UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**JUDGE RICHARD L. SPEER**
John Till, Jr.	)	
	)	Case No. 03-3074
Debtor(s)	)	
	)	(Related Case: 02-37559)
Cheryl Till	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
John Till, Jr.	)	
	)	
Defendant(s)	)	

DECISION AND ORDER

This cause is before the Court upon the Plaintiff's Complaint to determine dischargeability. At issue in the Plaintiff's complaint is the status of certain debts the Debtor was ordered to assume in a judgment entry of divorce wherein the marriage between the Plaintiff and the Defendant/Debtor was terminated. The specific debts at issue were contained in section 22 of the Parties' judgment entry of divorce which provided that the Debtor was to assume and hold the Plaintiff harmless for one-half of the obligations set forth in paragraphs (a) through (m), representing for the Debtor $2,746.67 in assumed debt.

On November 3, 2003, a Trial was held on this matter. Present at the Trial was the Plaintiff, counsel for the Plaintiff and counsel for the Debtor; the Debtor, however, did not make an appearance. At

the conclusion of the Trial, the Court, based upon the evidence presented, found that those obligations set forth in paragraphs (d) through (m) of section 22 of the Parties' judgment entry of divorce, and representing for the Debtor $1,273.57 in assumed debt, were in the nature of support obligations, and thus nondischargeable under 11 U.S.C. § 523(a)(5). (Doc. No. 22). As for the remaining obligations contained in paragraphs (a) thru (c), the Court, so as to make a proper review as to the applicability of the exception to discharge set forth in 11 U.S.C. § 523(a)(15), ordered the Plaintiff to submit an updated copy of her bankruptcy schedules I & J, which she has now done, reflecting her current income and expenditures as of the date of Trial. The Debtor was also afforded the opportunity to submit an updated copy of his bankruptcy schedules I & J, but did not do so.

DISCUSSION

Based upon the procedural stance of this case, one issue needs to be addressed: Whether the Debtor's obligation to assume $1,473.10 in marital debts, representing one-half of the obligations set forth in section 22, paragraphs (a) through (c), of the Parties' judgment entry of divorce is a nondischargeable debt under § 523(a)(15) of the Bankruptcy Code? Pursuant to 28 U.S.C. § 157(b)(2)(I), a matter concerning the dischargeability of a debt is a core proceeding over which this Court has been conferred with the jurisdictional authority to enter final orders and judgments. 28 U.S.C. §§ 157(a)/(b)(1) and 1334.

Section 523(a)(15) excepts from discharge any debts that are incurred by a debtor during the course of a separation or divorce or under a separation agreement or court order, and which do not otherwise fall within the exception to discharge contained in 11 U.S.C. § 523(a)(5). However, unlike the exception to discharge set forth in 523(a)(5), which is absolute, § 523(a)(15) provides for two exceptions to the nondischargeability of a marital debt: a debt arising from a divorce or separation will be discharged

if, (1) a debtor cannot afford to pay the debt, or (2) if discharging the debt would benefit the debtor more than it harms the debtor's spouse and children.

For purposes of an analysis under § 523(a)(15), the creditor bears the initial burden to show that the debt at issue arose in connection with a divorce. *Courtney v. Traut (In re Traut)*, 282 B.R. 863, 869 (Bankr. N.D.Ohio 2002). Once this burden is met, however, the burden then shifts to the debtor to establish that either of the above-stated defenses set forth in § 523(a)(15) are applicable. *Id*. In this case, therefore, since there is no question that the Debtor's obligation arose from the Parties' judgment entry of divorce, the ability of the Debtor to receive a discharge hinges on the applicability of either of the exceptions to nondischargeability set forth § 523(a)(15). As it relates to this matter, the Court, in accordance with Bankruptcy Rule 7052, makes the following findings of fact:

> Both the Debtor and the Plaintiff are able to afford life's basic amenities. However, the household income of both the Debtor and the Plaintiff prevent either party from engaging in any significant discretionary spending.
>
> The Debtor's current monthly income and expenditures are about equal.
>
> The Debtor, who is in his young 30's, is presently the custodial of the Parties' young minor child, for which the Plaintiff pays child support. In the past, the Plaintiff has missed some payments on her child support obligation.
>
> Besides the debts at issue, the Debtor received a discharge of his other unsecured debts on March 6, 2003.
>
> The Plaintiff is not currently employed, and is financially supported by her new husband. The Plaintiff also has a significant amount of debt.

Based upon these findings, the Court, for the reasons set forth immediately below, is not persuaded that the Debtor has sustained his burden under either of the exceptions to nondischargeability set forth in § 523(a)(15).

First, as it concerns the first exception, which is known as the "ability to pay" test, there is a very low amount of debt at issue: $1,473.10. This fact, in combination with the considerations that the Debtor is young, and presently able to meet his day-to-day expenses, raises, in this Court's view, a presumption that the Debtor has the "ability to pay" his marital debt. *See Woszczyan v. Woszczyan (Woszczyan)*, 295 B.R. 425, 429 (Bankr. D.Conn. 2003) (the amount of debt should be considered in light of debtor's income); *Hammermeister v. Hammermeister (In re Hammermeister)*, 270 B.R. 863, 874 (Bankr. S.D.Ohio 2001) (court may consider amount of debt as a factor in determining a debtor's ability to pay). In this regard, the Debtor, by declining to appear at the Trial, in no way attempted to refute this presumption.

Second, with respect to the second exception to nondischargeability set forth in § 523(a)(15) – often referred to as the "balancing test" – this Court has held that by the statute's use of the word "outweighs," not only must the debtor benefit from the discharge, but that there most be a noticeable subordination of the debtor's standard of living to that of the nondebtor-spouse. *Cox v. Brodeur (In re Brodeur)*, 276 B.R. 827, 836 (Bankr. N.D.Ohio 2001). Contrary to meeting this burden, however, the evidence presented in this case revealed that, at most, both Parties' respective standards of living are similarly situated. In particular, while not living in abject poverty, the evidence revealed that both the Debtor and the Plaintiff are struggling to meet their day-to-day living expenses. Also, neither Party has any significant assets.

Also worth mentioning, while this Court has always afforded custodial parents, such as the Debtor, a certain degree of advantage when analyzing the parties' respective standards of living, two equitable considerations prevent such a factor from tipping the balance in the Debtor's favor. First, the Debtor has never even attempted to pay his marital obligations. More importantly, the Plaintiff, albeit not always timely, has been making her child support payments to the Debtor.

Therefore, for the reasons set forth above, it is the judgment of this Court that the Debtor is not entitled to receive a discharge of his marital obligations to the Plaintiff. In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

ORDERED that those obligations the Debtor/Defendant, John Till, Jr., was ordered to assume in section 22 of the Parties' judgment entry of divorce, entered in the Erie County Court of Common Pleas, Case No. 2000-DR-225, dated May 29, 2002, be, and are hereby, determined to be NONDISCHARGEABLE DEBTS.

Dated:

_____

Richard L. Speer
United States
Bankruptcy Judge