

11 USC § 507(a)(7)
Support

In Re David Russell Peter

District Ct. # 02-6295-AA
Bankruptcy Ct. # 600-65936-aer7

11/26/02 Aiken (reversing Radcliffe) Unpublished
(No underlying written bankruptcy court opinion)

In February 1998, Debtor became obligated under a Pendente Lite Order in a contested divorce proceeding to make certain monthly payments for the mortgage, taxes and insurance on the marital residence. The state court found that the payments were "in the nature of maintenance" to preserve the marital asset and to allow debtor's then present, now, ex-spouse and child to continue residing in the home during the pendency of the divorce.

Debtor then filed a Chapter 13 petition which was eventually converted to a Chapter 7 proceeding.

Debtor's ex-spouse filed a proof of claim asserting priority status under Section 507(a)(7) for unpaid payments under the above-referenced Pendente Lite Order. Debtor objected. The bankruptcy court, after considering the facts and relevant law, held the payments were not in the nature of support (and thus not entitled to priority). Specifically, the court looked at the parties' relative income (as evidenced by their 1997 and 1998 tax returns, said returns being prepared after the Pendente Lite proceeding), and found evidence of the parties' relative income failed to establish that there was an actual need for such support.

On appeal, the District Court reversed, holding that from the face of the Pendente Lite Order, it was clear the state court's intent was that the ordered payments were to be considered maintenance, and that "therefore, the court need not look beyond the Pendente Lite Order, because the intention of the state court is clear." Holding further, that even looking to other relevant factors, there was a disparity in income between the parties, and a minor child resided with the spouse in the marital residence. The court found no evidence suggesting that the nature of the obligation was for anything other than maintenance. Finally, the court held the bankruptcy court's "determination of actual need for support based on income after the Pendente Lite Order was issued was not relevant to whether the state court intended the mortgage payments to serve as maintenance." Thus the payments in question were entitled to priority status under Section 507(a)(7).

E02-8(7)

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CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:

DAVID RUSSELL PETER,
Debtor.

KAREN STEIN,
Appellant,
v.

DAVID RUSSELL PETER,
Appellee.

Case No. 02-6295-AA
Bankruptcy Case No. 00-65936-aer7

ORDER

AIKEN, Judge:

Appellant Karen Stein appeals a ruling of the United States Bankruptcy Court. The Bankruptcy Court found that a portion of an obligation owed by appellee to appellant, his former spouse, was not support or maintenance under 11 U.S.C. § 507(a)(7) and not entitled to priority status. Appellant maintains that \$17,792 in past due mortgage payments and related taxes and insurance owed pursuant to a state court order was intended as maintenance and should be included in the priority claim. For the reasons given below, The decision of the Bankruptcy Court is reversed.

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1 - OPINION AND ORDER

E02-8(7)

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1. Introduction

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1 incorporated in the final judgment.

2 On May 18, 2000, a state court judgment was entered against
3 appellee in the amount of \$20,599.12, which included past due mortgage
4 payments and related taxes and insurance. SER No. 15. In issuing the
5 judgment, the state court judge specifically ruled that the Stipulation
6 of Settlement did not release appellee from the obligations set forth in
7 the Pendente Lite Order. Id. at p. 2.

8 On October 10, 2000, appellee filed a petition for relief under
9 Chapter 13 of the Bankruptcy Code.

10 On February 6, 2002, the Bankruptcy Court conducted a hearing on
11 the allowance of appellant's claims and priority of those claims. ER
12 No. 10.

13 On February 8, 2002, the Bankruptcy Court found that \$21,768.92 in
14 past due child support payments and other expenses were a priority claim
15 under 11 U.S.C. § 507(a)(7). The Bankruptcy Court disallowed the
16 mortgage and related expenses as a priority claim. Specifically, the
17 Bankruptcy Court found that the mortgage payments and related taxes and
18 insurance did not constitute support or maintenance, because evidence of
19 the parties' income failed to establish that there was an actual need
20 for such support. ER No. 11. In so finding, the Bankruptcy court
21 relied on the parties' tax return forms for the years 1997 and 1998.

22 The Bankruptcy Court allowed the mortgage payments along with other
23 outstanding debts as an unsecured claim totaling \$44,456.05. ER No. 9.
24 Appellant appeals this ruling.

25 DISCUSSION

26 The issue presented in this appeal is whether the bankruptcy court
27 correctly found that mortgage payments, taxes and insurance owed to
appellant pursuant to court order were not "maintenance for, or support

1 of [a] spouse or child," and therefore not entitled to priority status
2 under 11 U.S.C. § 507(a)(7). Appellant has limited the amount of her
3 appeal to \$16,398, an amount that appellee admits is outstanding. See
4 Appellant's Opening Brief, p. 3 n.2.

5 To determine whether a debt is entitled to priority for purposes of
6 § 507(a)(7), the court must consider "whether the debt is 'actually in
7 the nature of . . . support.'" In re Chang, 163 F.3d 1138, 1140 (9th
8 Cir. 1998) (quoting Shaver v. Shaver, 736 F.2d 1314, 1316 (9th Cir.
9 1984)).¹ This determination is a question of fact as a matter of federal
10 bankruptcy law. Id. "The intent of the parties and the substance of
11 the obligation are the touchstone" of the analysis in the Ninth Circuit.
12 In re Seixas, 239 B.R. 398, 404 (9th Cir. B.A.P. 1999) (citing Shaver,
13 736 F.2d at 1316). Thus, the court must ascertain the intention of the
14 parties at the time the order was entered, and not the current
15 circumstances of the parties. In re Combs, 101 B.R. 609, 615 (9th Cir.
16 B.A.P. 1989); see also In re Sternberg, 85 F.3d 1400, 1405 (9th Cir.
17 1996) ("In determining whether a debtor's obligation is in the nature
18 of support, the intent of the parties at the time of the settlement
19 agreement is executed is dispositive."), overruled on other grounds, In
20 re Bammer, 131 F.3d 788 (9th Cir. 1997).

21 The court examines "the surrounding circumstances and all other
22 relevant incidents bearing on the parties' intent to determine whether
23 the parties intended a particular obligation to be in the nature of
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25 ¹Although In re Chang primarily addressed the question of whether
26 an obligation was maintenance or support and not dischargeable under
27 11 U.S.C. § 523(a)(5), the Ninth Circuit held that the language in
§507(a)(7) "was identical" to that in § 523(a)(5). In re Chang, 163
F.3d at 1142. Thus, the same analysis applies to both provisions, and
cases interpreting § 523(a)(5) are relevant to the determinations of
whether an obligation is support or maintenance under § 507(a)(7).

1 child support." In re Seixas, 239 B.R. at 404-05 (internal quotation
2 marks and citations omitted). "A relevant factor for the bankruptcy
3 court to consider when making this determination is how the particular
4 state law characterizes the debt." In re Chang, 163 F.3d at 1140.
5 Other factors relevant to whether an obligation was intended as support
6 or maintenance include the recipient's need for support, the presence of
7 minor children in the marriage, a disparity of income between the
8 parties, an imbalance in the relative income of the parties, and the
9 nature and duration of the obligation. In re Seixas, 239 B.R. at 404;
10 In re Sternberg, 85 F.3d at 1405. "If the provision's intended function
11 is to provide a necessity of life, it is ordinarily held to be
12 nondischargeable maintenance support." In re Combs, 101 B.R. at 615-16.

13 Here, the Pendente Lite Order was contested; therefore, this court
14 must determine the intent of the state court at the time the order was
15 issued. From the face of the Pendente Lite Order, it is clear that the
16 state court intended the mortgage payments and related taxes and
17 insurance to serve as maintenance. In fact, the state court expressly
18 provided that such payments were in "the nature of maintenance," to
19 preserve the marital asset and "to allow the defendant and minor child
20 to remain in the home" during the pendency of the divorce proceedings.
21 ER No. 2, p. 2. Therefore, the court need not look beyond the Pendente
22 Lite Order, because the intention of the state court is clear.

23 Even if the court looked to other relevant factors, however, the
24 result is the same. At the time the Pendente Lite Order was issued,
25 there was a disparity in income between the parties, and a minor child
26 resided with appellant in the marital residence. Indeed, the stated
27 purpose of the obligation was to provide appellant and the minor child
with continued housing in the residence during the pendency of the

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1 divorce proceedings. No evidence suggests that the nature of the
2 obligation was for anything other than maintenance. Thus, I find that
3 the Bankruptcy Court's determination of actual need for support based on
4 evidence of the parties' relative income after the Pendente Lite Order
5 was issued was not relevant to whether the state court intended the
6 mortgage payments to serve as maintenance. See In re Combs, 101 B.R. at
7 615. Accordingly, the mortgage payments and related taxes and insurance
8 which comprise the obligation are entitled to priority status under §
9 507(a)(7).

10 CONCLUSION

11 The decision of the Bankruptcy Court excluding mortgage payments
12 and related taxes and insurance from appellant's priority claim is
13 REVERSED. Appellant Karen Stein shall have an allowed priority claim
pursuant to 11 U.S.C. § 507(a)(7) in the amount of \$38,166.92.

14 IT IS SO ORDERED.

15 DATED this 26 day of November, 2002.

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19 Ann Aiken
20 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In Re:

DAVID RUSSELL PETER,

Debtor.

KAREN STEIN

Appellant,

USDC Civil No. 02-6295-AA

v.

Bankruptcy No. 00-65936-aer7

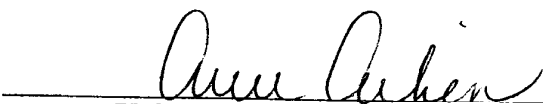
DAVID RUSSELL PETER,

Appellee.

JUDGMENT

The decision of the Bankruptcy Court excluding mortgage payments and related taxes and insurance from appellant's priority claim is reversed. Appellant Karen Stein shall have an allowed priority claim in the amount of \$38,166.92.

Dated: November 26, 2002.


United States District Judge

JUDGMENT

DOCUMENT NO: 136