

DOCKET NUMBER: 00-11068

ADV. NUMBER: 00-1117

JUDGE: M. A. Mahoney

PARTIES: Daniel Howard Turley, Joyce Hicks Turley

CHAPTER: 7

ATTORNEYS: J. M. Ross, R. J. Watson

DATE: 11/6/00

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

DANIEL HOWARD TURLEY,

Case No. 00-11068-MAM-7

Debtor.

DANIEL HOWARD TURLEY

Plaintiff,

v.

Adv. No. 00-1117

JOYCE HICKS TURLEY

Defendant.

ORDER DECLARING DEBT TO BE DISCHARGEABLE

Jay M. Ross, Mobile, Alabama, Attorney for the Debtor

Russell J. Watson, Bay Minette, Alabama, Attorney for Joyce Hicks Turley

This matter is before the Court on the complaint of Debtor, Daniel Howard Turley, to determine the dischargeability of a debt. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the Court finds that the \$10,450.00 debt owed to Joyce Hicks Turley is dischargeable under §§ 523(a)(5) and (a)(15).

FACTS

Debtor and Ms. Turley were divorced on May 13, 1991. The Judgment of Divorce stated:

8. The [Debtor] owes [Ms. Turley] the sum of Ten thousand four hundred fifty dollars (\$10,450.00) plus any interest paid by [Ms. Turley] on the indebtedness she incurred to provide the [Debtor] with said money. [Debtor] shall pay [Ms.

Turley] the sum of five hundred dollars (\$500.00) a month until said debt is paid in full.

On December 14, 1993, the Circuit Court of Baldwin County, Alabama, in the case styled Joyce Turley (Lavender) vs. Daniel H. Turley, case number CV 93-1, granted partial summary judgment for Ms. Turley and against Debtor “as to amounts due for alimony in gross in amount of \$10,450.00.” On March 16, 2000, Debtor filed for relief pursuant to chapter 7 of the Bankruptcy Code. None of the debt has been paid.

LAW

Debtor filed this complaint asking the court to determine that the \$10,450.00 judgment is not nondischargeable support pursuant to 11 U.S.C. § 523(a)(5). The complaint states that since the debt is not a support debt, it is “dischargeable pursuant to 11 U.S.C. § 523(a)(15).” The complaint therefore seeks a declaration only that the debt is not support. The Court does not read the complaint as seeking a determination of dischargeability under § 523(a)(15).¹

The debtor bears the burden of establishing a prima facie case when the debtor brings the action; but, once the prima facie case is proved, the creditor bears the burden of proving why the debt is nondischargeable. In this case, Debtor submitted the divorce decree and judgment which call the \$10,450 debt “alimony in gross.” The term “alimony in gross” is generally used to describe “a form of property settlement paid either in a lump sum or fixed installments of a specific sum.” *In re Townsend*, 155 B.R. 235, 238 (Bankr. S.D. Ala. 1992). This establishes a

¹ There are two reasons this complaint is not a cause of action under § 523(a)(15) which allows a court to determine that certain property settlements are nondischargeable debts. First, the Debtor’s complaint was filed after the deadline for filing such a complaint. 11 U.S.C. § 523(a)(15) and Fed. R. Bankr. P. 4007. Second, 11 U.S.C. § 523(c)(1) requires that the creditor, in this case Ms. Turley, seek the relief.

prima facie case. The creditor must prove the debt is excepted from discharge by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991); *In re Delaine*, 56 B.R. 460 (Bankr. N.D. Ala. 1985).

Section 523(a)(5) of the Bankruptcy Code provides that a debt to a former spouse or child for "alimony to, maintenance for, or support of such spouse or child" is not dischargeable. The United States District Court for the Southern District of Alabama has outlined what a court must look at to determine dischargeability under § 523 (a)(5): It is well established that the issue of whether a particular debt is a support obligation or part of a property settlement is governed by federal bankruptcy law, rather than by state law. *See Carver v. Carver*, 954 F.2d 1573, 1578-79 (11th Cir. 1992); *In re Harrell*, 754 F.2d 902, 905 (11th Cir. 1985); *In re Snipes*, 190 B.R. 450, 451-52 (Bankr. M.D. Fla. 1995); *but see In re Bedingfield*, 42 B.R. 641, 645 (S.D. Ga. 1983) (although federal law controls, state law should not be ignored completely). The mere labeling of an obligation in an agreement as alimony is not determinative of whether that particular obligation constitutes nondischargeable alimony. On the contrary, the court's inquiry concerns the substance of the obligation rather than its form. *See In re Chalkley*, 53 F.3d 337 (table), 1995 WL 242314 *1 (9th Cir. Apr. 25, 1995); *Ackley v. Ackley*, 187 B.R. 24, 26 (N.D. Ga. 1995); *Bedingfield*, 42 B.R. at 645; *but see Coleman v. Coleman (In re Coleman)*, 152 B.R. 779 (Bankr. M.D. Fla. 1993) (while label placed on obligation is not dispositive, it is indicative of parties' intent). In determining whether a given obligation should be deemed alimony or part of a settlement, the focus is on the intent of the parties in entering the dissolution agreement, and on the substantive effect of that obligation. *In re MacDonald*, 194 B.R. 283, 287 (Bankr. N.D. Ga. 1996). For an award to constitute a property settlement the amount and time of payment

must be certain and the right to the payment must be vested and not subject to modification. *In re Delaine*, 56 B.R. 460, 466 (Bankr. N.D. Ala. 1985). In this case, the amount is certain, \$10,450.00, and was to be paid until paid in full. There were no conditions, such as remarriage or death, under which the debt would be modified. The debt clearly appears to be in the nature of a property settlement. The fact that the Circuit Court of Baldwin County, Alabama used the word “alimony” when it ordered Debtor to pay Ms. Turley does not alter the nature of the debt. In fact, as noted above, the term “alimony in gross” as was specified in the order is different from periodic alimony and “is synonymous with a property settlement.” *Id.*

Since the obligation is in the nature of a property settlement, it could only be nondischargeable if it met the test established in § 523(a)(15). Ms. Turley did not file a timely complaint seeking such a determination. Therefore the debt is due to be declared discharged.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. The \$10,450.00 debt that the Circuit Court of Baldwin County, Alabama ordered Daniel Howard Turley to pay to Joyce Hicks Turley is in the nature of a property settlement and the debt is DISCHARGED pursuant to 11 U.S.C. §§ 524 and 727.

Dated: November 6, 2000

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE