

523(a) (5)

11 U.S.C. §

523(a) (15)

11 U.S.C. §

Support

Indermuhle v. Indermuhle, Adv. No. 97-3104, BAP No. 97-1625-DoMeJ
In re Indermuhle, Case No. 396-37290-dds7

5/22/98

BAP aff'g DDS

Unpublished

Former spouse of debtor filed appealed determination that certain obligations contained in a Stipulated Judgment of Dissolution of Marriage were discharged.

The BAP held that the former spouse provided no evidence to contradict the bankruptcy court's finding that the judgment lien on the marital residence in the amount of \$15,000 was not support. The former spouse had specifically waived her right to spousal support in the Stipulated Judgment.

The bankruptcy court heard extensive evidence and considered the parties' current financial circumstances in evaluating dischargeability pursuant to 11 U.S.C. § 523(a) (15). The record reveals ample support for the bankruptcy court's findings and conclusions.

P98-11 (8)

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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

MAY 22 1998

LODGED PAID REC'D DOCKETED *WJ*

In re
 ROBERT K. INDERMUHLE,
 Debtor.

LINDA J. INDERMUHLE,
 Appellant,
 v.
 ROBERT K. INDERMUHLE,
 Appellee.

BAP No. OR-97-1625-DoMeJ
 BK. No. 396-37290-dds13
 Adv. No. 97-3014

led 6-1-98

MEMORANDUM¹

FILED

MAY 23 1998 *pc*

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

Argued and Submitted on March 19, 1998
at Portland, Oregon

Filed - May 22, 1998

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Donal D. Sullivan, Bankruptcy Judge, Presiding

Before: DONOVAN², MEYERS, and JONES, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of the law of the case, res judicata, or collateral estoppel. See BAP Rule 13 & Ninth Circuit Rule 36.3.

² Hon. Thomas B. Donovan, Bankruptcy Judge for the Central District of California, sitting by designation.

(19)

I. BACKGROUND

A. PROCEDURAL BACKGROUND

Robert Indermuhle (Debtor) filed a chapter 13 petition on September 24, 1996. The Debtor converted his bankruptcy case to chapter 7 on October 10, 1996. Linda Indermuhle (Appellant) filed a timely complaint seeking a determination of nondischargeability of debt under §§523(a)(5) and (a)(15)³. At the conclusion of trial, the trial court determined that the debt was dischargeable. The Appellant filed a timely appeal from the trial court's judgment entered on July 1, 1997.

B. FACTUAL BACKGROUND

The Debtor and the Appellant were married on May 15, 1980. The couple separated in 1996. During the separation but prior to the divorce, the Appellant lived in the couple's home. In February 1996, the house was flooded. Shortly after, the parties received a \$10,000 FEMA grant for repair costs. The marriage was dissolved on May 18, 1996 by a stipulated dissolution order. As part of the stipulation, the Debtor was awarded title to the home and was ordered to pay the Appellant \$15,000 for her equity in the home. The Debtor's obligation to the Appellant was secured by a lien enforceable by execution in the event of default. The Appellant specifically waived any interest in spousal support as part of the stipulation.

³ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§101-1330.

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At the time of the divorce, property taxes on the house had been in default since 1994. Each spouse earned roughly the same income at the time of the divorce. In August 1996, the Debtor defaulted on mortgage payments on the house, and in November 1996, a second flood inundated the home. At the time of the dischargeability trial, the Debtor was earning roughly twice the annual income of the Appellant.

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After trial, the trial court concluded that the debt should be discharged, under §§523(a)(5) and (a)(15), based on (a) the express language of the parties' stipulated dissolution order and (b) the fact that at the time of trial, both the Debtor and the Appellant were hopelessly insolvent. The trial court balanced the Debtor's need for a fresh start against the Appellant's need to protect her credit rating from the Debtor's debts and her need to avoid filing bankruptcy herself. The court found that the Debtor's need prevailed. The Appellant now challenges the findings necessary to support the trial court's judgment.

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II. ISSUES

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Did the trial court err when it found that the Debtor's \$15,000 stipulated dissolution obligation to the Appellant was not intended for support but was intended to be a property settlement?

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Did the trial court err when it found that the Debtor's need for a fresh start outweighed the detrimental consequences of the Debtor's discharge to the Appellant?

III. STANDARD OF REVIEW

4 We review the trial court's determinations of fact for
5 clear error. Murray v. Bammer (In re Bammer), 131 F.3d 788
6 (9th Cir. 1997). "A finding is 'clearly erroneous' when
7 although there is evidence to support it, the reviewing court
8 on the entire evidence is left with the definite and firm
9 conviction that a mistake has been committed." United States
10 v. United States Gypsum Co., 333 U.S. 364 (1948).

IV. DISCUSSION

12 The Appellant argues that the trial court erred in two
13 respects: first, it erroneously found that the money owed the
14 Appellant under the stipulated dissolution order was not
15 spousal support, and second, it erroneously found that the
16 Debtor's need for a fresh start outweighed the Appellant's
17 need for the money promised to her in the stipulated
18 dissolution order. In support of her appeal the Appellant
19 claims that her earnings and prospects were significantly less
20 than the Debtor's at the time of the dischargeability trial
21 and that she was in dire need of the money promised to her in
22 the stipulated dissolution order.

Section 523(a)(5) provides, in part, an exception to
discharge for debts owed to a former spouse for alimony,
maintenance or support, as follows:

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

(5) to a spouse, former spouse, or child of the
debtor, for alimony to, maintenance for, or support
of such spouse or child, in connection with a
separation agreement, divorce decree or other order

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of a court of record

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Section 523(a)(5). If a dissolution decree is ambiguous, the

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trial court may conduct a factual inquiry to determine the

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nature of obligations of a debtor to a former spouse. Shaver

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v. Shaver, 736 F.2d 1315 (9th Cir. 1984). "If an agreement

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fails to provide explicitly for spousal support, a court may

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presume that a so-called 'property settlement' is intended for

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support when the circumstances of the case indicate that the

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recipient spouse needs support." Id. at 1316.

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In the case at hand, the trial court reviewed the

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stipulated dissolution order and determined that there was no

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ambiguity and that the Debtor's \$15,000 obligation to the

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Appellant was not intended for support but was intended to be

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a property settlement. On this appeal the Appellant bears the

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burden of providing this court with evidence of a clear error

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committed by the trial court. Burkhart v. Federal Deposit

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Insurance Corp. (In re Burkhart), 84 B.R. 658 (9th Cir. BAP

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1988). "The responsibility to file an adequate record . . .

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rests with the Appellant." Id. at 660. The Appellant has

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provided no evidence to contradict the trial court's finding.⁴

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Furthermore, the record reveals that the Appellant

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specifically waived her right to spousal support in the

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⁴ The Appellant included with her brief unidentified excerpts of testimony along with the trial court's findings of fact; however, the excerpts of testimony are not certified and do not indicate who is giving the testimony, when the testimony was given or where the testimony was given. Therefore, these excerpts are not helpful to this Panel's attempts to determine whether there was clear error in the decision of the trial court.

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3 stipulated dissolution. Therefore, this Panel finds no error,
4 let alone clear error, in the trial court's finding that the
5 Debtor's \$15,000 obligation to the Appellant in the stipulated
6 dissolution order was intended to be a property settlement,
7 not support.

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9 Section 523(a)(15) provides, in part, that marital debt
10 not described in §523(a)(5) still may be non-dischargeable, as
11 follows:

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(a) A discharge under section 727 . . . does not
13 discharge an individual debtor from any debt --

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(15) not of the kind described in paragraph (5)
15 that is incurred by the debtor in the course of a
16 divorce or separation or in connection with a
17 separation agreement, divorce decree or other order
18 of a court of record . . . unless --

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(A) the debtor does not have the ability to
20 pay such debt from income or property of the
21 debtor not reasonably necessary to be expended
22 for the maintenance or support of the debtor or
23 a dependent of the debtor . . . or

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(B) discharging such debt would result in a
25 benefit to the debtor that outweighs the
26 detrimental consequences to a spouse, former
spouse, or child of the debtor

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29 Section 523(a)(15). In response to the Appellant's claims at
30 the time of trial, the trial court heard extensive evidence
31 and considered the parties' current financial circumstances.
32 The trial court found that both parties were in poor financial
33 condition and that the Debtor's need for a fresh start
34 outweighed any detriment to the Appellant occasioned by the
35 Debtor's discharge. The Panel has reviewed a certified
36 transcript of the trial. The transcript reveals that both
parties testified extensively concerning their income,

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prospects, assets and liabilities. The Panel's review of the entire record of trial testimony reveals ample support for the trial court's findings and conclusions. In sum, the evidence shows that at the time of trial, both parties' financial condition was dire and that the Debtor's needs were every bit as great as the Appellant's need for the payment promised to her in the stipulated dissolution order. There is no basis in the trial court record for this Panel to conclude that the trial court's findings of fact with respect to the issues posed by §523(a)(15) was clearly erroneous.

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V. CONCLUSION

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The judgment is **AFFIRMED**.

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