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JUDGE: M. A. Mahoney

PARTIES: Sherry Lynn Crews, Richard Dunbar

CHAPTER:

ATTORNEYS: A. L. Sliva, M. R. Whittaker

DATE: 10/26/01

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In Re

SHERRY LYNN CREWS,

Case No. 01-40948-PNS3

Debtor.

RICHARD DUNBAR

Plaintiff,

Adv. No. 01-80037

v.

SHERRY LYNN CREWS

Defendant.

ORDER SUSTAINING THE OBJECTION TO DISCHARGE OF MARITAL DEBT

Amy Logan Sliva, Pensacola, Florida, Attorney for Debtor
Mark R. Whittaker, Pensacola, Florida, Attorney for Plaintiff

This matter is before the Court on the complaint of Richard Dunbar objecting to the discharge of the debtor pursuant to 11 U.S.C. § 523(a)(5). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 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. The case was submitted on the pleadings at the status hearing held on October 15, 2000. For the reasons indicated below, the Court is sustaining Richard Dunbar's objection to discharge of the horse veterinarian bill.

FACTS

Sherry Lynn Crews and Richard Dunbar were awarded joint custody of their minor child. Pursuant to a stipulated order entered October 16, 1996, each party was ordered to pay "one-half

of any educational expenses incurred for the benefit of the minor child and each party shall pay one-half of any costs incurred by the minor child for her horse activities.” No monetary amount was specified in the order. Mr. Dunbar owned a horse stable and several horses regularly ridden by the minor child. In May 2000, one of those horses had emergency surgery resulting in a veterinarian bill of approximately \$8,000 which was paid by Mr. Dunbar. Ms. Crews refused to reimburse Mr. Dunbar for half of that bill. The child support was modified by court order dated March 20, 2001. The order set the amount Ms. Crews is to pay for child support at \$416.00 per month and stated that Ms. Crews:

is ordered to pay \$3,068.00 to respondent, as her share of a horse vet bill incurred in May of 2000. Petitioner is to pay \$200.00 per month, 1/2 on the 1st and 15th of the month, commencing March 1, 2001 towards said amount, until paid in full.

The order also specified that “except as ordered above, the previous order dated October 16, 1996 requiring the parties to pay one-half of any costs incurred by the minor child for her horse expenses is hereby terminated.”

LAW

Mr. Dunbar contends that the veterinarian bill is in the nature of child support and is excepted from discharge pursuant to 11 U.S.C. § 523(a)(5). Section 523(a)(5) excepts from discharge debts to a spouse for “support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court.” To be excepted from discharge the support debt must actually be “in the nature of alimony, maintenance, or support.” 11 U.S.C. § 423(a)(5). A debt is in the nature of support if at the time of its creation the parties intended it to function as support. *Cummings v. Cummings*, 244 F.3d 1263 (11th Cir. 2001) (citations omitted). “[T]he party seeking to hold the debt nondischargeable has the burden of proving by a

preponderance of the evidence that the parties intended the obligation as support.” *Id.* (quoting *In re Sampson*, 997 F.2d 717, 723 (10th Cir. 1993)).

Courts have considered the following factors when analyzing the intent of the parties:

- 1) Whether the obligation is subject to contingencies, such as death or remarriage;
- 2) Whether the payment was fashioned to balance disparate incomes of the parties;
- 3) Whether the obligation is payable in installments or a lump sum;
- 4) Whether there are minor children involved; and
- 5) Whether there was need for support.

See *In re Prater*, 231 B.R. 819, 821 (Bankr. M.D. Fla. 1999); *In re Smith*, 207 B.R. 289, 291 (Bankr. M.D. Fla. 1997). This is not an exhaustive list and each factor need not be proven or even considered in every case. *Horner v. Horner (In re Horner)*, 222 B.R. 918, 922 (S.D. Ga. 1998). In this case, the obligation is payable in installments for the education and activities of a minor child. If the minor child were to pass away there would be no expenses. The obligation was clearly in the nature of support for the minor child. The parties stated in paragraph four of the original stipulated order of October 10, 1996, that neither party would pay support; however, the next paragraph then establishes what expenses they will share for the benefit of their daughter. Even though paragraph five is not a typical support provision, it accomplishes the same end— their daughter’s care.

Ms. Crews refused to pay half of the veterinarian bill because she did not feel that her obligation to pay “one-half of any costs incurred by the minor child for her horse activities” included the veterinarian bill in question. However, the order dated March 20, 2001, which was entitled “stipulation to establish or modify child support and order” specified that Ms. Crews was to pay \$3,068 as her share of the veterinarian bill. The March 2001 order does not involve any property settlement. It only pertains to establishment or modification of child support as clearly stated in its title. Its purpose was to terminate the prior support arrangement and set support

based on statutory guidelines. The \$3,068 amount is child support owed pursuant to the previous order of October 1996. Therefore, this Court is compelled to find that the \$3,068 that Ms. Crews was ordered to pay was in the nature of support and is excepted from discharge pursuant to § 523(a)(5).

THEREFORE, IT IS ORDERED AND ADJUDGED that the objection of Richard Dunbar to discharge is sustained and the Court declares that the \$3,068 horse veterinarian bill is not dischargeable in the bankruptcy of Sherry Lynn Crews pursuant to 11 U.S.C. § 523(a)(5).

Dated: October 26, 2001

MARGARET A. MAHONEY
BANKRUPTCY JUDGE