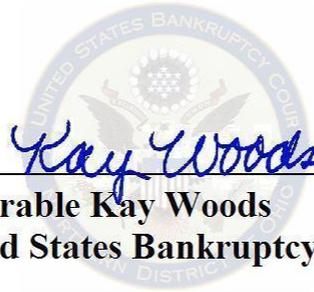


IT IS SO ORDERED.



Dated: March 02, 2007
03:50:26 PM

Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

DAVID J. SATTERFIELD

Debtor.

CASE NUMBER 06-40359

TAMMY L. SATTERFIELD,

Plaintiff,

vs.

DAVID J. SATTERFIELD,

Defendant.

ADVERSARY NUMBER 06-4092

THE HONORABLE KAY WOODS

M E M O R A N D U M O P I N I O N
(NOT INTENDED FOR NATIONAL PUBLICATION)

The following opinion is not intended for national publication and carries limited precedential value. The availability of this opinion by any source other than www.ohnb.uscourts.gov is not the result of direct submission by this Court. The opinion is

available for electronic citation at www.ohnb.uscourts.gov pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

This matter is before the Court upon the Motion for Summary Judgment filed on behalf of Plaintiff Tammy L. Satterfield ("Plaintiff") on January 9, 2007. Defendant David J. Satterfield ("Defendant") failed to respond to the Motion for Summary Judgment. In her Motion for Summary Judgment, Plaintiff asserts that a debt which was incurred by Defendant in the course of the parties' separation and is memorialized in a separation agreement and incorporated in a judgment decree dissolving their marriage is nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

I. Facts

The following facts are taken from the Stipulated Statement of Facts filed on behalf of the parties on December 15, 2006. Plaintiff and Defendant were divorced pursuant to a Judgment Entry issued by the Domestic Relations Division of the Columbiana County Court of Common Pleas on October 18, 2004. The Separation Agreement, which was attached to the Judgment Entry and expressly incorporated into the same, reads, in pertinent part:

[A]s for a cash property settlement, the parties have liquidated a certain 401(k) in the husband's name which yielded the lump sum of \$16,223.00. The parties agree

that said funds shall be divided equally with each party receiving their one-half share of \$8,116.60 [sic] each. The wife hereby acknowledges that she has received, prior to the signing of this agreement, the advance payment from the Husband in the sum of \$3,000.00 and that husband shall, on or before the date of the final hearing of dissolution in this matter, pay the wife the remaining balance on said distribution in the amount of \$5,116.50. The husband shall be responsible for all payments of taxes and penalties on said liquidation.

Defendant never paid the remaining balance of the one-half share in the proceeds of the 401(k) to Plaintiff, which is the debt at issue in this case. Defendant filed his Chapter 7 petition on March 28, 2006.

II. Standard for Review

The procedure for granting summary judgment is found in FED. R. CIV. P. 56(c), made applicable to this proceeding through FED. R. BANKR. P. 7056, which provides in part that:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

FED. R. BANKR. P. 7056(c). Summary judgment is proper if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A fact is material if it could affect the determination of the underlying action. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Tennessee Department of Mental Health & Retardation v. Paul B.*, 88 F.3d 1466, 1472 (6th Cir. 1996). An issue of material fact is genuine if a rational fact-finder could find in favor of either party on the issue. *Anderson*, 477 U.S. at 248-49; *SPC Plastics*

Corp. v. Griffith (In re Structurlite Plastics Corp.), 224 B.R. 27 (B.A.P. 6th Cir. 1998). Thus, summary judgment is inappropriate "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248 (1986).

In a motion for summary judgment, the movant bears the initial burden to establish an absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at 322; *Gibson v. Gibson (In re Gibson)*, 219 B.R. 195, 198 (B.A.P. 6th Cir. 1998). The burden then shifts to the nonmoving party to demonstrate the existence of a genuine dispute. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992). The evidence must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970). However, in responding to a proper motion for summary judgment, the nonmoving party "cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must 'present affirmative evidence in order to defeat a properly supported motion for summary judgment.'" *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989) (quoting *Anderson*, 477 U.S. at 257). That is, the nonmoving party has an affirmative duty to direct the court's attention to those specific portions of the record upon which it seeks to rely to create a genuine issue of material fact. *Street*, 886 F.2d at 1479.

III. Law

Section 523(a) provides several exceptions to the general rule that pre-petition debts are dischargeable under the Code. Plaintiffs bear the burden of proving by a preponderance of the

evidence that a debt is excepted from discharge. See *Meyers v. Internal Revenue Service (In re Meyers)*, 196 F.3d 622, 624 (6th Cir. 1999) (citing *Grogan v. Garner*, 498 U.S. 279, 290-91, 111 S.Ct. 654, 661 (1991)). Exceptions to discharge are narrowly construed. See *id.* (citing *Grogan*, 498 U.S. at 286-87, 111 S.Ct. at 654).

Section 523(a)(15) reads, in pertinent part:

A discharge under section 727. . .of this title does not discharge an individual debtor from any debt-

(15) to a spouse, former spouse, or child of the debtor and 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, or a determination made in accordance with State or territorial law by a governmental unit;

11 U.S.C. § 523 (West 2007).

The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") took effect on October 17, 2005, and essentially deleted certain affirmative defenses previously set forth in § 523(a)(15)(A) and (B).

The previous version of the statute included a balancing test, which first required the Court to determine whether the debtor had the ability to pay the debt from the income not reasonably necessary to be expended for his or her maintenance and support. If not, former subsection (A) required discharge of the debt. However, in the event that the debtor was able to pay the debt, the Court would then consider whether discharging the debt would result in a benefit to the debtor that outweighed the detrimental consequences to the spouse, former spouse, or child of the debtor.

If the benefit to the debtor outweighed the consequence to the other party or parties, former subsection (B) required discharge of the debt. See 11 U.S.C. § 523 (1998); see also *Bubp v. Romer (In re Romer)*, 254 B.R. 207, 212 (N.D. Ohio 2000). This balancing test was eliminated from § 523(a)(15) upon the effective date of BAPCPA.

IV. Analysis

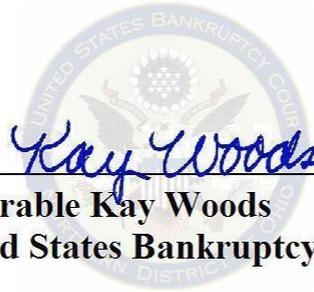
There is no dispute that the debt at issue in this case is a debt to a former spouse. Nor is there any dispute that the debt was incurred by Debtor in the course of a separation and, ultimately, a dissolution and is memorialized in a separation agreement incorporated by reference into a judgment entry issued by the Domestic Relations Division of the Columbiana Court of Common Pleas.

Because the plain language of § 523(a)(15) no longer requires that the Court determine Debtor's ability to pay the debt, or to balance whether discharging the debt would provide a benefit to Debtor that outweighed the detrimental consequences to Plaintiff, this Court finds that no genuine issue of material fact exists with respect to the essential elements of Plaintiff's § 523(a)(15) claim, and, consequently, that the debt for \$5,166.50 is nondischargeable.

An appropriate order will follow.

#

IT IS SO ORDERED.



Dated: March 02, 2007
03:50:26 PM

Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

DAVID J. SATTERFIELD

Debtor.

CASE NUMBER 06-40359

TAMMY L. SATTERFIELD,

Plaintiff,

vs.

DAVID J. SATTERFIELD,

Defendant.

ADVERSARY NUMBER 06-4092

THE HONORABLE KAY WOODS

O R D E R

For the reasons set forth in this Court's Memorandum Opinion, the Motion for Summary judgment filed on behalf of Plaintiff Tammy L. Satterfield is granted. The debt in the amount of \$5,116.50 is nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

#