

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
JIMMY GORDON RAINWATER,	:	BANKRUPTCY CASE
	:	NO. 03-12341-WHD
Debtor.	:	
<hr/>	:	
BEVERLY WHITLEY ADAMS,	:	ADVERSARY PROCEEDING
	:	NO. 03-1747
Plaintiff,	:	
	:	
v.	:	
	:	
JIMMY GORDON RAINWATER,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Currently before the Court is the "Complaint to Determine Dischargeability" filed by Beverly Adams (hereinafter the "Creditor") against Jimmy Rainwater (hereinafter the "Debtor"). The Creditor seeks a declaration that certain divorce-related obligations owed her by the Debtor are nondischargeable under § 523(a)(5) and (15) of the Bankruptcy Code. Following a trial, the Court took this case under advisement. This matter falls within the subject matter jurisdiction of the Court, *see* 28 U.S.C. §§ 157(b)(2)(I); 1334, and the following constitutes the Court's findings of fact and conclusions of law. *See* FED. R. BANKR. P. 7052.

FINDINGS OF FACT

1. The Creditor and the Debtor were divorced by entry of a final decree in the Superior Court of Heard County, Georgia on March 3, 2005. The final decree incorporated a jury verdict.
2. The jury verdict awarded the Creditor a judgment of \$14,800 against the Debtor. The \$14,800 represented a secured debt that the Creditor incurred for the Debtor's benefit. This debt is secured by a first priority mortgage on Creditor's residence.
3. The Creditor works seven days a week at three different jobs.

CONCLUSIONS OF LAW

To resolve this matter, the Court need only determine whether the Debtor's obligation to pay \$14,800 to the Creditor is nondischargeable under § 523(a)(15).¹ Section 523(a)(15), which was added to the Bankruptcy Code in 1994, operates to make all divorce-related obligations subject to a presumption of nondischargeability. *Cleveland v. Cleveland (In re Cleveland)*, 198 B.R. 394, 397 (Bankr. N.D. Ga. 1996) (Drake, B.J.). Section 523(a)(15) provides as follows:

(a) a discharge under section 727, 1141, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt—

¹ The Creditor first alleges that this debt is nondischargeable under § 523(a)(5) because it is in the nature of support. Because the Court has determined that the debt is nondischargeable under § 523(a)(15), the Court need not reach this issue. Additionally, the Creditor failed to present evidence with regard to the relative financial conditions of the parties at the time of the divorce that would have been helpful to the Court in determining whether the award was intended as support or a division of marital liabilities.

(15) not of the kind described in paragraph (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, a determination made in accordance with State or territorial law by a governmental unit 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 dependent 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 a spouse, former spouse, or child of the debtor. . . .

11 U.S.C. § 523(a)(15). This statute was designed to make it more difficult for a debtor to discharge divorce-related debts. *Smolinski v. Arnott (In re Arnott)*, 210 B.R. 651, 655 (Bankr. S.D. Fla. 1997); *Anthony v. Anthony (In re Anthony)*, 190 B.R. 433, 436 (Bankr. N.D. Ala. 1995).

Notwithstanding that purpose or intent, § 523(a)(15) is limited in two respects. First, the exception does not apply if a debtor lacks “the ability to pay” the marital debts. Second, the exception does not apply if a discharge would benefit the debtor more than it would harm the creditor. Inasmuch as § 523(a)(15) is phrased in the disjunctive, a debt must be discharged if a debtor meets either of the two exceptions. Regarding the burden of proof in a § 523(a)(15) case, the “creditor bears the initial burden of establishing that the debt owed to it actually arose in connection with a divorce or separation agreement.” *Cleveland*, 198 B.R. at 397. “From and after that point, however, the burden of coming forth shifts to the

debtor, thereby requiring him to demonstrate either (1) that he lacks the ability to pay the debt in question from income and property not necessary for the support of himself and his dependents, or (2) that the allowance of a discharge would produce benefits exceeding any consequent harm to the Creditor.” *Id.* at 397-98; *see also Simons v. Simons (In re Simons)*, 193 B.R. 48, 50 (Bankr. W.D. Okla. 1996).

That the Debtor’s obligation to pay the Creditor \$14,800 arose by virtue of a divorce decree is undisputed. Thus, the burden shifts to the Debtor to prove that an exception to § 523(a)(15) applies. This Court has previously held that the proper focus of the “ability to pay” analysis is the totality of a debtor’s financial circumstances, with an emphasis on the following factors: (1) the debtor’s “disposable income” as measured at the time of trial; (2) the debtor’s opportunities for more lucrative employment; (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 himself and to satisfy the debt in question. *Cleveland*, 198 B.R. at 398; *Humiston v. Huddelston (In re Huddelston)*, 194 B.R. 681, 688 (Bankr. N.D. Ga. 1996) (Drake, B.J.). In so holding, the Court reasoned that “[a]bsent such an expansive inquiry, no certain conclusion may be had regarding the debtor’s true capacity to satisfy those debts which came as a consequence of his divorce.” *Huddelston*, 194 B.R. at 689.

At trial, the Debtor testified that he does not have the ability to pay this debt. Notwithstanding this testimony, the Debtor presented no evidence that would allow the Court to form its own opinion as to whether the Debtor can afford to pay the debt. Although

the Debtor testified that he earns \$15 per hour, he did not elaborate as to how many hours he works, whether he receives any over-time pay, the amount of money withheld from his pay, or the amount of his regular expenses. Without such evidence, the Court cannot determine whether the Debtor has sufficient disposable income to repay this debt. Additionally, the Debtor presented no evidence that would permit the Court to form an opinion as to whether the Debtor has any prospects for more lucrative employment in the future, or whether the Debtor's current debts might be reduced in the future. The Court simply cannot rely solely on the Debtor's conclusory, self-serving testimony.

As to the second prong of § 523(a)(15), the Debtor presented absolutely no evidence as to whether the discharge of this debt would provide a benefit to him that would outweigh the harm to the Creditor. To the contrary, the Creditor presented sufficient evidence to establish that she would be harmed greatly if the debt is discharged. The Creditor testified that she must repay the \$14,800 that she borrowed on the Debtor's behalf because she consolidated the loan with her first mortgage on her principal residence. Accordingly, if she does not pay the debt, her secured creditor will be permitted to foreclose on her home. Additionally, she testified that, although she works seven days a week at three jobs, she makes just enough to meet her monthly expenses and that she is "way behind" on paying her bills. Clearly, being permitted to avoid repayment of this obligation will benefit the Debtor to some extent. However, the Debtor presented no evidence that persuades the Court that this benefit would outweigh the harm to the Creditor of having this debt discharged. Therefore, the Court must conclude that the Debtor has failed to meet his burden with regard

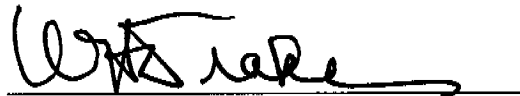
to establishing that the exception to § 523(a)(15) applies, and that the Debtor's obligation to pay the \$14,800 debt to the Creditor is nondischargeable pursuant to § 523(a)(15) of the Bankruptcy Code.

CONCLUSION

Having given this matter its careful consideration, the Court finds that the Creditor is entitled to the relief requested in her complaint. The debt of \$14,800 owed by Jimmy Rainwater to Beverly Adams is nondischargeable in bankruptcy pursuant to 11 U.S.C. §§ 523(a)(15). A judgment in favor of the Creditor shall be entered.

IT IS SO ORDERED.

At Newnan, Georgia, this 7 day of June, 2005.



W. HOMER DRAKE, JR.

UNITED STATES BANKRUPTCY JUDGE