

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

PETER J. WALSH
CHIEF JUDGE

824 MARKET STREET
WILMINGTON, DE 19801
(302) 252-2925

July 28, 2000

Ms. Jane A. Fronheiser
329 Armstrong Lane
Monterey, TN 38574

Henry A. Heiman, Esq.
702 King Street
Suite 600
P.O. Box 1675
Wilmington, DE 19801

RE: Jane A. Fronheiser vs. James V. Papi
Adversary No. A-98-288

Dear Ms. Fronheiser and Mr. Heiman:

Before the Court in this adversary proceeding is the amended complaint (the "Complaint") (Doc. # 7) of Jane A. Fronheiser ("Fronheiser") seeking a determination, pursuant to § 523(a)(15) of the Bankruptcy Code,¹ that an obligation incurred by her former spouse, James V. Papi ("Papi"), pursuant to a series of court orders arising from the divorce proceedings between Fronheiser and Papi, is non-dischargeable.² For the reasons discussed below, I

¹ Unless otherwise indicated, all references to "§ ___" are to a section of the Bankruptcy Code, 11 U.S.C. § 101 *et. seq.*

² Fronheiser originally sought relief pursuant to § 523(a)(5) which provides:

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find that Papi's obligation is dischargeable pursuant to § 523(a)(15)(A) and (B).

FACTS

This adversary proceeding arises from Papi's Chapter 7 filing of March 19, 1998 but has as its factual origin the divorce of Fronheiser and Papi in January 1992. In addition to various marital and child support orders which are not at issue in the present matter, on January 8, 1993, the parties entered a property division stipulation (the "Stipulation") by which Papi was to pay Fronheiser \$20,000 that represented Fronheiser's interest in the marital home (the "Marital Home") located at 1306 Lore Avenue in Gordon Heights. If Papi were unwilling or unable to pay Fronheiser the \$20,000, the Marital Home was to be sold according to court-

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) 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 . . .

11 U.S.C. § 523. However, upon determination that the provisions of this particular subsection were inapplicable to the claim in dispute, and in light of Fronheiser's pro se status, Fronheiser was allowed to amend her complaint to seek relief under the more-appropriate subsection, § 523(a)(15).

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prescribed procedures and Fronheiser was to be paid her \$20,000 from the proceeds of the sale.

The funds were not paid to Fronheiser by Papi and the Marital Home was, therefore, sold on March 31, 1994 for \$119,500.00. However, the Marital Home was sold subject to two outstanding mortgages totaling approximately \$37,652, an undisputed debt owed to Fronheiser's parents of \$30,650, and three liens imposed by the Internal Revenue Service for delinquent personal and business income taxes owed by Papi for tax years 1990, 1991, and 1992 totaling approximately \$23,231. After other relevant taxes and charges associated with the sale were deducted from the proceeds, all that was realized from the sale of the Marital Home was \$10,928 all of which was paid to Fronheiser. The resultant short fall in Papi's \$20,000 obligation to Fronheiser pursuant to the terms of the Stipulation was \$9,072.

Papi made no additional payments to Fronheiser in satisfaction of the Stipulation. By a Family Court enforcement order of April 13, 1994, Papi was found to be in contempt and ordered to pay the remainder of his property division obligation to Fronheiser, \$9,072. Again, no payments on the obligation were forthcoming and, pursuant to a Family Court order dated November 4, 1994, Papi was ordered to pay Fronheiser the outstanding balance of

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\$9,072 at nine (9) percent interest commencing on August 1, 1994 at a rate of \$100 per week.

After persisting in his failure to satisfy his outstanding obligation to Fronheiser, Papi was found in contempt of court and ordered to serve weekend commitments in an adult corrections facility, an order that the court later declined to enforce. Nevertheless, no payments were made on the \$9,072 debt. Finally, on March 3, 1997, the Family Court increased the interest rate on the outstanding debt to ten (10) percent and authorized the recording of the judgment in any County in New Castle. However, Papi again made no further payments to Fronheiser.

On December 29, 1997, Fronheiser took the first concrete steps to enforce her judgment against Papi, instituting a seizure and sale of two of Papi's vehicles, a 1995 Ford van and a 1968 Ford pickup truck. The vehicles were impounded and set for auction. On March 19, 1998, claiming that the vehicles thus impounded were essential to his business operations, Papi opted to file for Chapter 7 relief. The vehicles were apparently released from impound and returned to Papi.

Fronheiser initially sought relief from the automatic stay so that she might pursue the sale of the impounded vehicles. She later abandoned this tact and instituted the present adversary proceeding, seeking first to prevent discharge of Papi's obligation

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to her under § 523(a)(5) and later, in her amended complaint, under § 523(a)(15) so that she might pursue some remedy at state law to receive payment of Papi's long-outstanding obligation to her.

DISCUSSION

Papi seeks discharge of his non-support marital liability to Fronheiser through his Chapter 7 filing. Fronheiser seeks to prevent discharge of her right to the payment as ordered by the Family Court, pursuant to § 523(a)(15) of the Bankruptcy Code. Section 523 provides in relevant part:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

* * *

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the

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detrimental consequences to a spouse, former spouse, or child of the debtor.

11 U.S.C. § 523(a). Although there is a split of authority as to who properly bears the burden of proof under § 523(a)(15), the majority of courts that have considered this issue conclude that, once a creditor-spouse has proved that the debt in question comes within the definition of § 523(a)(15), a presumption of non-dischargeability arises. See, e.g., Gamble v. Gamble (In re Gamble), 143 F.3d 223, 226 (5th Cir. 1998); Jodoin v. Samayoa (In re Jodoin), 209 B.R. 132, 139 (B.A.P. 9th Cir. 1997); In re Kaczmariski, 245 B.R. 555, 562-63 (Bankr. N.D. Ill. 2000); Busch v. Busch (In re Busch), 226 B.R. 710, 712-13 (Bankr. M.D. Fla. 1998); Perkins v. Perkins (In re Perkins), 221 B.R. 186, 190 (Bankr. N.D. Ohio 1998); Feldman v. Feldman (In re Feldman), 220 B.R. 138, 144 (Bankr. N.D. Ga. 1998); Williams v. Williams (In re Williams), 210 B.R. 334, 346 (Bankr. D. Neb. 1997); Crossett v. Windom (In re Windom), 207 B.R. 1017, 1021 (Bankr. W.D. Tenn. 1997); Shellem v. Koons (In re Koons), 206 B.R. 768, 772 (Bankr. E.D. Pa. 1997); In re Smither, 194 B.R. 102, 106-07 (Bankr. W.D. Ky. 1996). The burden then shifts to the debtor to prove the applicability of one of § 523(a)(15)'s two exceptions to non-dischargeability. See id. That is, once a creditor-spouse makes a preliminary showing that the claim at issue arises from a divorce or separation proceeding

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and is intended as non-support-related payment, a debtor may nevertheless obtain a discharge of the obligation upon demonstrating (i) financial inability to meet the obligation or (ii) that the benefit to the debtor to be derived from discharge outweighs the detrimental consequences to the creditor-spouse from discharge. See id.; see also 11 U.S.C. § 523(a)(15). A debtor who is able to satisfy either of these tests is deemed to be entitled to discharge of the kind of debt encompassed by § 523(a)(15). See id. Exceptions to the dischargeability of debt are to be strictly construed in favor of the debtor in keeping with the Code's general policy of encouraging rehabilitation of debtors. See, e.g., In re Jodoin, 209 B.R. at 139; In re Kaczmariski, 245 B.R. at 562; In re Henrie, 235 B.R. 113, 119 (Bankr. M.D. Fla. 1999).

In applying § 523(a)(15), courts are divided as to the appropriate date at which to evaluate a debtor's financial ability to meet his or her non-support marital obligations. While at least one court opted to review a debtor's financial condition at the time of the filing of the § 523(a)(15) complaint, see, e.g., Hill v. Hill (In re Hill), 184 B.R. 750, 754 (Bankr. N.D. Ill. 1995), and others have chosen to examine a debtor's financial condition at the petition date, see, e.g., Taylor v. Taylor (In re Taylor), 191 B.R. 760, 765 (Bankr. N.D. Ill. 1996); Anthony v. Anthony (In re Anthony), 190 B.R. 433, 438 (Bankr. N.D. Ala. 1995), the majority

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of courts have looked at a debtor's financial status at the time of trial in making their § 523(a)(15) determinations. See, e.g., In re Gamble, 143 F.3d at 226; In re Jodoin, 209 B.R. at 139; In re Henrie, 235 B.R. at 120; In re Busch, 226 B.R. at 713; In re Perkins, 221 B.R. at 190; In re Feldman, 220 B.R. at 144; In re Williams, 210 B.R. at 347; In re Windom, 207 B.R. at 1021; In re Koons, 206 B.R. at 773; In re Smither, 194 B.R. at 106-07. Those courts making § 523(a)(15) determinations based upon the debtor's financial condition at the time of trial do so to capture in their calculus the debtor's changed financial circumstances from the time of the petition date including the benefit that might derive from the debtor's "fresh start" and other good and bad fortune that might have befallen the parties. See In re Busch, 226 B.R. at 713; Fureigh v. Haney (In re Haney), 238 B.R. 432, 435 (Bankr. E.D. Ark. 1999); Dressler v. Dressler (In re Dressler), 194 B.R. 290, 300 (Bankr. D.R.I. 1996). Additionally, many of those courts adopting the time-of-trial financial review opt for a more-fluid, forward-looking picture of the debtor's financial condition, taking into consideration not only a "snap shot" of debtor's financial condition at the time of trial but also the debtor's future earning potential as it pertains to the debtor's ability to meet non-support marital obligations going forward. See, e.g., Findley v. Findley (In re Findley), 245 B.R. 526, 532 (Bankr. N.D. Ohio

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2000); Migneault v. Migneault, 243 B.R. 585,589 (Bankr. D.N.H. 1999); In re Haney, 238 B.R. at 435; In re Windom, 207 B.R. at 1021; In re Slover, 191 B.R. 886, 892 (Bankr. E.D. Okla. 1996); In re Smither, 194 B.R. at 107-08. Those courts employing this forward-looking perspective seek to avoid the possibility that a debtor might manipulate his or her financial condition at any given time to overemphasize an inability to meet his or her marital obligations, thereby binding the parties to a decision based on incomplete or inaccurate information because the court cannot revisit the debtor's financial circumstances after the conclusion of the bankruptcy. See id.

Although I am inclined to follow the majority of courts in making my § 523(a)(15) determination based upon Papi's financial condition at the time of trial, the record before me provides limited basis for a forward-looking determination of Debtor's financial condition. Papi's earning potential has shown little variation over the last few years and there is no basis to find a likelihood for significant change for better or worse in the foreseeable future.

An inquiry under § 523(a)(15)(A) into a debtor's ability to pay non-support marital obligations requires examination of the debtor's financial condition and the ability to pay such debts based solely upon consideration of the finances of the debtor; the

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non-debtor spouse's finances are irrelevant. See, e.g., In re Haney, 238 B.R. at 435. A majority of courts utilize a "disposable income" test by which a court considers what funds a debtor has available to pay the obligation after deducting for reasonable and necessary expenses. See, e.g., In re Windom, 207 B.R. at 1021; In re Jodoin, 209 B.R. at 142; In re Hill, 184 B.R. at 755. In applying the disposable income test, the court must focus on whether the debtor's budgeted expenses are reasonable and necessary to support and maintain the debtor or his legitimate business endeavors. See id.

Courts are given little guidance by the language of § 523(a)(15)(A) and must resort to the application of common sense to determine what constitutes a debtor's "reasonable and necessary" expenses beyond which his or her income might go toward satisfying obligations under § 523(a)(15)(A). Some courts suggest a "totality of the circumstances" approach. See, e.g., In re Armstrong, 205 B.R. at 391; In re Smither, 194 B.R. at 107; In re Dressler, 194 B.R. at 300. At least one court has established a set of criteria a court might apply in making such a determination. See In re Smither, 194 B.R. at 108. The court in In re Smither sets forth the following test:

First, the Court will have to determine the amount of the debts which a Creditor is seeking to have held nondischargeable and the repayment terms and conditions of those debts.

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Second, the Court will have to calculate the Debtor's current income and the value and nature of any property which the Debtor retained after his bankruptcy filing.

Third, the Court will have to ascertain the amount of reasonable and necessary expenses which the debtor must incur for the support of the Debtor, the Debtor's dependents and the continuation, preservation and operation of the Debtor's business, if any.

Finally, the Court must compare the Debtor's property and current income with his reasonable and necessary expenses to see whether the Debtor has the ability to pay these obligations.

See id. at 108. Other courts have further refined the general approach to the disposable income analysis set forth by the court in In re Smither to include such criteria as:

The presence of more lucrative employment opportunities which might enable the debtor fully to satisfy his divorce-related obligation;

The extent to which the debtor's burden of debt will be lessened in the near term;

The extent to which the debtor previously has made a good faith effort toward satisfying the debt in question;

Any evidence of probable changes in the debtor's expenses.

See id.; In re Windom, 207 B.R. at 1021-22; In re Armstrong, 205 B.R. at 391; Cleveland v. Cleveland (In re Cleveland), 198 B.R. 394, 397 (Bankr. N.D. Ga. # 1996). Applying the suggested criteria

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to the facts before me, I arrive at the conclusion that Papi is unable to meet his non-support marital obligations pursuant to the Stipulation and is therefore entitled to a discharge of that debt under § 523(a)(15)(A).

It appears that the only significant debt Papi sought to discharge was the debt at issue, his non-support marital obligation to Fronheiser. See In re James V. Papi 98-644 PJW (March 19, 1998) Statement of Debtor's Intentions (Doc.# 3)(stating Papi's intention to reaffirm his outstanding vehicle and mortgage obligations). Papi has made no attempt in his Chapter 7 case to discharge any other of his significant obligations including his mortgage payments and the payments still owed on the two vehicles still subject to outstanding notes.³ The trustee, appointed in Papi's Chapter 7 case filed a certification that Papi's was a no asset case because Papi had no equity value in any of his property subject to secured obligations. See id. In re James V. Papi 98-644 PJW, Report and Certification of Trustee in a No Asset Case, (Doc. # 14); see also In re James V. Papi 98-644 PJW, Trustees Notice of

³ However, since the time of the hearing on this matter, motions seeking relief from the automatic stay were subsequently granted as to the mortgagee, United Companies Lending Corp. on March 29, 2000 to commence foreclosure proceedings on Papi's house at 514 Lore Avenue and as to the Ford Motor Credit Co. on April 3, 2000 to pursue appropriate measures because of Papi's default on a stipulated agreement to satisfy his obligation on his 1995 Ford van. See In re James V. Papi 98-644 PJW (March 19, 1998) (Doc. # 18) and (Doc. # 27).

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Abandonment (Doc. # 15)(noting trustees abandonment of Papi's house at 514 Lore Avenue because the property had no value beyond the valid lien against the property). His remaining unsecured obligations, beside his obligation to Fronheiser, were delinquent tax payments, including penalties, owed to the Delaware Department of Revenue in the sum of \$5,800. See In re James V. Papi 98-644 PJW, Listing of Creditors (Doc.# 13). Thus, the only debt for which discharge might have a significant impact on Papi's disposable income is his debt to Fronheiser, the very debt he seeks to discharge for his inability to pay. The payment terms of this obligation were last fixed by the Family Court on March 3, 1997 at \$100 per month at 10% interest but were subsequently reduced to judgment by Fronheiser prepetition when she levied against two of Papi's vehicles and had those vehicles impounded. As of the trial date, Papi remained liable to Fronheiser for \$9,072.

Papi is a high-school educated general contractor who has operated his business as a sole proprietorship for many years. See Trans. at 23:22-25:23. He has no post-high-school education or career training. See id. at 25:9-17. Papi introduced evidence at trial that his average annual income over the past eight years was \$16,988 and over the past five years his average annual income was approximately \$12,000. See Exhibit 1, Papi's Tax Returns for the years 1990-97 inclusive (Ex. 1). In addition to his historically

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limited income production, nothing in the record suggests that Papi possesses the requisite skills or training to alter his earning potential to any significant degree in the foreseeable future.

Papi has no discernable equitable interest in any real or personal property. He owns four vehicles that, according to the record before me, either have little or no resale value or are subject to outstanding obligations in excess of any resale value: a 1995 Ford van, used in Papi's work, on which he currently owes over \$5,600 on an original \$16,507 note; a 1992 Ford pickup truck, used in Papi's work, on which he currently owes more than \$6,500 on an original \$12,040 note; an uninsured and idle 1968 Ford pickup, sometimes pressed into service in Papi's work, with minimal or non-existent resale value; and a 1989 Volkswagen station wagon, driven both for business and personal uses, for which Papi paid \$1,000 in 1997 which today has minimal or non-existent resale value.

Apparently, Papi owns no valuable personal property. See Trans. at 18:21-19:5; 36:21-24; see also In re James V. Papi 98-644 PJW, Schedule B, Personal Property (Doc. # 3)(noting that Papi held less than \$1000 in personal property at the time of filing for bankruptcy relief). Papi's bank statements also suggest that his sole bank account, that functions as both his personal and business accounts, held an average balance of \$924 in 1999 and an average balance of \$859 for the twelve months preceding trial. See Exhibit

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5, Papi's bank statements (Ex. 5). Papi has no other bank account, no stock funds, bond funds, retirement funds, or any such investment securities. See Trans. at 29:11-20; 36:17-20; see also In re James V. Papi 98-644 PJW, Schedule B, Personal Property (Doc. # 3).

Papi owns his residence in joint tenancy with his mother, but Papi alone is obligated on the mortgage which calls for monthly payments of approximately \$863. See Exhibit 7, Papi Mortgage and Deed (Ex. 7); see also Trans. at 32:4-33:5. Just prior to the time of trial, the home was appraised at \$94,000. See Trans. at 18:16-18. Papi's outstanding obligation on the mortgage as of trial was approximately \$81,000 plus penalties and late charges. See id. at 18:19-20. As noted above, in light of Papi's continuing failure to meet his mortgage obligations, the company holding the note on Papi's home have been granted relief from stay to institute foreclosure proceedings. See In re James V. Papi 98-644 PJW, Order for Relief from Stay, (Doc. # 18). Nothing in the record suggests that Papi is hiding assets or holds any interest in property of any significant, marketable value.

Papi introduced his budget as of the time of trial that suggests that, while his average annual income is approximately \$12,000, his monthly expenses total more than \$3,400, including both his personal and business expenses. See Ex.1 and Exhibit 4,

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Papi's Monthly Budget (Ex. 4); see also Trans. at 28:1-3. Papi's monthly budget provides:

Mortgage	\$863.34
Electric	200.00
Water/sewer	20.00
Phone	30.00
Cell Phone	55.00
Garbage	16.00
Cable	42.00
Home maintenance	50.00
Food	400.00
Clothing	100.00
Laundry	15.00
Medical/dental	50.00
Transportation(gas/maint.)	300.00
Recreation/entertainment	20.00
Life insurance	32.00
Auto insurance	400.00
Auto payments	561.00
Child support	269.00
TOTAL	\$3,423.34

See Ex. 4. The budget reflects Papi's business and personal expenses and those incurred in providing support for his teenaged son who, although recently departed for college, still requires some support from his father. See Trans. at 34:3-15. Although one might question the amount of some of the expenses listed, nothing in Papi's budget suggests that he is carrying any unreasonable or unnecessary expenses since his budget includes work-related expenses and expenses for support of a teenaged son.

A review of Papi's income and expenses shows that Papi has no remaining disposable income from which to make the non-support marital payments to Fronheiser. In fact, Papi appears to

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live on the very margins of sustainable financial viability and it seems clear that forcing him to meet his obligation to Fronheiser could undermine an already-tenuous financial reality. This sense of financial peril is reinforced by the recent orders entered in Papi's Chapter 7 case granting relief from stay to Papi's mortgagee and vehicle financier to move against Papi's home and principle work vehicle. Particularly as in the present matter in which Fronheiser seeks to enforce her judgment against Papi by seizing and auctioning off two vehicles in which Papi has no valuable interest and that Papi claims he needs for his already-marginal business enterprise, it seems that compelling Papi to meet the obligation in dispute stretches beyond reasonableness Debtor's financial viability. Based on all of the evidence and testimony before me, it is clear that Papi simply does not have the disposable income or assets to meet his obligation to Fronheiser.

Nor do I find that any of the other criteria suggested for application in a § 523(a)(15)(A) analysis alter my assessment of Papi's ability to pay. I do not believe that Papi has a realistic opportunity to secure more lucrative employment opportunities which might enable him to fully satisfy his obligation to Fronheiser. Papi is a contractor of apparently limited skill and industry and looks likely to remain so. Further,

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nothing in the record suggests that Papi's financial burden of debt will be lessened to any significant extent in the near term.

There is also little if any evidence of probable changes in Papi's expenses. Aside from his son moving off to college, Papi appears to be in the same tenuous position, clinging to a marginal financial existence with little disposable income and no legitimate prospects of future beneficial change.

A determination pursuant to § 523(a)(15)(A) that a debtor is unable to pay his or her non-support marital obligation is sufficient to obtain discharge of that obligation and makes unnecessary an analysis under § 523(a)(15)(B)'s balancing test. However, as discussed below, I find that a more compelling basis exists for a discharge of the obligation under the test specified in § 523(a)(15)(B).

Unlike the test under § 523(a)(15)(A), analysis under § 523(a)(15)(B) requires that the court make a direct comparison of the standards of living of the former spouses, both the debtor-spouse and the creditor-spouse, in an effort to determine which of the two would suffer greater hardship depending on whether the non-support marital obligation was deemed dischargeable or non-dischargeable. See, e.g., In re Windom, 207 B.R. at 1023; In re Armstrong, 205 B.R. at 393; In re Smither, 194 B.R. at 111. If the court determines that the debtor's standard of living, absent

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discharge, is equal to or greater than the creditor-spouse's standard of living, the debt should be held non-dischargeable. See id. However, if the debtor's standard of living will fall materially below the creditor-spouse's standard of living absent discharge, the debt should be discharged. See id. Courts have set forth a list of factors to be considered in a § 523(a)(15)(B) analysis:

1. The amount of debt involved, including all payment terms;
2. The current income of the debtor, objecting creditor and their respective spouses;
3. The current expenses of the debtor, objecting creditor and their respective spouses;
4. The current assets, including exempt assets of the debtor, objecting creditor and their respective spouses;
5. The current liabilities, excluding those discharged by the debtor's bankruptcy, of the debtor, objecting creditor and their respective spouses;
6. The health, job skills, training, age and education of the debtor, objecting creditor and their respective spouses;
7. The dependents of the debtor, objecting creditor and their respective spouses, their ages and any special needs which they may have;
8. Any changes in the financial conditions of the debtor and the objecting creditor which may have occurred since the entry of the divorce decree;

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9. The amount of debt which has been or will be discharged in the debtor's bankruptcy;

10. Whether the objecting creditor is eligible for relief under the Bankruptcy Code; and

11. Whether the parties have acted in good faith in the filing of the bankruptcy and the litigation of the 11 U.S.C. S 523(a)(15) issues.

See, e.g., In re Smither, 194 B.R. at 111 (noting that this list of factors is by no means exclusive and the § 523(a)(15)(B) balancing test has to be performed on a case by case basis).

Application of the suggested factors to the matter before me points toward the appropriateness of discharge. The amount of debt involved is \$9,072 to be paid in monthly installments of \$100 at 10% interest and now enforceable by Fronheiser's levying against two of Papi's vehicles. As noted above, Papi cannot make the payments from disposable income and the seizing of his vehicles will cripple his financial viability and provide no benefit to Fronheiser. One vehicle, the 1968 Ford van, has little or no resale value; the other, the 1992 Ford pickup truck, is subject to a valid lien held by the Ford Motor Credit Co. beyond any interest Papi might have in the vehicle. Thus, allowing Fronheiser to pursue her state court remedy would result in harm to Papi and no appreciable financial gain to Fronheiser.

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As noted above, Papi has, in effect, negative income as his expenses appear to consistently out pace his income. Fronheiser, while not the recipient of a large income, nevertheless makes approximately \$24,000 in annual income as reflected in her tax returns for the tax years 1996 through 1998 inclusive. While it is true that Fronheiser must also apply that income to support two children, she does receive \$269 in monthly support payments from Papi on which he is current. Additionally, Fronheiser lives in a three bedroom home situated on five acres of land on which there is no mortgage. See Trans. at 122:20-123:19. Fronheiser submitted a monthly budget showing expenditures of \$1,096. While she failed to include certain expenses in the budget statement Fronheiser acknowledged that her hastily drafted budget statement was not a meaningful document. See id. at 142:17-143:11. Included in the monthly budget is a \$575 rental payment. However, Fronheiser testified that these "rent" payments are made to reimburse her mother who paid for the land and the house in which Fronheiser and her children live. See id. at 143:13-16. Because there is no mortgage on the property, Fronheiser has no legal obligation to make these monthly payments to her mother. See id. at 144:1-145:21. Moreover, the \$575 monthly figure was simply arrived at by Fronheiser and her mother as a figure Fronheiser could afford based on her salary. See id. at 143:18-24. No matter

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how noble Fronheiser's intention in repaying her mother's kindness, such voluntary payments should not be factored into a party's expenses for a § 523(a)(15)(B) analysis. See Mandancini v. Slygh (In re Slygh), 244 B.R. 410, 416 (Bankr. N.D. Ohio 2000)(reasoning that voluntary support payments made on behalf of debtor's adult daughter would not be considered in determining debtor's budget). A balancing of the equities in measuring relative incomes and expenses clearly suggests that Papi occupies much more tenuous financial ground.

As noted above, Papi has no assets and is in danger of losing any interest he might have in his home and primary vehicle. Conversely, Fronheiser owns a home on five acres of land on which there is no mortgage. Although both parties apparently live from paycheck to paycheck, Fronheiser holds a significant legally cognizable asset; Papi does not. Moreover, Papi has significant liabilities and Fronheiser appears to have none.

Whereas Papi appears to be a marginally skilled contractor with limited training and education, Fronheiser has a college degree, having obtained a B.S. in music education from West Chester University and having taken some course work in pursuit of her masters degree. See id. at 123:20-124:12. Fronheiser is currently employed as a music teacher by the Putnam County School District in Cookeville, Tennessee, a position she has held for

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several years. See id. at 124:16-23. She also earns income playing organ for her church and teaching bible studies to the children in the congregation. See id. at 125:9-22. Balancing the employment opportunities of the two parties, it seems clear that Fronheiser is currently more stable in her employment and enjoys brighter employment prospects in the future than does Papi. Neither party offered evidence that they suffered from any outstanding health concerns that might affect future employment opportunities.

Fronheiser may indeed live frugally while supporting the two daughters with whom she lives. However, she seems to manage her affairs in reasonable fashion and, as noted above, she receives support payments from Papi. Papi apparently provides some continuing support for his son who recently departed for college. Neither party appears overwhelmed by their support obligations and, on balance, Papi appears to live under a greater burden by virtue of his mandatory support payments imposed by Family Court order. Moreover, whereas Fronheiser's financial condition seems to have improved since the couple's divorce, Papi at best has maintained the status quo and in all probability has suffered reverses that make his financial condition more precarious than in 1994. Nor does Fronheiser evidence any indication that her financial situation is such that she herself might seek relief in bankruptcy.

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Indeed, Fronheiser admitted at trial that the real intended beneficiaries of her action to secure payment of this obligation are her children and that she is capable of making her own way without receipt of these payments. See id. at 154:7-155:10.

CONCLUSION

For the reasons stated above, I find that the obligations incurred by Papi for the payment to Fronheiser of a portion of proceeds from the sale of certain marital property are dischargeable pursuant to § 523(a)(15)(A) and (B) of the Bankruptcy Code.

Very truly yours,

Peter J. Walsh

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	Chapter 7
)	
JAMES V. PAPI)	Case No. 98-644-PJW
)	
Debtor.)	
_____)	
)	
JANE A. FRONHEISER,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. A-98-288
)	
JAMES V. PAPI,)	
)	
Defendant.)	

JUDGMENT ORDER

For the reasons set forth in the Court's letter opinion of this date, I find that the non-support obligation incurred by James V. Papi for the payment to Jane A. Fronheiser arising out of the sale of certain marital property and the Family Court orders arising therefrom are dischargeable pursuant to § 523(a)(15)(A) and (B) of the Bankruptcy Code, 11 U.S.C. § 523(a)(15)(A) and (B).

Peter J. Walsh
United States Bankruptcy Judge

Date: July 28, 2000

