UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: GINA BRAY, DEBTOR CASE NO. 02-26628-DWH

GINA BRAY PLAINTIFF

VERSUS ADV. PROC. NO. 03-1044-DWH

USA FUNDS, et al. DEFENDANTS

OPINION

On consideration before the court is a complaint filed by the plaintiff, Dr. Gina Bray, (debtor); answers and affirmative defenses having been filed in response to said complaint by the defendants, United States Department of Education, (Department of Education), and North Carolina State Education Assistance Authority, (NCSEAA); on proof in open court; and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and 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)(I).

II.

The debtor, Gina Bray, is a medical doctor, having graduated in 1994 from West Virginia School of Osteopathic Medicine with a degree of Doctor of Osteopathy. Dr. Bray studied additionally at East Virginia Medical School from 1994 to 1997, and, during this time, completed a transitional internship and a residency in internal medicine. In furtherance of her education, she incurred substantial student loans which will be described hereinbelow.

On October 23, 2002, Dr. Bray filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. She filed the above captioned adversary proceeding on February 10, 2003, seeking to discharge her student loan obligations for the reason that they imposed an undue hardship on her and her dependents as provided in §523(a)(8) of the Bankruptcy Code. The defendants, Department of Education and NCSEAA, each asserted that Dr. Bray does not merit a hardship discharge because her financial circumstances do not meet the three pronged test set forth in *Brunner v. New York State Higher Educ. Serv. Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987), which was adopted by the Fifth Circuit Court of Appeals in *In re Gerhardt*, 348 F.3d 89, 91 (5th Cir. 2003).

Under the *Brunner* test, a debtor must establish: "(1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans." *Brunner*, 831 F.2d at 396. The debtor must prove each element by a preponderance of the evidence before the loans can be discharged. *In re Wynn*, 378 B.R. 140, 147 (Bankr. S.D. Miss. 2007). If the debtor fails to prove all of the elements, the inquiry ends with a finding of non-dischargeability. *Id.*

Alternatively, the Department of Education asserts that the debt owed by Dr. Bray to the Department is non-dischargeable pursuant to §727(b) of the Bankruptcy Code. This contention is premised on the fact that Dr. Bray consolidated her student loans with the Department after filing bankruptcy, and, thus, through novation, owes a post-petition debt, not a pre-petition debt.

For the reasons set forth herein, the court will not find it necessary to address this alternative argument.

The Department of Education is the holder of one promissory note, executed by the debtor on October 7, 2005, to consolidate her student loans. NCSEAA is the holder of two promissory notes executed by the debtor respectively on August 1, 1991, and August 10, 1992, in the amounts of $7,500.00 each. Dr. Bray's debt to the Department of Education and NCSEAA are educational loans made, insured, or guaranteed by a governmental unit as specified in §523(a)(8) of the Bankruptcy Code. The loans are currently in default. Effective March 23, 2007, Dr. Bray owes the Department of Education $225,504.71, and effective March 26, 2007, she owes NCSEAA $48,170.36.

III.

In order for Dr. Bray to have her student loan obligations discharged for hardship reasons, she must establish by a preponderance of the evidence each of the three requirements developed by the *Brunner* decision. The post-trial memorandum submitted by the defendants contains an accurate recounting of the testimony presented at trial. Consequently, the court will only point out specific factual issues that drive this decision.

Without question, the plaintiff has experienced certain financial "setbacks" in her professional career. For years, she has been a recovering alcoholic, and recently lost her position as the attending physician at the Desoto County, Mississippi, jail. However, she is in good health, is an intelligent individual, and has the ability to become a productive member of the medical community. She received a summary suspension from Baptist Hospital, but implied that there was a plausible reason to have this suspension lifted.

Under the first element of the *Brunner* test, Dr. Bray must prove that she cannot maintain, based on current income and expenses, a minimum standard of living for herself and her defendants if she is forced to repay her loans. *See, In re Wynn*, 378 B.R. 140 (Bankr. S.D. Miss. 2007), and *In re Salyer*, 348 B.R. 66 (Bankr. M.D. La. 2006). While the debtor has been confronted with substantial debts, she has not been a paragon of frugal spending. Indeed, her travel, entertainment, and shopping expenses tend to be extraordinary. Dr. Bray explained that she made several trips in furtherance of her continuing medical education, but these trips did not prove to be solely for business purposes. The Department of Education estimated that the debtor's 2006 trip to Orlando cost a minimum of $4,545.71, and that a similar trip to Orlando in 2004 cost approximately $3,425.44. In 2004, Dr. Bray also made trips to Myrtle Beach, South Carolina; Cape Code, Massachusetts; Atlanta, Georgia; and Sandestin, Florida. The testimony revealed that many of her ordinary day to day expenses are equally extravagant. (These expenses are also detailed in the defendants' post-trial memorandum.) These expenditures are indicative that Dr. Bray can maintain a better than minimal standard of living for herself and her dependents, as well as, that she can make reasonable payments on her student loan obligations.

The second element of the *Brunner* test requires a showing that the debtor's hardship circumstances are likely to persist for a significant portion of the repayment period of the student loans. As noted hereinabove, the debtor is a well trained member of the medical profession and has a speciality in internal medicine. The debtor's potential to earn a living that would be considered well above average does not indicate to this court that austere circumstances will persist for her for a significant period of time.

The third element of the *Brunner* test is that the debtor has made a good faith effort to repay the student loans. Other than a generalized comment that she had made some payments on the NCSEAA loans, Dr. Bray offered no specific evidence or documentary proof that she had made any payments to NCSEAA whatsoever. She certainly did not establish that she had made a good faith repayment effort to either of these creditors by a preponderance of the evidence.

Dr. Bray has not established any of the *Brunner* elements. Consequently, this court has no choice but to conclude that the obligations owed to the Department of Education and NCSEAA are non-dischargeable debts. The hardship exception found in §523(a)(8) has been refuted by the debtor's own personal spending habits.

A separate order will be entered consistent with this opinion.

This the 28th day of April, 2008.

/s/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE