

§ 507(a)  
§ 1322(a)(2)  
§ 101(14A)  
domestic support obligation  
DSO

Ramona Jacquelyn Morgan, Case No. 10-67114

04/26/2011 ELP

Unpublished

Memorandum Opinion addressing confirmation of debtor's chapter 13 plan. Debtor's ex-husband objected to confirmation based on his view that debtor's obligation to make monthly payments to him, arising out of a dissolution judgment, is a domestic support obligation that must be paid as a priority claim through the plan. The same issue controlled resolution of debtor's objection to the ex-husband's claim, which he had filed as a priority claim.

The question was whether the obligation arising out of the judgment, which was the result of an agreement between the parties, was a domestic support obligation as defined in § 101(14A). The court considered the terms of the dissolution judgment, including the fact that the judgment did not mention spousal support and labeled the obligation at issue here as an "equalizing judgment," as well as the testimony of the parties about their intent with regard to the obligation. The court concluded that the obligation was not intended to be in the nature of support, and so is not a DSO that must be paid as a priority claim through the plan. The court overruled the ex-husband's objection to confirmation and sustained debtor's objection to the ex-husband's priority claim.

P-11-5 (7)

1  
2  
3  
4  
5  
6  
7  
8  
9 UNITED STATES BANKRUPTCY COURT  
10 FOR THE DISTRICT OF OREGON

11 In Re: ) Bankruptcy Case No.  
12 RAMONA JACQUELYN MORGAN, ) 10-67114-elp13  
13 Debtor. ) MEMORANDUM OPINION  
14 )

15 Creditor Fred Morgan ("Morgan") objects to confirmation of debtor  
16 Ramona Morgan's ("debtor") chapter 13 plan.<sup>1</sup> Debtor objects to the claim  
17 that Morgan, her ex-husband, filed in this bankruptcy case. The question  
18 underlying both disputes is the characterization of the debt debtor owes  
19 to Morgan that arose out of a dissolution judgment. Morgan says that it  
20 is a domestic support obligation ("DSO"), while debtor says that it is a  
21 debt for property division, which is not entitled to priority under the  
22 Bankruptcy Code. The court held an evidentiary hearing on the  
23 objections. Based on the evidence and testimony presented at the  
24 hearing, and for the reasons set out below, I conclude that the debt is

25  
26 <sup>1</sup> References to chapters and sections are to the Bankruptcy Code,  
11 U.S.C. § 101 et seq.

1 not entitled to priority, because it is not a DSO. Debtor's chapter 13  
2 plan will be confirmed and her objection to Morgan's claim sustained.<sup>2</sup>

3 FACTS

4 Debtor and Morgan were married in 1969. They divorced in 2009. At  
5 the time of the hearing in this case, debtor was 72 years old and Morgan  
6 was 91. The judgment dissolving their marriage was the result of an  
7 agreement, negotiated while both parties were represented by counsel. As  
8 relevant here, the judgment divided the parties' property, awarded debtor  
9 a judgment of \$4,000 against Morgan for property division, and awarded  
10 Morgan an equalizing judgment against debtor of \$35,000, to be paid in  
11 monthly installments of \$350 per month until paid in full. Judgment of  
12 Dissolution ¶¶ 2.8, 6 (pp. 7, 11). Debtor's obligation to make payments  
13 on the \$35,000 terminates on the death of either party, and the estate of  
14 either party has no obligation or claim based on the \$35,000 award. Id.  
15 ¶ 6.2 (p. 11).

16 The dissolution judgment divided the parties' debts and obligations.  
17 Paragraph 5.5 (p. 10) of the judgment provided:

18 The obligation of a party to pay, defend, indemnify and hold  
19 the other party harmless from the payment of any debt described in  
20 this Judgment is a support obligation under 11 U.S.C. subsection  
21 523(5) [sic] which is not dischargeable in bankruptcy as to the  
22 other party.

23 Debtor filed chapter 13 in 2010. Her plan does not provide for

---

24 <sup>2</sup> In his Trial Memorandum, and again at trial, Morgan argued that  
25 the debt is nondischargeable under § 523(a)(15). The procedure for  
26 obtaining a determination of the dischargeability of a debt is to file an  
adversary proceeding. Fed. R. Bankr. P. 7001(6). In any event, unlike a  
debt described in § 523(a)(5), a debt described in § 523(a)(15) is not  
excepted from a chapter 13 discharge. § 1328(a)(2).

1 payment of the \$35,000 obligation as a priority claim under § 507(a)(1),  
2 but instead treats the \$35,000 obligation arising from the dissolution  
3 judgment as a general unsecured claim. Morgan objects to confirmation,  
4 arguing that, because the obligation is a DSO, it must be paid as a  
5 priority claim through the plan. Morgan filed a proof of claim in which  
6 he asserts that the obligation is a priority claim. Debtor objects to  
7 the claim on the ground that it is not entitled to priority.

#### 8 DISCUSSION

9 A chapter 13 plan must provide for payment, in full, of claims  
10 entitled to priority under § 507. § 1322(a)(2). An allowed unsecured  
11 claim for a DSO owed to a former spouse is entitled to first priority.  
12 § 507(a)(1)(A). As relevant here, "domestic support obligation" is  
13 defined as a debt owed to a spouse or former spouse that is "in the  
14 nature of alimony, maintenance, or support . . . without regard to  
15 whether such debt is expressly so designated." § 101(14A).

16 Whether an obligation is in the nature of support and thus qualifies  
17 as support under bankruptcy law is a question of federal law. In re  
18 Sternberg, 85 F.3d 1400, 1405 (9th Cir. 1996), rev'd on other grounds, In  
19 re Bammer, 131 F.3d 788 (9th Cir. 1997). In determining whether an  
20 obligation is a DSO entitled to priority under § 507(a), the court looks  
21 to the interpretation of support discussed in cases relating to the  
22 dischargeability of support under former § 523(a)(5). In re Collins,  
23 2007 WL 1110766, \*4 n.6 (Bankr. D. Or. 2007); In re Chang, 163 F.3d 1138,  
24 1142 (9th Cir. 1998).

25 To decide whether an obligation, such as the \$35,000 obligation in  
26 this case, is in the nature of support, "the court must look beyond the

1 language of the decree to the intent of the parties and to the substance  
2 of the obligation." Shaver v. Shaver, 736 F.2d 1314, 1316 (9th Cir.  
3 1984). When, as here, the obligation is created by a stipulated  
4 dissolution judgment, "the intent of the parties at the time the  
5 settlement agreement is executed is dispositive." Sternberg, 85 F.3d at  
6 1405. Factors to be considered in determining the intent of the parties  
7 include "whether the recipient spouse actually needed spousal support at  
8 the time of the divorce[;]" which requires looking at whether there was  
9 an "imbalance in the relative income of the parties" at the time of the  
10 divorce. Id. Other considerations are whether the obligation terminates  
11 on the death or remarriage of the recipient spouse, and whether payments  
12 are made directly to the spouse in installments over a substantial period  
13 of time. Id.; Shaver, 736 F.2d at 1316-1317. The labels the parties  
14 used for the payments may also provide evidence of the parties' intent.  
15 Sternberg, 85 F.3d at 1405.

16 I start with the provisions of the dissolution judgment. The  
17 judgment, resulting from an agreement between the parties, divides the  
18 parties' property and obligations. At the time of dissolution, debtor  
19 had assets valued at \$155,482, and Morgan had assets valued at \$63,833.  
20 Debtor's most significant asset was her CalPERS account valued at  
21 \$146,782, which provides her with a stream of income. Morgan's assets  
22 included a mobile home valued at \$26,500 but needing \$7,650 in repairs.  
23 Morgan also had a Fidelity account that was valued at \$57,100 less a  
24 \$13,000 outstanding cash advance. Debtor was awarded the CalPERS  
25 account; Morgan was awarded the mobile home and the Fidelity account.

26 In the section of the judgment labeled "Division of Assets," debtor

1 was awarded \$4,000, which was called "a property division judgment."  
2 ¶ 2.8 (p. 7). Debts were allocated between the parties. ¶ 5 (pp. 8-10).  
3 In the paragraphs dealing with allocation of debts, the judgment said,  
4 "The obligation of a party to pay, defend, indemnify and hold the other  
5 party harmless from the payment of any debt described in this Judgment is  
6 a support obligation under 11 U.S.C. subsection 523(5) [sic] which is not  
7 dischargeable in bankruptcy as to the other party." ¶ 5.5 (p. 10).

8 Paragraph 6 was labeled "Equalizing Judgment." In that paragraph,  
9 Morgan was awarded a \$35,000 judgment against debtor, to be paid at  
10 \$350.00 per month, terminating on the death of either party. ¶¶ 6, 6.1,  
11 6.2 (p. 11).

12 The judgment did not mention spousal support.

13 Debtor's obligation to pay Morgan \$35,000 was labeled as an  
14 equalizing judgment. Although the label is some evidence of intent, it  
15 is not dispositive, if it appears that the parties actually intended the  
16 obligation to be in the nature of support.

17 The evidence at trial was that, at the time of the dissolution,  
18 debtor's net income was approximately \$871 per month from Social Security  
19 and \$942 per month from CalPERS, for a total of \$1,813 per month.  
20 Morgan's net income was approximately \$70 from his private pension and  
21 \$626 from Social Security, for a total of \$696 per month. In addition,  
22 Morgan was awarded his Fidelity account, from which he could withdraw up  
23 to \$600 per month. Therefore, his total available income was \$1,296 per  
24 month.

25 Although there was a disparity in income of approximately \$500 a  
26 month, which could support a conclusion that the \$35,000 award payable at

1 \$350 per month was intended to be in the nature of support, it is also  
2 relevant that Morgan was awarded the mobile home, and so did not have  
3 housing costs other than his monthly mobile home lot rental. Debtor, on  
4 the other hand, had to find housing and either pay rent or make a  
5 mortgage payment.

6 Taking into account the award of the home to Morgan, thereby  
7 reducing his housing costs, the discrepancy in net monthly income of the  
8 parties is much less than would be indicated by looking at the net income  
9 of the parties alone. Because debtor had to find and pay for housing, it  
10 appears that the net income available to each party, taking into account  
11 housing expenses, was relatively equal.

12 Although the judgment in this case structured the equalizing award  
13 in some ways like a support payment, requiring payment of \$350 per month  
14 over a period of time and terminating on the death of either party, I  
15 conclude that this obligation was not intended to be in the nature of  
16 support. Both parties were represented by counsel. The obligation was  
17 labeled "Equalizing Judgment," a term that counsel and the parties chose  
18 to characterize the obligation. The judgment did not mention spousal  
19 support. The incomes of the parties, taking into account the costs of  
20 housing, were relatively equal. Although the label given to the  
21 obligation is not dispositive, I give it weight in this case where both  
22 parties had counsel and the judgment addressed the issue of  
23 dischargeability of the obligation to pay debts. Judgment at ¶ 5.5 (p.  
24 10). There is no similar provision relating to the obligation to pay the  
25 equalizing judgment contained in ¶ 6. The fact that the judgment  
26 specifically addressed the bankruptcy consequences of the allocation of

1 debts, and that it failed to include a similar provision regarding the  
2 bankruptcy consequences of the equalizing judgment supports the  
3 conclusion that the parties did not intend the equalizing judgment to be  
4 in the nature of support, but instead intended it to be what the judgment  
5 said it was - a judgment equalizing the assets of the parties.

6 I recognize that both parties in this case have little income.  
7 However, the question is whether the parties intended the \$35,000 award  
8 in the dissolution judgment to be in the nature of support. Under the  
9 facts of this case, I conclude that they did not intend it to be support,  
10 and so it is not a priority claim that must be paid through the plan.

11 CONCLUSION

12 The trustee reported that, if the obligation at issue here is not a  
13 DSO, debtor's plan is ready to be confirmed. I overrule Morgan's  
14 objection to confirmation and direct the trustee to submit the Order  
15 Confirming Plan. Because the determination that the obligation is not a  
16 DSO also resolves debtor's objection to Morgan's claim, I sustain her  
17 objection to the claim. Counsel for debtor should submit an order  
18 sustaining the objection and allowing the claim as a general unsecured  
19 claim and not as a priority claim.

20 ###

21 cc: Kristin E. Olson  
22 Fred Morgan  
23 Fred Long  
24  
25  
26