Court notes that the debt owed by the Debtor to his own attorney for the services provided in connection with the parties' divorce will be discharged by the entry of the Debtor's Chapter 7 discharge. Accordingly, the Debtor has no remaining obligation to pay that amount.

to establish that his new wife is not contributing to the household budget and defraying some of these expenses. Second, the Debtor has property, in the form of the 1976 Ford Mustang, which could be sold to pay a portion of this debt. Accordingly, the Court finds that the Debtor has failed to establish that he cannot pay the Plaintiff's claim for \$8,600 from funds not reasonably necessary for the support of himself and his dependent.

Even though a debtor has the ability to pay the debt in question, he still may receive a discharge if doing so "would result in a benefit to the debtor that outweighs the detrimental consequences to the spouse, former spouse, or child of the debtor." *See* 11 U.S.C. § 523(a)(15)(B). Therefore, "if a non-debtor spouse would suffer little detriment from the debtor's nonpayment of an obligation . . . the obligation would be discharged," even though the debtor himself might have the ability to pay the obligation." H.R. Rep. No. 835, 103d Cong., 2d Sess. 54 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3363. Given the nature of its inquiry, courts hinge the applicability of section 523(a)(15)(B) upon a variety of factors. Specifically, the income and expenses of each party, the nature of the debt in question, and the former spouse's ability to pay are all said to influence the dischargeability of a divorce-related debt under section 523(a)(15)(B). *In re Hill*, 184 B.R. at 755; *In re Carroll*, 187 B.R. at 201; *In re Florio*, 187 B.R. at 658. Such considerations merely present a starting point of inquiry, however, and courts also must give weight to the intangible effect which its finding will have upon each party involved. *In re Huddelston*, 194 B.R. at 689; *In re Taylor*, 191 B.R. at 767 ("result could change in other cases if the evidence showed

some horrible non-economic detriment (to health, liberty, or something else of great material value to the non-debtor party)"). Ultimately, therefore, whenever the totality of the circumstances and the equities of the case call for such a result, the Court should declare the debt to be dischargeable, either in whole or in part.

In this case, the Court must find that the totality of the circumstances mitigate in favor of discharging this debt. Although the Court has found that the Debtor may have the ability to pay this debt, it is also clear from the evidence presented that releasing the Debtor from the burden of paying this debt would bestow a significant benefit upon the Debtor. Even assuming that the Debtor's new wife contributes financially to the Debtor's household budget, the Debtor has very little excess income, few assets, and no retirement savings. The Debtor is already obligated to make monthly payments of \$1,250 for the Plaintiff's support and \$250 for the Plaintiff's health insurance, which require just over 40% of the Debtor's take-home pay. Following the entry of his discharge, the Debtor will also remain responsible for the payment of at least \$3,000 owed to the Plaintiff's attorney. Allowing the Debtor to discharge the \$8,600 debt to the Plaintiff will allow the Debtor to begin rebuilding his life. Such a benefit outweighs any detriment to the Plaintiff that might result from the discharge of this debt. Although the Court recognizes that the Plaintiff's illness has made finding stable employment difficult, the Plaintiff has been able to find sufficient employment to support herself since the parties' divorce in December 2002. Additionally, she will receive \$1500 per month in support payments from the Debtor until the end of 2005. Even

when the support payments cease, the Plaintiff will continue to have savings upon which to rely. The Plaintiff left the parties' marriage with \$70,000 in the bank, \$30,000 of which she was able to use as a down payment on a home. Although the Plaintiff finds it unfair that she should be required to use her savings, instead of the equity payment owed by the Debtor, to help support herself, the Court is persuaded that the Plaintiff's \$40,000 in savings and \$30,000 in equity in her home provide a sufficient cushion that will absorb the impact of the discharge of this \$8,600 debt. For these reasons, the Court finds that the Debtor has succeeded in meeting his burden, and the debt of \$8,600 owed to the Plaintiff pursuant to the Final Judgment and Decree is dischargeable, pursuant to § 523(a)(15)(B).

II. Section 727

In her complaint, the Plaintiff also alleges that the Debtor's discharge should be denied pursuant to § 727 of the Bankruptcy Code. At its core, the bankruptcy process seeks to provide debtors with a discharge from their debt obligations. *See Dilworth v. Boothe*, 69 F.2d 621, 624 (5th Cir. 1934) ("One of the great objects of the Bankruptcy Act is to relieve an honest debtor of the oppression of his debts when he has surrendered all of his property to be converted into cash for distribution among his creditors."). Nevertheless, a variety of policy considerations simultaneously mandate that certain exceptions be made for those debtors who are undeserving of such a discharge. *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991). Thus, as part of its discharge scheme, the Bankruptcy Code makes the following

provisions:

(a) The court shall grant the debtor a discharge, unless—

* * * *

(2) the debtor, with intent to hinder, delay, or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of the filing of the petition; or . . . property of the estate, after the date of the filing of the petition;

* * * *

(4) the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account;

* * * *

11 U.S.C. § 727(a)(2), (a)(4).

These provisions serve to implement the fundamental concept that our system of bankruptcy is an equitable system that is predicated on the debtor’s honesty and on the debtor’s complete and accurate disclosure of information necessary to administer the debtor’s case. *See Diorio v. Kreisler-Borg Construction Co. (In re Diorio)*, 407 F.2d 1330, 1331 (2d Cir. 1969) (“Successful administration of the Bankruptcy Act hangs heavily on the veracity of statements made by the bankrupt.”); *Ansvar Am. Ins. Co. v. Klein (In re Klein)*, 114 B.R. 778 (Bankr. M.D. Fla. 1990) (“It is of fundamental importance to the administration of the bankruptcy system that a debtor present himself or herself accurately and truthfully before their creditors and the Court.”).

When proceeding under § 727, the plaintiff bears the burden of demonstrating that

a denial of discharge is warranted. See FED. R. BANKR. P. 4005; see also *In re Wines*, 997 F.2d 852, 856 (11th Cir. 1993). The plaintiff must satisfy this burden by a preponderance of the evidence. *Peterson v. Scott (In re Scott)*, 172 F.3d 959, 966-67 (7th Cir. 1999); *United States v. Hindenlang (In re Hindenlang)*, 164 F.3d 1029, 1034 (6th Cir. 1999); *Farouki v. Emirates Bank Int'l Ltd.*, 14 F.3d 244, 249 (4th Cir. 1994). Furthermore, as with all objections to discharge, the Court must interpret the applicable provisions of the Bankruptcy Code narrowly, so as to favor a presumption of the debtor's eligibility for a discharge. *Rosen v. Bezner*, 996 F.2d 1527, 1531 (3d Cir. 1993); *In re Burgess*, 955 F.2d 134, 136 (1st Cir. 1992); *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 110 (1st Cir. 1987). Mindful is the Court that “[c]ompletely denying a debtor his discharge, as opposed to avoiding a transfer or declining to discharge an individual debt . . . is an extreme step and should not be taken lightly.” *Rosen*, 996 F.2d at 1530; cf. *Dilworth*, 69 F.2d at 624 (“[t]he reasons for denying a discharge to a bankrupt must be real and substantial, not merely technical and conjectural”). Bearing these general principles and policy concerns in mind, the Court will turn its attention to the merits of the Plaintiffs’ case.

A. § 727(a)(2)

Section 727(a)(2) is designed to prevent the discharge of a debtor who has attempted to avoid paying his creditors by concealing or otherwise disposing of his assets. *In re Kessler*, 51 B.R. 895 (Bankr. D. Kan. 1985). Before the Court may deny a debtor’s

discharge under § 727(a)(2), the Plaintiff must establish that: 1) the debtor or an authorized agent of the debtor transferred or concealed property of the debtor or of the estate within one year before the date of the filing of the debtor's petition or after the filing of the petition and 2) the act was done with the actual intent to hinder, delay, or defraud a creditor. 11 U.S.C. § 727(a)(2).

The Plaintiff points to several pieces of property that she contends the Debtor had in his possession at the time he filed his schedules, but did not disclose in his schedules. Specifically, she alleges that the Debtor removed some marble and laminate flooring, two chandeliers, and some draperies from the Property. During the trial, the Debtor admitted that he had removed the flooring and the chandeliers, but not the draperies. He claimed that he did so because he was afraid that the items would be stolen because the Plaintiff had not left him a key to enter the Property and he had to break a window to enter the Property. As to why he failed to list the items on his schedules, the Debtor has stated that he was not represented by counsel, that he completed the schedules to the best of his abilities, and that he did not intend to conceal his possession of these items. Given the low value of these items, the Court believes that the Debtor had little motive to conceal the items. Accordingly, the Court finds that there is no evidence that he concealed property of the estate with the intent to hinder, delay, or defraud his creditors.

B. § 727(a)(4)

With respect to § 727(a)(4)(A), a plaintiff has the burden of proving that (1) the debtor knowingly made a false statement under oath; (2) the statement is material to the bankruptcy proceeding; and (3) the debtor made the statement with a fraudulent intent. *Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174, 177-78 (5th Cir. 1992). As for the first element, a false statement or omission in the schedules qualifies as a false oath. *Id.*

The Plaintiff argues that the Debtor made several false oaths in his schedules. First, she contends that he failed to disclose several assets on his schedules, including the aforementioned flooring, chandeliers, and draperies. For the reasons stated above, the Court finds no evidence to suggest that the Debtor failed to disclose these items with fraudulent intent.

Second, the Plaintiff contends that the Debtor overstated his expenses. For example, the Plaintiff submits that the Debtor included expenses payable on the Property that he was not paying after he vacated the Property. Having heard the Debtor's testimony, the Court concludes that the Debtor's failure to accurately state his monthly expenses was the result of the Debtor's lack of knowledge of the process of completing schedules and the fact that he was not represented by an attorney. The Debtor had been making payments for the mortgage and utilities on the Property up to the time that he filed his schedules. It seems to the Court that, at the time the Debtor completed his schedules, he did not completely understand that he should list the expenses that he expected to incur on a prospective basis,

but rather thought that he should include his past expenses as a means of justifying to his creditors his need to seek bankruptcy protection. Additionally, the Court finds that the Debtor listed his entire obligation to pay a debt for attorney's fees as a monthly expense because he did not think that he had a right to pay the debt in monthly installments. Accordingly, the Court does not believe that the Debtor intentionally inflated his expenses as a means of defrauding the Court or his creditors.

Third, the Plaintiff challenges the value that the Debtor placed on certain assets, including the 1976 Ford Mustang, the Debtor's tools, and the Property. The Debtor valued the vehicle at \$1,000. Based upon the testimony and documentary evidence admitted at trial, the Court has concluded that the vehicle is worth at least \$4,000, but no more than \$5,000. However, the Debtor testified that he valued the vehicle at only \$1,000 because the vehicle did not run and he assumed that it would be difficult to find a buyer for the vehicle without continuing the restoration and placing the vehicle in an operable condition. The Court finds the Debtor's testimony credible and does not believe that the Debtor valued the vehicle at \$1,000 with fraudulent intent. Next, the Plaintiff contends that the Debtor's tools are worth far in excess of the \$2,000 value placed upon them by the Debtor. The only evidence submitted as to the value of the tools was that the Debtor purchases \$50 worth of tools per pay period through his employer and has done so for a significant period of time. The Court declines to use this as a method of determining the value of the Debtor's current tool collection. It may be that the purchase price of these tools is not reflective of the true retail

value, the tools may have depreciated over the years, or the Debtor may have discarded or otherwise disposed of some of the tools. In short, the Court finds insufficient evidence to substantiate the Plaintiff's contention that the Debtor's tools are worth more than \$2,000. Finally, the Plaintiff takes issue with the \$165,000 value placed upon the Property by the Debtor. The Plaintiff points to the fact that the Debtor had refinanced the Property in September 2001, at which time the Property appraised for \$200,000. The Debtor testified that he relied upon the value indicated by the comparative market analysis he received in December 2002. The Court finds it reasonable to conclude that the Debtor concluded that the more recent comparative market analysis was the correct value. Even assuming the Property was really worth \$200,000, the Court finds that the Debtor did not undervalue the Property with fraudulent intent.

Having considered all of the testimony presented in this case, the Court concludes that, even assuming some of the statements at issue are false and material, there is insufficient evidence to support a finding that the Debtor made these statements with a fraudulent intent. The Court is persuaded by listening to the Debtor's testimony and viewing his demeanor, that he completed his schedules and valued his assets in good faith without any intent to hinder or delay his creditors. Accordingly, the Plaintiff's objection to the Debtor's discharge, based on §§ 727(a)(2) and (a)(4) must be denied.

CONCLUSION

_____ Having carefully considered the testimony and the documentary evidence introduced at trial, the Court concludes that:

1) The Plaintiff has carried her burden in establishing that a debt of approximately \$3,000, which the Debtor owes to Patrick J. Fox, is **NONDISCHARGEABLE** pursuant to § 523(a)(5). A judgment to this effect shall enter in favor of the Plaintiff.

2) The Debtor has carried his burden of establishing that the Debtor's obligation to pay approximately \$8,600 to the Plaintiff, pursuant to the parties' divorce decree, is **DISCHARGEABLE** pursuant to § 523(a)(15)(B). A judgment to this effect shall enter in favor of the Debtor.

3) The Plaintiff has failed to carry her burden of proof that the Debtor's discharge should be denied pursuant to § 727(a)(2) or (a)(4). Accordingly, the portion of the Plaintiff's complaint objecting to the Debtor's discharge shall be **DISMISSED**.

IT IS SO ORDERED.

At Newnan, Georgia, this _____ day of July, 2004.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
KEVIN S. BROWN,	:	BANKRUPTCY CASE
	:	NO. 03-17171-WHD
Debtor.	:	
_____	:	
	:	
SIMONE BROWN,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 03-1022
v.	:	
	:	
KEVIN S. BROWN,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

PARTIAL JUDGMENT

Partial Judgment is hereby entered for the Plaintiff, Simone Brown, against the Defendant, Kevin S. Brown, in the above-styled adversary proceeding in accordance with the Order of the Court entered the ____ day of July, 2004.

At Newnan, Georgia, this ____ day of July, 2004.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
KEVIN S. BROWN,	:	BANKRUPTCY CASE
	:	NO. 03-17171-WHD
Debtor.	:	
_____	:	
	:	
SIMONE BROWN,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 03-1022
v.	:	
	:	
KEVIN S. BROWN,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

PARTIAL JUDGMENT

Partial Judgment is hereby entered for the Defendant, Kevin S. Brown, against the Plaintiff, Simone Brown, in the above-styled adversary proceeding in accordance with the Order of the Court entered the ____ day of July, 2004.

At Newnan, Georgia, this ____ day of July, 2004.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE