

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
*
YVONNE J. PATTERSON, *
* CASE NUMBER 02-45655
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Debtor. *
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YVONNE J. PATTERSON, *
*
Plaintiff, *
*
vs. * ADVERSARY NUMBER 03-4070
*
NATIONAL PAYMENT CENTER, *
U.S. DEPARTMENT OF EDUCATION, *
*
Defendant. *
*

M E M O R A N D U M O P I N I O N

Debtor/Plaintiff Yvonne J. Patterson ("Plaintiff") filed for protection under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code") on December 13, 2002. She filed this adversary proceeding against Defendant National Payment Center, U.S. Department of Education ("Defendant"), seeking to discharge certain student loans pursuant to § 523(a)(8) of the Bankruptcy Code. Defendant timely answered. The parties conducted discovery and a trial on this matter was held on April 13, 2005. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

The following constitutes this Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

F A C T S

At the trial, Plaintiff was the only witness in support of her case. She testified that she dropped out of school after the ninth grade, but that she received a GED in 1986, which permitted her to pursue higher education. Plaintiff testified that because she dreamed of becoming a criminal defense attorney, she pursued a degree in criminal justice at Kent State University. She attended Kent State from 1986 through 1990 with the help of student loans. She applied to receive an associate's degree in 1990, but she was one class short. She returned to Kent State, completed the remaining class and received her associate's degree in criminal justice in September 2001. Plaintiff filed for protection under the Bankruptcy Code approximately fifteen months after receiving her degree. Plaintiff testified that she has never worked in the criminal justice field. She also testified that it is unlikely that she will be able to continue her education and obtain a bachelor's degree.

Plaintiff incurred more than Forty-Three Thousand Dollars (\$43,000.00) in principal amount of student loans to obtain her degree. (See Defendant's Exhibits 1 and 2.) She has never made any voluntary repayments on these loans, but the Internal Revenue Service ("IRS") has intercepted at least one tax refund (based on

Earned Income Tax Credit) and applied such refund to the student loans.

Plaintiff testified that she works two jobs - full time as a bus driver for the Warren City School District and part time as a monitor for an institution for mentally ill adults. She testified that her combined monthly income from these two jobs is approximately Two Thousand Dollars (\$2,000.00), which is somewhat lower than the Two Thousand Two Hundred Fifty-Nine Dollars (\$2,259.00) set forth in her Answers to Interrogatories, Question No. 6, (Defendant's Exhibit 3) and Two Thousand Three Hundred Seventy-Four Dollars (\$2,374.00) set forth in the Statement of Financial Status dated April 7, 2005 (one week before trial) (Plaintiff's Exhibit B).

Plaintiff testified at trial that her monthly expenses are One Thousand Eight Hundred Ten Dollars (\$1,810.00), which is somewhat higher than the One Thousand Seven Hundred Sixty Dollars (\$1,760.00) set forth in Answers to Interrogatories, Question No. 16, (Defendant's Exhibit 3) and lower than the One Thousand Nine Hundred Eighty-Eight Dollars (\$1,988.00) set forth in the Statement of Financial Status dated April 7, 2005 (Plaintiff's Exhibit B). Plaintiff's expenses include Two Hundred Fifty Dollars (\$250.00) per month to rent furniture, which will be paid for in full within one year. Plaintiff testified that she is the only "working member" of her extended family. She supports or partially supports her three grown children. She has an adult son, whom she

classified as "borderline" retarded and who earns Fifty-Eight Dollars (\$58.00) per week. Plaintiff testified that her son received Social Security benefits until he reached the age of majority, but he has been denied benefits since that time. She testified that she provides at least Fifty Dollars (\$50.00) per month to one of her adult daughters and that she has raised one of her grandchildren (who is now ten years old) since birth because her daughter was a teenager at the time of his birth. Plaintiff testified, however, that she has not adopted her grandchild and that the mother is capable of caring for him now. She also has daytime "custody" of another grandchild, who is seven years old. The mother of that child is also capable of taking care of him.

Plaintiff further testified that she has medical problems, including osteoarthritis, which will require her to have hip surgery in the relatively near future. Plaintiff submitted an exhibit from her treating physician that stated that her "[p]rognosis [is] good for complete recovery after surgery." (See Plaintiff's Exhibit A.) Plaintiff testified that if she has the surgery, it will likely take her a year to recover and that she is uncertain when she will be able to return to work. She conceded, however, that even if she could not continue to drive a school bus, she would be able to maintain a full time job as a monitor. She also stated that if she became unemployed as a result of the surgery, her rent, which is in public housing, would be reduced to zero for a period of time.

L E G A L A N A L Y S I S

Section 523(a)(8) of the Bankruptcy Code provides that student loans are not dischargeable in bankruptcy unless repayment of such loans would pose an undue hardship on the debtor. The Sixth Circuit Court of Appeals has recently adopted the so-called *Brunner* test to determine if excluding student loans from discharge would impose an undue hardship. *Oyler v. Educational Credit Management Corp. (In re Oyler)*, 397 F.3d 382, 385 (6th Cir. 2005) ("Given then, that the *Brunner* construct subsumes the criteria we have treated as distinct and independent, and that the *Brunner* formulation easily accommodates factors we look to in evaluating undue hardship, we opt to join other circuits in adopting the simpler rubric of the *Brunner* test."). The *Brunner* test sets forth a three-prong test to determine if repayment of student loans would impose an undue hardship.

Most circuit courts follow the standard for "undue hardship" adopted by the Second Circuit which requires a three-part analysis: "(1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans."

Oyler, 397 F.3d at 385 (quoting *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987)).

Although Plaintiff does not live lavishly and is having a hard time meeting her monthly expenses, many of those expenses are voluntary contributions to support her adult children or her grandchildren, who are the financial responsibility of those adult children. No matter which of the varying amounts of income and expenses Plaintiff has claimed, in each case there is some "excess" income that could be applied to repay the student loans if she did not voluntarily support her adult children and grandchildren. The fact that she is the only "working member" of her extended family does not make her legally financially responsible to take care of those she chooses to support. As a consequence, Plaintiff fails the first prong of the *Brunner* test, *i.e.*, that she cannot maintain a minimal standard of living for herself and her [legal] dependents if forced to repay the student loans.

Plaintiff also fails the second part of the *Brunner* test. She has not demonstrated additional circumstances that indicate that this state of affairs [inability to maintain a minimal standard of living] will persist for a significant portion of the repayment period of the student loans. Plaintiff has medical problems that will likely require surgery, but there is no evidence that she will not make a complete recovery and be able to return to work. She also testified that a significant expense of Two Hundred Fifty Dollars (\$250.00) per month to rent furniture will end within the year, which will free up additional money that could be used to repay her student loans. Even though Plaintiff's

choice to support her adult children and grandchildren, under other circumstances, may be appropriate, here they cannot constitute "additional circumstances" that would prohibit Plaintiff from repaying her student loans because such circumstances must be beyond her control. As noted in *Oyler* at 386, "[a]nd, most importantly, they must be beyond the debtor's control, not borne of free choice."

Last, Plaintiff fails the third part of the *Brunner* test because she has not made any voluntary repayment of her loans. The only repayment on the loans was through interception by the IRS of a tax refund. The Court also notes that Plaintiff filed her Chapter 7 petition less than a year and a half after completing her associate's degree.

C O N C L U S I O N

The *Brunner* test is disjunctive. Failure of any of the three parts is enough to deny discharge of the student loans debts on the basis of undue discharge. Here, Plaintiff fails all three parts of the test. Accordingly, this Court finds that Plaintiff has not carried her burden to establish that the student loans must be discharged as an undue burden and denies Plaintiff the relief she seeks in her Complaint.

An appropriate order will follow.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

YVONNE J. PATTERSON,

Debtor.

CASE NUMBER 02-45655

YVONNE J. PATTERSON,

Plaintiff,

vs.

ADVERSARY NUMBER 03-4070

NATIONAL PAYMENT CENTER,
U.S. DEPARTMENT OF EDUCATION,

Defendant.

O R D E R

For the reasons set forth in this Court's Memorandum Opinion entered this date, this Court denies Plaintiff the relief she seeks in her Complaint since Plaintiff has not demonstrated that the student loans must be discharged as an undue burden.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Opinion and Order were placed in the United States Mail this _____ day of July, 2005, addressed to:

YVONNE J. PATTERSON, 1510 Roman Street, Warren, OH 44484.

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JOANNA M. ARMSTRONG