IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 03-33069

KATHRYN RENEA CROUCH
a/k/a KATHRYN RENEA THOMPSON
a/k/a KATHRYN RENEA WOODS

Debtor

DONNIE RAY CROUCH

Plaintiff

v.

Adv. Proc. No. 03-3128

KATHRYN RENEA CROUCH

Defendant

M E M O R A N D U M

APPEARANCES: S.N. GARRETT, ESQ.
Post Office Box 725
Jamestown, Tennessee 38556
Attorney for Plaintiff

F. CHRIS CAWOOD, ESQ.
Post Office Box 124
Kingston, Tennessee 37763
Attorney for Defendant/Debtor

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court upon the Complaint to Determine Dischargeability (Complaint) filed by the Plaintiff, Donnie Ray Crouch, on July 28, 2003, seeking a determination that a judgment awarded him against the Debtor pursuant to a divorce decree is in the nature of alimony, maintenance, and support and is therefore nondischargeable under 11 U.S.C.A. § 523(a)(5) (West 1993 & Supp. 2003).[1]

The trial of this adversary proceeding was held on January 12, 2004. The record before the court consists of seven exhibits introduced into evidence, the Undisputed Facts filed by the parties on November 24, 2003, and the testimony of the parties.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(I) (West 1993).

I

The following facts are not in dispute. The parties were married in December 1998 and separated in November 2002. At the conclusion of a contested divorce action before the Fentress County General Sessions Court (the divorce court) on April 17, 2003, the state court judge granted the parties a divorce. A Final Decree was filed on June 5, 2003. The Final Decree states, in material part:

> [A]fter consideration of the testimony of the Plaintiff and his documentary evidence, and the testimony of the Defendant, and her documentary evidence, and a review of the court file, this court finds that a fair and equitable division of the marital property and debts is set out below, and that Kathryn Renea Woods Crouch has the capacity to earn, and is presently earning, $2,200.00 per month, and that the actions of Kathryn Renea Woods

[1] In the Complaint, the Plaintiff also asserted that a portion of the award was incurred through fraud and/or false pretenses and nondischargeable pursuant to 11 U.S.C.A. § 523(a)(2) (West 1993 & Supp. 2003); however, at trial, the Plaintiff did not introduce any evidence to support this contention.

Crouch have caused Donnie Ray Crouch to suffer additional attorney fees and additional debt, and that Donnie Ray Crouch is in need of a lump sum in solido alimony award in the amount of the debt that Kathryn Renea Woods Crouch has caused with the General Motors Acceptance Corporation (GMAC) in the amount of $10,853.81, and that Kathryn Renea Woods Crouch has removed $1,374.00 from the bank account of Donnie Ray Crouch in violation of the statutory injunction set out in T.C.A. § 36-4-106[[2]] and in violation of this court's Restraining Order dated November 5, 2002, and the parties have agreed to stipulated grounds for divorce under T.C.A. § 36-4-129[[3]].

IT IS ACCORDINGLY ORDERED as follows:

. . . .

6. Donnie Ray Crouch is awarded alimony in solido against Kathryn Renea Woods Crouch, hereinafter known as Kathryn Renea Thompson, in the amount of $10,853.81 for the GMAC [debt] set out in the letter from GMAC dated March 26, 2003 and filed as an exhibit with this court, and additional alimony in solido in the amount of $1,374.00 for funds withdrawn from the bank account of Donnie Ray Crouch by Kathryn

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[2] This statute provides, in part:

> (d) Upon the filing of a petition for divorce or legal separation except on the sole ground of irreconcilable differences and upon personal service of the complaint and summons on the respondent or upon waiver and acceptance of service by the respondent, the following temporary injunctions shall be in effect against both parties until the final decree of divorce or order of legal separation is entered, the petition is dismissed, the parties reach agreement, or until the court modifies or dissolves the injunction, written notice of which shall be served with the complaint:
>
> > (1) (A) An injunction restraining and enjoining both parties from transferring, assigning, borrowing against, concealing or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any marital property. Nothing herein is intended to preclude either of the parties from seeking broader injunctive relief from the court.

TENN. CODE ANN. § 36-4-106 (2003).

[3] Section 36-4-129 states as follows:

> (a) In all actions for divorce from the bonds of matrimony or legal separation the parties may stipulate as to grounds and/or defenses.
>
> (b) The court may, upon stipulation to or proof of any ground for divorce pursuant to § 36-4-101, grant a divorce to the party who was less at fault or, if either or both parties are entitled to a divorce, declare the parties to be divorced, rather than awarding a divorce to either party alone.

TENN. CODE ANN. § 36-4-129 (2001). The parties stipulated that the ground for divorce was inappropriate marital conduct, and the Final Decree granted a divorce to both parties from each other based on this ground.

> Renea Woods Crouch in violation of the injunction and the Restraining Order for a total lump sum alimony award of $12,227.81 for which Judgment is hereby entered as alimony in solido against Kathryn Renea Woods Crouch, hereinafter known as Kathryn Renea Thompson, in favor of Donnie Ray Crouch.

TRIAL EX. 1.

The Debtor filed the underlying Chapter 7 bankruptcy case on June 4, 2003, and she listed both the Plaintiff and GMAC as unsecured creditors in her statements and schedules. *See* TRIAL EX. 2.

II

The nondischargeability of debts is governed by 11 U.S.C.A. § 523, which provides, in material part:

> (a) A discharge under section 727[4]. . . 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 of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—
>
> . . . .
>
> (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support[.]

[4] Chapter 7 debtors receive a discharge of pre-petition debts, "[e]xcept as provided in section 523 of this title[.]" 11 U.S.C.A. § 727(b) (West 1993). This accomplishes the goals of Chapter 7 to relieve an "honest but unfortunate debtor" of his indebtedness and allow him to make a "fresh start" through discharge of pre-petition debts. *In re Krohn*, 886 F.2d 123, 125 (6th Cir. 1989) (citing *Local Loan Co. v. Hunt*, 54 S.Ct. 695, 699 (1934)).

11 U.S.C.A. § 523(a) (West 1993 & Supp. 2003). The party seeking a determination that a debt is nondischargeable under all subsections of § 523(a) has the burden of proof by a preponderance of the evidence. *Grogan v. Garner*, 111 S. Ct. 654, 661 (1991). While § 523(a) actions are generally construed strictly in favor of the debtor, in order to promote Congressional policies favoring the enforcement of spousal and child support obligations, proof in § 523(a)(5) actions is strictly construed in favor of the former spouse and/or child. *See Rouse v. Rouse (In re Rouse)*, 212 B.R. 885, 887 (Bankr. E.D. Tenn. 1997).

The Plaintiff argues that the alimony *in solido* judgment awarded to him in the Final Decree falls within the purview of § 523(a)(5) and is nondischargeable by the Debtor. Because the Debtor may discharge an award labeled as alimony if it is not "actually in the nature" thereof, the bankruptcy court must make an inquiry into the intent of the state court when awarding the judgment. *See Long v. Calhoun (In re Calhoun)*, 715 F.2d 1103, 1107 (6th Cir. 1983). Whether a debt is alimony, maintenance, or support for the purposes of § 523(a)(5) is a matter of federal law. *Calhoun*, 715 F.2d at 1107. However, because "alimony, support and maintenance are issues within the exclusive domain of the state courts[,]" bankruptcy courts should also rely on state law in making this determination. *Calhoun*, 715 F.2d at 1107-08. In *Calhoun*, the Sixth Circuit employed the following three-part test to determine if alimony, maintenance, or support is actually in the nature thereof: (1) whether the award was intended to be support; (2) whether the award was effectively support in light of the recipient non-debtor's present needs; and (3) whether the award was "manifestly unreasonable under traditional concepts of support." *Calhoun*, 715 F.2d at 1109-1110.

The Sixth Circuit re-addressed the *Calhoun* test in *Fitzgerald v. Fitzgerald (In re Fitzgerald)*, 9 F.3d 517 (6 th Cir. 1993), and clarified that *Calhoun* expressly dealt with the assumption of third-party debts that were not specifically labeled support by the trial court. *Fitzgerald*, 9 F.3d at 520. The *Fitzgerald* court opined that "*Calhoun* was not intended to intrude into the states' traditional authority over domestic relations and the risk of injustice to the non-debtor spouse or children." *Fitzgerald*, 9 F.3d at 521. The court also held that when a state court has identified an award as alimony, maintenance, or support, the only question before the bankruptcy court is "whether something denominated as alimony is really alimony and not, for example, a property settlement in disguise." *Fitzgerald*, 9 F.3d at 521.

This concept was reaffirmed by the Sixth Circuit in *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397 (6th Cir. 1998), which held that a state court's designation of an award as alimony or support should be presumed to be such by the bankruptcy court. *Sorah*, 163 F.3d at 401. Under these directives, the bankruptcy court should "look[] to the structure of an obligation only to determine whether it is in the nature of support." *Sorah*, 163 F.3d at 403. "In determining whether an award is actually support, the bankruptcy court should first consider whether it 'quacks' like support." *Sorah*, 163 F.3d at 401. If a state court has designated an award to be support, the presence of "traditional state law indicia that are consistent with a support obligation" gives rise to the conclusive presumption that the award is support, including but not limited to the following non-exhaustive list: "(1) a label such as alimony, support, or maintenance in the decree or agreement, (2) a direct payment to the former spouse, as opposed to the assumption of a third-party debt, and (3) payments that are contingent upon such events as death,

remarriage, or eligibility for Social Security benefits." *Sorah*, 163 F.3d at 401. Other circumstances to be considered include "(1) the disparity of earning power between the parties; (2) the need for economic support and stability; (3) the presence of minor children; and (4) marital fault." *Luman v. Luman (In re Luman)*, 238 B.R. 697, 706 (Bankr. N.D. Ohio 1999) (citing *Singer v. Singer (In re Singer)*, 787 F.2d 1033, 1035 (6th Cir. 1986)).

Only if the non-debtor spouse establishes the presence of "traditional state law indicia" and satisfies the burden of proof does it shift to the debtor to prove the third prong of the *Calhoun* test; i.e., that "although the obligation is of the *type* that may not be discharged in bankruptcy, its *amount* is unreasonable in light of the debtor spouse's financial circumstances." *Sorah*, 163 F.3d at 401. In making a reasonableness determination, the bankruptcy court must give deference to the state court's findings of fact. *Sorah*, 163 F.3d at 403. When the state court has "clearly structured the obligation as support[,]" any additional fact-finding is "inappropriate." *Sorah*, 163 F.3d at 402. Thus, the debtor may not "introduce evidence regarding the resources, earning potential, and daily needs of the non-debtor spouse, either at the time the obligation arose or at the time of the bankruptcy proceeding." *Sorah*, 163 F.3d at 401-02. However, if an award is unreasonable, the bankruptcy court may discharge the debt only "*to the extent* that it exceeds what the debtor can reasonably be expected to pay." *Sorah*, 163 F.3d at 402. "Section 523 obviously places no limitation upon a state court's ability to award alimony, maintenance, or support, and the bankruptcy court should not second-guess the state court support award absent evidence that the burden on the debtor spouse is excessive." *Sorah*, 163 F.3d at 402 (citations omitted).

The Final Decree clearly states that the Debtor is to pay alimony *in solido* to the Plaintiff. Therefore, the court must first determine if the $12,227.81 alimony *in solido* award is actually support and nondischargeable under § 523(a)(5) by examining state law. In Tennessee, alimony is awarded to assist a disadvantaged spouse become self-sufficient and mitigate the "harsh economic realities of divorce." *Anderton v. Anderton*, 988 S.W.2d 675, 683 (Tenn. Ct. App. 1999). When awarding alimony, the most important factor to be considered by the trial court is the need of the spouse receiving the award, followed next by the ability of the obligated spouse to pay the award. *Houghland v. Houghland*, 844 S.W.2d 619, 621 (Tenn. Ct. App. 1992). Relevant factors to be considered by the trial court in making its support determination include, among others, relative earning capacity, relative education and training, the health of each party, the duration of the marriage, the parties' separate assets, the division of marital property, the standard of living established during the marriage, the relative fault of the parties to the divorce, and any other factors "as are necessary to consider the equities between the parties." *See* TENN. CODE ANN. § 36-5-101(d)(1)(E) (2003).

Because the Final Decree expressly designated the Plaintiff's award as "alimony *in solido*," the bankruptcy court must give deference to the divorce court's labeling and structure of the award.[5] *See Sorah*, 163 F.3d at 401; *Fitzgerald*, 9 F.3d at 520-21. While *Sorah* does not require bankruptcy courts to limit the examination to the "traditional state law indicia" expressly enumerated in that decision, the ultimate determination hinges upon whether the award designated as "alimony *in solido*" is actually to be

[5] The divorce court judge heard direct testimony from the parties themselves, as well as other witnesses, and reviewed documentary evidence, so there is a presumption, pursuant to *Sorah*, that the trial court meant what it said and said what it meant in terming the award as alimony *in solido*. Also, the Final Decree mentions that the Debtor has the capacity to earn $2,200.00 per month. The evidence at trial indicated that the Debtor's income has since decreased.

used for the support and maintenance of the Plaintiff. Here, the divorce court ordered the judgment be paid directly to the Plaintiff, satisfying the second *Sorah* indicia, but it did not order the Debtor to make monthly payments, nor did the Final Decree place any contingencies such as remarriage or death upon the award. Moreover, the marriage was of a short duration, lasting around four years, there were no children born into the marriage, and at the time of the divorce, the parties made roughly the same gross monthly income. Taking all of these factors together, it does not appear that the "traditional state law indicia" necessary for awarding alimony were present.

Furthermore, as stipulated by the parties at trial and stated in the Final Decree, the basis for the divorce court's award of alimony *in solido* was not support or maintenance of the Plaintiff. Rather, an outstanding deficiency balance of $10,853.81 owed to GMAC for a repossessed vehicle and money taken from a bank account during the pendency of the divorce action in the amount of $1,347.00 make up the entire alimony *in solido* award of $12,227.81. In addition, the Final Decree expressly states that the divorce court awarded the alimony *in solido* based upon the Debtor's actions, which "caused [the Plaintiff] to suffer . . . additional debt," rendering him in need of the award. The reasons given by the divorce court for awarding the alimony *in solido* evidence that it was attempting to either divide the assets and debts of the parties or punish the Debtor, which is not generally a basis for alimony awards. *See Langley v. Langley*, No. M2002-02278-COA-R3-CV, 2003 Tenn. App. LEXIS 887, at *8 (Tenn. Ct. App. Dec. 19, 2003) ("Fault is a factor which may be considered, but an award of unneeded alimony assessed, in actuality, as punishment, or as a palliative to the [former spouse], is anathema and contrary to law."). Regardless of which of these motives served as the basis for the divorce court making the award, it seems

clear that support of the Plaintiff was not the basis. As such, the debt incurred was not in the "nature of alimony, maintenance, or support" as required by § 523(a)(5)(B), and was discharged on October 30, 2003.

A judgment consistent with this Memorandum will be entered.

FILED: January 16, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 03-33069

KATHRYN RENEA CROUCH
a/k/a KATHRYN RENEA THOMPSON
a/k/a KATHRYN RENEA WOODS

Debtor

DONNIE RAY CROUCH

Plaintiff

v.

Adv. Proc. No. 03-3128

KATHRYN RENEA CROUCH

Defendant

JUDGMENT

For the reasons stated in the Memorandum filed this date containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure, it is ORDERED, ADJUDGED, and DECREED as follows:

1. The Complaint to Determine Dischargeability filed by the Plaintiff on July 28, 2003, is DISMISSED.

2. The $12,227.81 judgment awarded the Plaintiff against the Defendant as "alimony *in solido*" by the General Sessions Court for Fentress County, Tennessee, at paragraph 6 of the Final

Decree filed on June 5, 2003, in Case No. 8379, styled *Donnie Ray Crouch v. Kathryn Renea Woods Crouch*, is discharged.

ENTER: January 16, 2004

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE