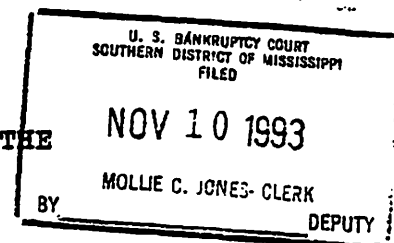


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
MERIDIAN DIVISION



IN RE:
HOWARD F. MADISON

CHAPTER 7
CASE NO. 9300347MC

HOWARD F. MADISON

PLAINTIFF

VS.

ADVERSARY NO. 930019MC

HELEN S. MADISON

DEFENDANT

HELEN S. MADISON

PLAINTIFF

VS.

ADVERSARY NO. 930022MC

HOWARD F. MADISON

DEFENDANT

Hon. Walter T. Rogers
P. O. Box 291
Meridian, MS 39302

Attorney for Debtor

Hon. James A. Williams
P. O. Box 5002
Meridian, MS 39302

Attorney for Helen Madison

Edward Ellington, Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court on Helen S. Madison's Motion for Summary Judgment filed in adversary proceeding number 930022MC and on her request to remand to the Chancery Court of Lauderdale County, Mississippi the Motion for Contempt and Related Relief found in adversary proceeding number 930019MC. After reviewing the pleadings and briefs filed by the parties, the Court finds that no genuine issue of material fact exists, and therefore, the motion

for summary judgment should be granted and that the request to remand the motion for contempt should be granted.

FINDINGS OF FACT

These adversaries arise from divorce proceedings in the Chancery Court of Lauderdale County, Mississippi between Howard F. Madison (Debtor) and his ex-wife, Helen S. Madison. After the Debtor withdrew his denial to the divorce on the grounds of adultery, the parties entered into a *Consent to Divorce on Uncontested Basis*. Mrs. Madison was then granted a divorce on the grounds of adultery on December 9, 1991. The Chancellor entered his *Opinion and Judgement (sic) of the Court* on January 16, 1992. In his opinion, the Chancellor ordered a partition sale of the parties' jointly-owned real property. After examining the monthly income and expenses of both parties and Mississippi law relating to the awarding of alimony, the Chancellor ruled that Mrs. Madison was entitled to lump sum and periodic alimony from the Debtor. However, the Chancellor stated that he would rule on the exact dollar amount of alimony awarded to Mrs. Madison after the real property had been sold.

After the real property was sold at auction by a Special Master, the Chancellor considered the money generated by the sale of the real property and examined the monthly income and expenses of both parties before ruling on the amount of alimony he would award to Mrs. Madison. After considering all of the above and

applying Mississippi law, in July 1992, the Chancellor awarded Mrs. Madison \$400 a month in alimony and \$20,000 in lump sum alimony.

The Debtor filed for relief under Chapter 7 of the Bankruptcy Code on February 1, 1993. On or about February 5, 1993, Mrs. Madison filed her *Motion for Contempt And Related Relief* in the Chancery Court of Lauderdale County, Mississippi alleging that the Debtor had failed to pay to her the alimony ordered by the Chancellor. The Debtor removed the motion to the United States District Court. The motion was then referred to this Court by agreement of the parties. Subsequently, Mrs. Madison filed her objection to the discharge of her debt under 11 U.S.C. 523(a)(5)¹ and her request to remand the motion for contempt to the Chancery Court of Lauderdale County, Mississippi (Chancery Court).

After the completion of discovery in adversary proceeding number 930022WC, Mrs. Madison filed her motion for summary judgment and her brief in support of her motion. Mrs. Madison alleges in her motion that there is no genuine issue of material fact in the dispute between the parties, and therefore, her award of alimony is nondischargeable under § 523(a)(5) as a matter of law. Subsequently, the Debtor filed his response to the motion for summary judgment and his brief in opposition to the motion. The Debtor alleges that there are factual disputes remaining between the parties and that the Bankruptcy Court is the proper forum for these matters to be adjudicated.

¹Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(B), (C) and (L).

II.

THE MOTION FOR SUMMARY JUDGMENT

Mrs. Madison filed her motion for summary judgment alleging that there are no genuine issues of material fact in the dispute between the parties, and consequently, she is entitled to a judgment, as a matter of law, against the Debtor for past due alimony (plus interest) and attorney fees. In support of her motion, Mrs. Madison relies upon the pleadings filed, the discovery conducted by the parties and her affidavit which she filed with the motion. The Debtor submitted the various opinions and judgments entered by the Chancery Court, the discovery conducted by the parties and his affidavit in opposition to the motion for summary judgment.

Federal Rule of Bankruptcy Procedure 7056 states in pertinent part:

(a) A party seeking to recover upon a claim . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

. . . .

(c) The judgment sought shall be rendered forthwith if the pleadings, depositions,

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In order for the Court to sustain a motion for summary judgment, "[t]he pleadings, depositions, answers to interrogatories, and admissions of file, together with any affidavits, must demonstrate there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Krim v. BancTexas Group, Inc., 989 F.2d 1435, 1444 (5th Cir. 1993) (quoting Ayo v. Johns-Manville Sales Corp., 771 F.2d 902, 904 (5th Cir. 1985)). See also Celotex Corp. v. Catrett, 477 U.S. 317, 322-34, 106 S.Ct. 2548, 2552-58, 91 L.Ed.2d 265 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970); Fed. R. Bankr. P. 7056.

The Court views the available evidence in the light most favorable to the nonmoving party. Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587-88, 106 S.Ct. 1348, 1356-57, 89 L.Ed.2d 538, 553 (1986). However, "the nonmoving party must adduce admissible evidence which creates a fact issue concerning the existence of every essential component of that party's case. Unsubstantiated assertions of an actual dispute will not suffice." Thomas v. Price, 975 F.2d 231, 235 (5th Cir. 1992) (citation omitted). "The plaintiff must present a genuine issue of material fact as to every one of the essential elements of each of his claims on which he bears the burden of proof at trial." Krim,

989 F.2d at 1444 (citing Celotex, 477 U.S. at 322, 106 S.Ct. at 2552.) (citation omitted).

Under the Bankruptcy Code, all debts of a debtor are dischargeable unless they are subject to objections set out in §727(a) or are expressly excepted from discharge by § 523. The party who asserts the nondischargeability of a debt has the burden to prove its exemption from discharge. Benich v. Benich (In the Matter of Benich), 811 F.2d 943, 945 (5th Cir. 1987). Mrs. Madison seeks a judgment that her claim against the Debtor is nondischargeable under § 523(a)(5). Section 523(a)(5) states:

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

(5) to a spouse, former spouse . . . for alimony to, maintenance for, or support of such spouse . . . in connection with a . . . divorce decree(,) . . . determination made in accordance with State . . . 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;

"Whether a particular obligation constitutes alimony, maintenance, or support within the meaning of this section is a matter of federal bankruptcy law, not state law." Biggs v. Biggs (In the Matter of Biggs), 907 F.2d 503, 504 (5th Cir. 1990) (citing H.R. Rep. No. 595, 95th Cong., 2d Sess. 364, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6320; see In re Harrell, 754 F.2d 902, 905 (11th Cir. 1985); Shaver v. Shaver, 736 F.2d 1314,

1316 (9th Cir. 1984)). Accordingly, § 523(a)(5) mandates that the bankruptcy court "determine the true nature of the debt, regardless of the characterization placed on it by the parties' agreement or the state court proceeding. The bankruptcy court may, therefore, consider extrinsic evidence to determine the real nature of the underlying obligation in order to determine its dischargeability." Benich, 811 F.2d at 945 (footnotes omitted). See also Davidson v. Davidson (In the Matter of Davidson), 947 F.2d 1294, 1296-97 (5th Cir. 1991); Smith v. Billingsley (In re Billingsley), 93 B.R. 476, 477 (Bankr. N.D. Tex. 1987).

In the Chancery Court proceedings, the parties stated in their *Consent to Divorce on Uncontested Basis* that they agreed to permit the Chancery Court to decide numerous issues. One of the enumerated issues was the question of whether Mrs. Madison was entitled to alimony. As a result, the Chancellor conducted a trial to determine if Mrs. Madison was entitled to an award of alimony. After hearing testimony and reviewing the evidence presented, the Chancellor entered its January 16, 1992, opinion and judgment. The Court found that Mrs. Madison was entitled to an award of alimony.

After the partition sale of their jointly-owned real property, the Chancellor entered his July 22, 1992, judgment specifically stating what dollar amount Mrs. Madison was awarded as alimony. In determining the amount of alimony to award to Mrs. Madison, the Chancellor considered 1) the health of the parties; 2) the earning capacity of the parties; 3) the current and previous income of the parties; 4) the reasonable needs of the parties; 5) the estimated

amount of withheld income taxes and refund from income taxes of the parties; 6) the accustomed dwelling of the parties until the separation; 7) the ages of the parties; 8) the assets of the parties; and 9) the proceeds available from the partition sale. These factors are very similar to the evidentiary factors which the Fifth Circuit has stated that bankruptcy courts should consider when evaluating divorce decrees under § 523(a)(5). See In re Nunnally, 506 F.2d 1024, 1026 (5th Cir. 1975); Smith v. Smith (In re Smith), 114 B.R. 457, 462 (Bankr. S.D. Miss. 1990); Smith v. Smith (In re Smith), 97 B.R. 326, 328-29, (Bankr. N.D. Tex. 1989).

Considering all of the evidence before the Court, this Court finds that it was clearly the intent of the Chancellor to award Mrs. Madison both lump sum and periodic alimony. Further, there is no genuine issue of material fact in dispute, and the motion for summary judgment is hereby granted. Accordingly, the Court finds that, as a matter of law, the periodic alimony and lump sum alimony awarded to Mrs. Madison by the Chancellor in his July 22, 1992, opinion are obligations which are nondischargeable under section 523(a)(5).

III.

THE REQUEST TO REMAND

On or about February 5, 1993, Mrs. Madison filed her *Motion for Contempt and Related Relief* in the Chancery Court of Lauderdale County, Mississippi. Mrs. Madison alleges that the Debtor has failed to pay the obligations he was ordered to pay under the Chancellor's July 22, 1992, order. The Debtor filed his *Notice of*

Removal of State Court Action with the United States District Court for the Southern District of Mississippi on February 18, 1993. The matter was then referred to this Court. Mrs. Madison then requested the Court to remand the matter to the Chancery Court.

A good overview of jurisdiction, abstention and remand as they relate to district and bankruptcy courts may be found in 1 *Collier on Bankruptcy* ¶ 3.01(1)(c), 3.01(3), and 3.01(5)(g), beginning at 3-20, 3-71, and 3-103 (Lawrence P. King ed., 15th ed. 1993). Pursuant to § 157, the Court is to determine whether a proceeding is a "core" proceeding or an "otherwise related" or a "non-core" proceeding. Section 1334 of Title 28 of the United States Code specifies when a bankruptcy court must exercise mandatory abstention or when it may exercise permissive abstention. A large body of law has evolved in an effort to define the jurisdiction of bankruptcy courts. The definitive case in the Fifth Circuit is the case of Matter of Wood, 825 F.2d 90 (5th Cir. 1987). (Also see this Court's opinion of Hufford v. Magnolia Federal Bank, et. al. (In re Hufford), opinion dated February 22, 1991, Case No. 8600317WC, Adversary No. 890231WC.)

Pursuant to 28 U.S.C. § 1334(c)(1), there are three broad grounds for which the Court may exercise discretionary abstention: the interest of justice; the interest of comity with state courts; and the respect for state law. Hufford, at p. 8 (citations omitted). Applying 28 U.S.C. § 1334(c)(1) and the Fifth Circuit's opinion in Wood, this Court finds that there are no compelling reasons for this Court to retain this matter. Therefore, this

Court will exercise discretionary abstention and remand the matter to the Chancery Court of Lauderdale County, Mississippi pursuant to 28 U.S.C. § 1452(b). See Browning v. Navarro, 743 F.2d 1069, 1076 (5th Cir. 1984).

CONCLUSION

Accordingly, this Court grants the motion for summary judgment and finds that the Debtor's obligations to Mrs. Madison as ordered in the July 22, 1992, opinion and judgment of the Chancery Court of Lauderdale County, Mississippi are nondischargeable under section 523(a)(5). In addition, the *Motion for Contempt and Related Relief*, Civil Action No. 90-1238(M), is remanded to the Chancery Court of Lauderdale County, Mississippi for determination of the amount of alimony arrearage, if any, the Debtor owes Mrs. Madison pursuant to the orders of the Chancery Court; for determination if the Debtor should be held in contempt; and for determination of any other matters related to the orders entered by the Chancery Court of Lauderdale County, Mississippi.

A separate judgment consistent with this opinion will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 10th day of November, 1993.


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR
SOUTHERN DISTRICT OF MISSISSIPPI
MERIDIAN DIVISION

U. S. BANKRUPTCY COURT SOUTHERN DISTRICT OF MISSISSIPPI FILED
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FINAL JUDGMENT

Consistent with the opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the *Motion for Summary Judgment* filed by Mrs. Madison is hereby granted and that the Debtor's obligations to Mrs. Madison as ordered by the Chancery Court of Lauderdale County, Mississippi are nondischargeable under 11 U.S.C. § 523(a)(5).

It is further ordered that the request to remand the *Motion for Contempt and Related Relief*, Civil Action No. 90-1238(M), is hereby granted, and the matter is remanded to the Chancery Court of Lauderdale County, Mississippi.

This is a final judgment for purposes of Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 10th day of November, 1993.


UNITED STATES BANKRUPTCY JUDGE