

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ROBERT W. GIBBONS

v.

C.A. No. 94-016

LUCINDA M. GIBBONS and
LIPSEY & SKOLNIK, ESQ., LTD.

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge

This case is before the Court for consideration of Robert Gibbons appeal from a decision by the Bankruptcy Court holding that Dr. Gibbons's obligation to make certain payments to his former wife, Lucinda Gibbons, is nondischargeable under 11 U.S.C. § 523(a)(5). The issue presented is whether the Bankruptcy Court erred in holding that the obligation in question was in the nature of "alimony to, maintenance for, or support of" Ms. Gibbons. I find that the Bankruptcy Court did not err and, therefore, affirm its decision.

Background

Lucinda and Robert Gibbons were married for approximately

seventeen years prior to their divorce in 1991. Ms. Gibbons worked full time as a licensed practical nurse ("LPN") while her husband attended podiatry school and, later, she assisted him in various ways in his practice. At the time of their divorce, the Gibbonses had five children ranging from seven to fifteen years of age. One of the children had special educational needs.

The divorce decree awarded physical custody of the children to Ms. Gibbons and required Dr. Gibbons to pay child support in the amount of \$5,000 per month. The decree also awarded Ms. Gibbons 70% of the marital assets "in lieu of alimony" and required Dr. Gibbons to "pay Mrs. Gibbons's legal fees."

The marital assets included Dr. Gibbons's practice. Lucinda Gibbons's share was valued at \$850,000, but the value of the property transferred to her at the time of the divorce totalled only \$417,223.71. Dr. Gibbons elected to pay the balance together with Ms. Gibbons's counsel fees in installments over a five-year period.¹

Dr. Gibbons subsequently filed a Chapter 11 petition in the Bankruptcy Court. That prompted Ms. Gibbons to initiate an adversary proceeding in which the Bankruptcy Court held that under 11 U.S.C. § 523(a)(5), Dr. Gibbons's obligations were not dischargeable, and Dr. Gibbons appeals from that decision.

¹On appeal, the Rhode Island Supreme Court reduced this amount by \$10,000 and fixed the amount of Ms. Gibbons' attorney's fees at \$35,000.

Standard of Review

In reviewing a decision of a bankruptcy court, the district court must accept the bankruptcy judge's findings of fact unless they are clearly erroneous. Fed. Bankr. R. 8013; Fed. R. Civ. P. 52(a); In re Bible Speaks, 869 F.2d 628, 629 (1st Cir.), cert. denied, 493 U.S. 816 (1989); Briden v. Foley, 776 F.2d 379, 381 (1st Cir. 1985). A bankruptcy court's conclusions of law, on the other hand, are subject to de novo review. In re G.S.F. Corp., 938 F.2d 1467, 1474 (1st Cir. 1991); quoting Andrew v. Bessemer City, 470 U.S. 564, 573 (1985).

A finding of fact is clearly erroneous "when, after reviewing the evidence, the appeals court is 'left with the definite and firm conviction that a mistake has been committed.'" In re G.S.F. Corp., 938 F.2d 1467, 1474 (1st Cir. 1991). The "clearly erroneous" test "applies not only when the [bankruptcy] court's findings are based upon its assessment of conflicting testimony, but also when . . . the evidence is documentary and the challenged findings are factual inferences drawn from undisputed facts." Constructora Maza, Inc. v. Banco de Ponce, 616 F.2d 573, 576 (1st Cir. 1980) (discussing bankruptcy appeal from district court to court of appeals). Generally speaking, determining whether interspousal payments are in the nature of alimony or support or, alternatively, are part of a property settlement is a question of fact to be decided by the bankruptcy court. Williams v. Williams,

703 F.2d 1055, 1057 (8th Cir. 1983); In re Goin, 808 F.2d 1391, 1393 (10th Cir. 1987).

Discussion

Section 523(a)(5) of the Bankruptcy Code makes nondischargeable 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, or other order of a court of record 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 402(a)(26) of the Social Security Act [42 USCS § 602(a)(26)], 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;

11 U.S.C. § 523(a)(5).

In deciding whether an obligation to a former spouse constitutes alimony, maintenance or support, a bankruptcy court is not bound by labels. Rather, it must make an independent determination as to whether the obligation is one to provide support; or, alternatively, whether it represents nothing more than the division of marital property. In re Goin, 808 F.2d at 1392 (quoting Williams, 703 F.2d at 1057); see Shine v. Shine, 802 F.2d 583, 586, 588 (1st Cir. 1988). In making that determination, courts have focused on seven factors:

1. the nature of the obligation assumed (whether for necessities or luxuries);
2. the type of payment (lump sum or installment);
3. the length of the marriage;

4. whether children of the marriage must be provided for;
5. the relative earning power of the spouses;
6. the adequacy of support without the debt assumption;
7. the understanding of the parties concerning the agreement.

In re Young, 72 Bankr. 450, 453 (Bankr. D.R.I. 1987); see In re Calisoff, 92 Bankr. 346, 353 (Bankr. N.D.Ill. 1988) (seven highly similar factors).

As already noted, the Gibbonses were married for seventeen years. In addition, the Bankruptcy Judge supportably found that there was a "glaring disparity of earning capacity between the parties." Specifically, he referred to the Family Court master's finding that Dr. Gibbons operated a lucrative podiatry practice generating an annual income of approximately \$275,000 per year and that Ms. Gibbons had no income and no prospect of employment, particularly in light of her child care responsibilities.

In this case, there is no understanding or agreement between the parties. The obligations in question arise from the decision made by the Family Court pursuant to an adversarial proceeding. Therefore, the relevant intent is that of the master who made the award. In re Schmiel, 94 Bankr. 373, 378 (Bankr. E.D.Pa. 1988).

Marital Assets

Dr. Gibbons relies heavily on the facts that the award of marital assets was not denominated as alimony, that it was

contained in a portion of the master's decision dealing with equitable assignment of marital property and that it does not terminate upon Ms. Gibbons's death or remarriage. However, as already noted, in determining whether an interspousal obligation is dischargeable, a bankruptcy court is not bound by characterizations contained in divorce decrees or state laws. In re Goin, 808 F.2d at 1392 (quoting Williams, 703 F.2d at 1057); see Shine v. Shine, 802 F.2d 583, 586, 588 (1st Cir. 1986). Rather, the Bankruptcy Court must look to the substance of the payment to determine whether it is a support obligation.

In this case, the record plainly supports the Bankruptcy Court's finding. As the Bankruptcy Judge observed, the award of marital assets was made "in lieu of alimony." Under these circumstances, it appears obvious that those words signified the master's intent that the property serve the purpose of alimony by providing for Ms. Gibbons's future support. Thus, despite the fact that the master found it "ludicrous" to expect that Ms. Gibbons had any prospect of becoming "gainfully employed in the near future," no other provision was made for her support. Furthermore, it is equally clear that the 70%-30% allocation was not based on a determination that Ms. Gibbons's contributions accounted for 70% of the value of the marital assets. The allocation can be explained only as an effort to provide for Ms. Gibbons's support.

The mere fact that Dr. Gibbons is not relieved of his

obligation in the event Ms. Gibbons dies or remarries does not alter the nature of the payment. In this case, there is no need for a termination provision. Rather than requiring fixed periodic payments for an indeterminate period of time, the master sought to give Ms. Gibbons what amounted to a lump sum that would provide for her future support. Consequently, the nature of the award is not

affected by the fact that Dr. Gibbons elected to pay the balance in installments over a five-year term.

Nor is there any basis for the assertion that the award of child support included an amount for the support of Ms. Gibbons. As the Bankruptcy Judge observed, the master made it plain that the award of child support was solely "for the benefit of the children so that it [sic] they can live in accordance with their standard of living." Thus, there is ample support for the Bankruptcy Judge's finding that the child support award was intended to be for the exclusive benefit of the children and did not include their mother.

Attorney's Fees

Courts have recognized that a spouse's need for adequate legal representation in matrimonial litigation is not materially different from other needs. Consequently, attorney's fees reasonably incurred in such litigation are considered to fall within the definition of alimony or support. In re Spong, 661 F.2d 6, 9 (2nd Cir. 1981); Goldman v. Roderiques, 349 N.E.2d 335 (Mass. 1976).

In this case the master found that the fees incurred by Ms. Gibbons were necessary "to protect herself and to protect her children." Therefore, the Bankruptcy Court was justified in finding the award of those fees to be in the nature of support.

Conclusion

In sum, the Bankruptcy Judge carefully considered and weighed

all of the applicable factors enumerated in In re Young, 72 Bankr. at 453. Moreover, his findings are not clearly erroneous. On the contrary, they are amply supported by the record.

Accordingly, the appeal from the Bankruptcy Court's decision is denied and the decision is hereby affirmed.

IT IS SO ORDERED,

Ernest C. Torres
United States District Judge

Date: April , 1995