UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re: Bk. No. 99-10545-JMD
Chapter 7

Stephen A. Marro,
Debtor

Kathleen Kopp,
Plaintiff

v. Adv. No. 99-1095-JMD

Stephen A. Marro,
Defendant

Alethea Lincoln Froburg, Esq.
Attorney for Plaintiff

Michael R. Kainen, Esq.
Attorney for Defendant

MEMORANDUM OPINION

I. BACKGROUND

Before the Court is a complaint filed by Kathleen Kopp ("Plaintiff") against Stephen A. Marro ("Debtor") objecting to the dischargeability of a number of divorce-related debts, pursuant to 11 U.S.C. § 523(a)(15).[1] A trial was held concerning this matter on November 8, 1999, at which time both parties testified and presented documentary evidence regarding the issues raised by the Plaintiff's complaint. Although this proceeding is conceptually straightforward, it involves two preliminary issues that are somewhat vexatious. First, the Debtor questions the applicability of § 523(a)(15) to the instant matter. Second, there is some uncertainty as to the exact nature of the debts at issue. Apart from these two issues, however, this proceeding does not present complicated issues of fact or law. The parties,

[1] Unless otherwise noted, all section references hereinafter are to Title 11 of the United States Code.

formerly husband and wife, were divorced by order of the Coos County Superior Court on October 9, 1996 (the "Divorce Decree"). The Divorce Decree incorporated a stipulation of the parties, which, inter alia, governs the division of the parties' marital debts. The Debtor filed for bankruptcy under Chapter 7 on February 22, 1999, and received a discharge on June 9, 1999. On his Schedule H, the Debtor listed the Plaintiff as a co-debtor on five debts. The Plaintiff argues that the Divorce Decree imposes obligations on the Debtor with respect to her, obligations that she argues should not be dischargeable pursuant to § 523(a)(15). In response, the Debtor argues that: (1) pursuant to the terms of the Divorce Decree, there is no obligation running from the Debtor to the Plaintiff and therefore § 523(a)(15) has no applicability; and (2) even if § 523(a)(15) applies, it is not satisfied under the instant facts. Since this proceeding would come to an abrupt halt if the Debtor's first argument is correct, it will be considered first.

The Court has jurisdiction of this subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. DISCUSSION

A. The Applicability of § 523(a)(15)

The Debtor argues that the Divorce Decree does not impose any obligations on him vis-a-vis the Plaintiff that existed as of the petition date and that, therefore, there is no recognizable § 523(a)(15) claim since § 523(a)(15) requires the existence of a debt before it may be brought to life. By contrast, the Plaintiff argues that the Divorce Decree does create such an obligation and therefore § 523(a)(15) potentially applies to the instant facts. Because these opposing arguments turn on the substance of the Divorce Decree, it must be examined in detail. Paragraph 17 of the Divorce Decree, under the heading "Allocation of Debt," outlines the parties' marital debt and provides under subsection (h):

> The parties shall equally share and satisfy this debt as of the date of the final divorce decree, by jointly refinancing the total $117,000 in debt, using as collateral the two real properties that are being awarded to them as tenants in common pursuant to other provisions in this final Divorce Decree. Following that refinance process, the parties each agree to pay and satisfy one-half of the re-financed marital debts . . . .

Ex. 1, Divorce Decree, at 5-6. It was established at trial that the parties, despite reasonable efforts, have been unable to refinance their marital debt. The Debtor seizes upon this lack of refinancing in arguing that he is under no obligation to the Plaintiff by virtue of the Divorce Decree. The Debtor essentially argues that paragraph 17(h) of the Divorce Decree envisions a contingent obligation with respect to the marital debt: if refinancing does not occur, then there is no obligation on either party to satisfy one-half of the marital debt. See Debtor's Answer dated July 2, 1999, ¶ 14 ("The contingency (i.e. refinance) never occurred, therefore there was no assignment of debt to the debtor in the final decree . . . ."). Because refinancing has not occurred, the Debtor argues that he is not yet under any compulsion by virtue of the Divorce Decree to satisfy one-half of the marital debt. In response, the Plaintiff argues that the contingent refinancing language found in paragraph 17(h) was intended solely to govern the method of paying the marital debt and its amount, but not its allocation. In other words, the Plaintiff argues that paragraph 17(h) first divides responsibility concerning the marital debt equally between the parties and *then* proceeds to order that the parties seek refinancing for the purpose of creating a new repayment structure. In an effort to strengthen this argument, she points to paragraph 24(d) of the Divorce Decree, which provides:

> Miscellaneous – if the parties, despite their best efforts, cannot obtain the refinancing of the $117,000 debt, then the provisions included herein as to the payment of that debt shall be subject to modification by agreement of the parties or Order of Court.

Ex. 1, Divorce Decree, at 8. The Plaintiff argues that the language of paragraph 24(d) favors her interpretation of the Divorce Decree because it envisions modification of the method of paying the marital debt and determining its amount if refinancing does not occur, but does not anticipate modifying the allocation of the debt under such circumstances. The Debtor counters by arguing that paragraph 24(d)

concerns both allocation and payment and therefore, because refinancing has not occurred, he is under no obligation until the Divorce Decree is modified pursuant to paragraph 24(d).[2]

It is generally accepted that, in interpreting a divorce decree, the plain meaning of the language used, in the context of the entire decree, shall control. See Bonneville v. Bonneville, 142 N.H. 435, 438 (1997) ("In ascertaining the meaning of the divorce decree . . . we look to the plain meaning of the language . . . in the context of the entire decree."). The Court finds that the plain meaning of paragraph 17(h) favors the Plaintiff's construction of the Divorce Decree. Paragraph 17(h) begins by stating that "[t]he parties shall equally share and satisfy this debt . . . ," and concludes by providing that "[following refinancing], the parties each agree to pay and satisfy one-half of the re-financed marital debts . . . ." Ex. 1, Divorce Decree, at 5-6. The plain meaning of this language indicates that it conditions payment on the occurrence of refinancing, but does not so condition the allocation of the marital debt. This conclusion is supported by the language of paragraph 24(d), which limits modification of the Divorce Decree following a lack of refinancing to the *payment* of the marital debt. Paragraph 24(d) is silent with respect to modifying the division of the marital debt should refinancing prove difficult. Accordingly, the Court finds that, as of the date of the Divorce Decree, the Debtor was under an obligation to satisfy one-half of the parties' marital debts. This conclusion is strengthened by the view, as articulated by the New Hampshire Supreme Court, that a court should avoid interpreting property settlement language in a divorce decree so as to create a condition

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[2] This gambit places the Debtor in an awkward position. Section 727(b) generally discharges the Debtor only from liability concerning pre-petition debts. See 11 U.S.C. § 727(b). As defined by the Bankruptcy Code, the term debt is coextensive with the term "claim." See 11 U.S.C. § 101(12) (providing that "debt" means liability on a claim). The term "claim" is given a very broad definition by the Code. See 11 U.S.C. § 101(5) (providing, inter alia, that a claim includes a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . . ."). See also 2 King et al., Collier on Bankruptcy ¶ 101.05[1] (15th rev. ed. 1997). The Debtor essentially argues that the Plaintiff has no claim against the Debtor by virtue of the Divorce Decree and that modification of the Divorce Decree is necessary to give rise to a claim. If this assertion is true, then it would appear that the Debtor's discharge would be inapplicable to any such claim since it would arise post-petition, thereby rendering such a claim fully recoverable by the Plaintiff notwithstanding the Debtor's bankruptcy. The Debtor has offered no specific authority that weakens this observation. Accordingly, this argument by the Debtor appears to work to his disadvantage. As discussed below, however, the Court finds that the Plaintiff does have a claim against the Debtor by virtue of the Divorce Decree that existed as of its issuance, which occurred pre-petition.

precedent given that the primary purpose of such a settlement is to effect a final distribution of marital property. See Bonneville, 142 N.H. at 438. Because the Court concludes that the Debtor is under an obligation pursuant to the Divorce Decree, § 523(a)(15) potentially applies.

B. The Debt at Issue

Before the merits of the Plaintiff's § 523(a)(15) claim are addressed, it is important to specify the debt at issue. The Debtor's obligations concerning the marital debts vis-a-vis the actual lenders have been discharged; the only obligations that are potentially nondischargeable pursuant to the Plaintiff's complaint are those that run from the Debtor to the Plaintiff as a result of the Divorce Decree. See Garrity v. Hadley (In re Hadley), 239 B.R. 433, 435 (Bankr. D.N.H. 1999); MacDonald v. MacDonald (In re MacDonald), 69 B.R. 259, 278 (Bankr. D.N.J. 1986). The Divorce Decree provides that the marital debts total approximately $117,000.[3] See Ex. 1, Divorce Decree, at 5. In addition, it itemizes the marital debt of the parties and then divides responsibility equally between them as to the total debt amount. Accordingly, the only obligation that the Debtor has to the Plaintiff arising under the Divorce Decree is the duty to indemnify her against payment of their marital debts beyond the one-half liability that she was allocated. Such an obligation will not arise unless and until the Plaintiff repays the parties' marital debt to an extent that surpasses the one-half that she must shoulder. See Hadley, 239 B.R. at 435.

At trial, the Plaintiff requested that the Court limit its focus to three specific marital debts: (1) a deficiency claim held by Siwooganock Bank (the "Bank") in the amount of approximately $26,000 resulting from its foreclosure as first mortgagee on certain commercial property previously owned by the parties; (2) a deficiency claim held by a second mortgagee (the "Second Mortgagee") on the same property in the amount of approximately $8,000; and (3) a joint Citibank credit card debt in the amount of approximately $6,300. More specifically, the Plaintiff requests that the Court order that the Debtor must indemnify the

[3] At trial, the Plaintiff represented that this figure is closer to $120,000. The exact amount is not crucial to the Court's conclusions.

Plaintiff in full should she be forced to pay any of these three creditors.[4] The Plaintiff stated that she is willing to be held responsible for the remaining marital debts so long as the Debtor is ordered to indemnify her completely against payment to the Bank, the Second Mortgagee, and Citibank. In other words, the Plaintiff requests that the Court hold, pursuant to § 523(a)(15), that the Debtor is fully responsible for three allegedly nondischargeable marital debts and that the Plaintiff is responsible for the remaining marital debts. In essence, therefore, the Plaintiff requests that this Court use § 523(a)(15) as a pen to rewrite the Divorce Decree. The Plaintiff, however, cites no authority in support of such a liberal reading of § 523(a)(15). The origin of the Plaintiff's request appears to flow from the fact that refinancing never occurred. The Divorce Decree envisions collapsing the individual marital debts into one common pool through refinancing, therefore precluding the need to assign responsibility for individual debts to each party. Paragraph 24(d) of the Divorce Decree, however, allows the parties to seek modification should refinancing not occur, thereby potentially allowing individual assignment of marital debts. The Plaintiff essentially asks that this Court effect such a modification. It is not clear whether a bankruptcy court's equitable powers allow such action.

A bankruptcy court's power under § 523(a)(15) may allow it to single out certain marital debts as nondischargeable or conclude that only a portion of a given debt is nondischargeable.[5] See McGinnis v. McGinnis (In re McGinnis), 194 B.R. 917, 921 (Bankr. N.D. Ala. 1996) (holding that a debt may be partially discharged under § 523(a)(15)); Comisky v. Comisky, II (In re Comisky, II), 183 B.R. 883, 884 (Bankr. N.D. Cal. 1995) (same). But see Taylor v. Taylor, 199 B.R. 37, 42 n.5 (N.D. Ill. 1996) (suggesting that most courts do not allow a partial discharge under § 523(a)(15)). However, it does not appear that a bankruptcy court's power, pursuant to § 523(a)(15), is so broad as to allow it to assign liability concerning individual marital debts when a divorce decree has not done so. Cf. Brennick v. Brennick (In re

[4] Testimony at trial revealed that the Plaintiff has not been contacted by these creditors concerning repayment.

[5] Because this Court is not required to pass on this issue in the context of this proceeding, it leaves the question for another day.

Brennick), 208 B.R. 613, 615-16 (Bankr. D.N.H. 1997) (implicitly suggesting that a bankruptcy court is not empowered to modify the terms of a divorce decree in the context of § 523(a)(15)). In essence, when applying § 523(a)(15), a bankruptcy court must take a divorce decree or separation agreement as it finds it. Accordingly, the Court denies the Plaintiff's request that the Court assign specific liability concerning individual marital debts to the parties, a result that is better sought from the appropriate state court.[6] Instead, the Court will view the Debtor's obligations at issue solely through the lens of the Divorce Decree as it stands: the obligation subject to the Plaintiff's complaint is merely the Debtor's obligation to indemnify the Plaintiff against payment of the marital debts beyond her one-half responsibility.

C. Section 523(a)(15)

The Plaintiff relies solely upon § 523(a)(15) in arguing that the Debtor's obligations to her under the Divorce Decree are nondischargeable. Section 523(a)(15) provides that a debtor will not be discharged from a debt when the debt is:

> 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 a debtor . . . or
>
> (B) discharging the debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor . . . .

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[6] In fact, the Plaintiff has filed with this Court a copy of a document indicating that she is seeking modification of the Divorce Decree at the state court level. The Plaintiff's counsel indicated at trial that the modification process has been frozen as a result of the Debtor's bankruptcy filing. Why the Plaintiff has not sought relief from the automatic stay to pursue modification is not clear. The Court also notes that the Plaintiff's pleadings in this case have not alleged grounds sufficient to modify the Divorce Decree even if this Court were inclined to consider the modification of a decree of another court, which it is not. See Sommers v. Sommers, No. 97-299, 1999 WL 446095, at *3 (N.H. July 2, 1999) (explaining that a property distribution will not be modified without a showing of fraud, undue influence, deceit, misrepresentation, or mutual mistake).

11 U.S.C. § 523(a)(15). Section 523(a)(15) begins by providing that debts arising from a divorce decree or separation agreement are not dischargeable so long as they are not governed by § 523(a)(5), the Bankruptcy Code section that excepts from discharge debts that are in the nature of alimony or support. See 11 U.S.C. § 523(a)(5). The parties stipulated at trial that the obligation at issue arose from the Divorce Decree. Moreover, neither party has alleged that such obligation falls within the purview of § 523(a)(5). Accordingly, the threshold requirements of § 523(a)(15) are met. "Once these initial requirements are met, § 523(a)(15) presumes the relevant debt to be nondischargeable, unless either one of two conditions is shown to exist: (A) the debtor is unable to pay the debt; or (B) the benefits of a discharge to the debtor outweigh the detrimental effects of such a discharge on a spouse, former spouse, or child." Hadley, 239 B.R. at 436 (citing Shea v. Shea (In re Shea), 221 B.R. 491, 499 (Bankr. D. Minn. 1998)). In determining whether the conditions set out in §§ 523(a)(15)(A) or (B) exist, each party's financial wherewithal is analyzed as of the time of trial. See Hadley, 239 B.R. at 436 (citing Konick v. Konick (In re Konick), 236 B.R. 524, 529-30 (B.A.P. 1st Cir. 1999)).

This Court has recently spoken on the issue of which party bears the burden of proof in the context of § 523(a)(15). In Hadley, this Court further parsed the term "burden of proof" and held, in the context of § 523(a)(15), that it should be split into its component parts: the burden of production and the burden of persuasion. See Hadley, 239 B.R. at 437. That opinion explains that the burden of production is satisfied when a prima facie case is made, whereas the burden of persuasion is met when enough evidence is offered so that the trier of fact is persuaded that "the alleged fact is true by the relevant evidentiary margin." Id. The Hadley opinion further holds that "the debtor bears the burden of production regarding § 523(a)(15)(A), while the creditor bears the burden of production and persuasion on all other elements of § 523(a)(15) and bears the ultimate burden of persuasion with respect to § 523(a)(15)(A)." See id. Accordingly, the Plaintiff bears the ultimate burden of persuasion regarding all elements of her claim and bears the burden of production with respect to all elements, except § 523(a)(15)(A)'s "ability to pay" element, which must be borne by the Debtor.

D. The Debtor's Ability to Pay

In determining a debtor's ability to pay pursuant to § 523(a)(15)(A), a court may use the disposable income test as defined by § 1325(b)(2). See Konick, 236 B.R. at 528-29 ("It is proper to use the disposable income test to determine [the debtor's] ability to pay."); Brasslett v. Brasslett (In re Brasslett), 233 B.R. 177, 183 (Bankr. D. Me. 1999). At trial, the Debtor offered copies of Schedules I and J filed with his bankruptcy petition, which outline his monthly income and expenses. His Schedule I indicates that he receives a monthly net income equal to $2,242, by virtue of employment with Sullivan County Economic Development. See Ex. 101, Debtor's Schedules I and J. The Debtor testified at trial, however, that he has recently moved to Florida and is now employed in a new position that yields a net monthly income equal to $1,770. The Debtor's Schedule J provides that his monthly expenses total $2,338. See id. However, the Debtor made handwritten changes to his Schedule J, which he testified reflect his changed expenses resulting from his move to Florida. The changes, which are outlined in Exhibit A to this opinion, yield a $54 increase so that the Debtor's monthly expenses now total $2,392.

The Debtor testified that he now lives with a new companion and three minor children who are not related to the Debtor. It is appropriate to include the income of a debtor's new spouse in applying § 523(a)(15). See Hadley, 239 B.R. at 438. The Court sees no reason in drawing a distinction between a new spouse and a live-in companion and therefore extends its holding in Hadley to cover live-in companions. See Cleveland v. Cleveland (In re Cleveland), 198 B.R. 394, 398 (Bankr. N.D. Ga. 1996) (finding that the income of a debtor's live-in companion may be considered in the § 523(a)(15)(A) analysis); Halper v. Halper (In re Halper), 213 B.R. 279, 284 (Bankr. D.N.J. 1997). See also Gagne v. Gagne, Bk. No. 97-12818-MWV, Adv. No. 97-1351-MWV (Bankr. D.N.H. June 26, 1998) (including the income of a debtor's live-in companion in the context of § 523(a)(15)). Accordingly, the income generated by the Debtor's current live-in companion may be considered. The Debtor testified that his live-in companion's income is consumed entirely by her share of the household's monthly expenses, expenses that he testified are not listed on his Schedule J. This testimony was not rebutted by the Plaintiff. Accordingly, based upon the evidence presented at trial, the Debtor's live-in companion's income is offset in its entirety by expenses

not included in the Debtor's Schedule J and, therefore, has no effect on the Debtor's net disposable income.

Reconciling the Debtor's monthly income with his monthly expenses yields a monthly deficit amount equal to $622.[7] Accordingly, based upon the evidence provided by the Debtor, the Court finds that the Debtor has made out a prima facie case that he lacks the ability to pay the obligations at issue pursuant to § 523(a)(15)(A). In other words, he has fulfilled his burden of production with respect to § 523(a)(15)(A). The issue, therefore, is whether the Plaintiff has satisfied her burden of persuasion with respect to the same issue. The Court concludes that she has not.

At trial, the Plaintiff argued that the following expenses as alleged by the Debtor are unreasonably high and therefore should not be included in the disposable income calculation: (1) $108 per month for renter's insurance; (2) $441 per month for a car payment; (3) $400 per month for the Debtor's food; and (4) $790 per month for rent given that the Debtor testified that he pays for his household's monthly rent in full. The Court agrees with the Plaintiff's argument concerning the renter's insurance payment. The Debtor testified that the large renter's insurance premium was required by the company that provides his car insurance. The Court finds this representation questionable given that he also testified that he has little in the way of assets. Accordingly, it will ignore the renter's insurance payment in computing the Debtor's disposable income. Therefore, the Debtor's monthly deficit with respect to disposable income is reduced to $514.[8]

The Court also questions the $400 monthly food expense. The Debtor's food expense as originally listed in his Schedule J was $250. Testimony at trial suggests that some of the $400 expense may account for food provided to the three minor children residing with the Debtor. A question arises, therefore, as to whether such an expense should be included in the § 523(a)(15)(A) calculus. Section 523(a)(15)(A) provides that a debtor's ability to pay turns on his or her income or property after accounting for expenses

[7] $1770 - $2,392 = ($622)

[8] $622 - $108 = $514

concerning "the maintenance or support of the debtor or a dependent of the debtor . . . ." 11 U.S.C. § 523(a)(15)(A). The Bankruptcy Code fails to define the term "dependent." See In re Rigdon, 133 B.R. 460, 463 (Bankr. S.D. Ill. 1991). Many courts, in various bankruptcy contexts, have given the term "dependent" a broad construction and have concluded that it means "a person who reasonably relies on the debtor for support and whom the debtor has reason to and does support financially." Leslie Womack Real Estate, Inc. v. Dunbar (In re Dunbar), 99 B.R. 320, 324 (Bankr. M.D. La. 1989) (using such a definition in determining that nine unrelated children living with the debtor were "dependents" for purposes of listing dependents on the debtor's schedules); Rigdon, 133 B.R. at 464 (adopting Dunbar's definition and its reasoning). See also In re Tracy, 66 B.R. 63, 67 (Bankr. D. Ma. 1986) (adopting a broad definition of "dependent" for purposes of § 1325(b)(2)(A)). This Court agrees with this definition, at least for purposes of § 523(a)(15)(A). The Court notes, however, that this standard requires a case-by-case analysis. See Dunbar, 99 B.R. at 325 n.3 (suggesting that the following factors may be relevant in determining whether a person qualifies as a dependent under the Bankruptcy Code: (1) the length of time the person has resided in the household; (2) the reasons he or she resides in the household; and (3) whether support of the claimed dependent is reasonable). Testimony at trial indicates that the Debtor's present household situation, i.e., his residing with a live-in companion and her three children, is a relatively recent occurrence. Such a circumstance cuts against the three children qualifying as dependents of the Debtor for purposes of § 523(a)(15)(A). It does not appear that such children should reasonably rely on the Debtor for support. The Court finds, therefore, that the three minor children residing with the Debtor are not dependents for purposes of § 523(a)(15)(A). Accordingly, the Court concludes that the Debtor's individual monthly food expense reasonably necessary for the support of the Debtor and his dependents is closer to $250, thereby reducing his monthly disposable income deficit to $364.[9]

The remaining expenses, however, appear reasonable to the Court, especially considering that the Plaintiff did not provide the Court with convincing evidence indicating otherwise. The Debtor testified that

[9] $514 - $150 = $364

his occupation requires a reliable vehicle. The Court finds that the Debtor's monthly car payment of $441 is therefore reasonable. In addition, the Court finds that, although the Debtor's expenses should not reflect costs associated with the three children in his household, a monthly payment close to $790 may be what it would cost the Debtor to rent or finance housing without the children. In any event, the Debtor's monthly disposable income would still be negative even if this expense was assigned what might be considered a more reasonable figure of $500.

The Plaintiff also argues that the Debtor's current annual net salary of $21,240 is self-imposed insofar that he voluntarily left more lucrative employment in New Hampshire for a lower paying job in Florida, and that, therefore, he would have the ability to pay the obligation at issue if he sought a better paying job, a situation that is within his power. The Debtor testified at trial, however, that it was his hope in moving to Florida that he would secure a more favorable job than he had in New Hampshire. It appears that the Debtor took a risk that may have not paid off. However, it does not appear that the assumption of such a risk was unreasonable. Nor was any evidence presented suggesting that the Debtor has intentionally underemployed himself. Accordingly, the Court rejects the Plaintiff's argument concerning the Debtor's change in employment. Finally, the Plaintiff argues that the best evidence of the Debtor's ability to pay is the observation that the Plaintiff has so far paid much of the marital debt while earning a salary similar to that currently earned by the Debtor. Although the Court finds some merit in this argument, it concludes that such a position is overshadowed by the fact that, based upon the evidence presented, the Debtor faces a negative monthly deficit with respect to his income and expenses. Accordingly, the Court finds that the Plaintiff has not fulfilled her burden of persuasion with respect to § 523(a)(15)(A). Based upon this conclusion, the Court need not reach the question of whether the Plaintiff has carried her burden of persuasion regarding § 523(a)(15)(B).

III. CONCLUSION

For the reasons stated above, the Court finds that the Plaintiff has not satisfied her burden of persuasion with respect to § 523(a)(15)(A). Consequently, the Debtor's obligation, by virtue of the Divorce

Decree, to indemnify the Plaintiff against payment of the marital debts beyond her one-half responsibility is dischargeable. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate judgment in accordance with this opinion shall be entered.

DONE and ORDERED this 10th day of December, 1999, at Manchester, New Hampshire.

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J. Michael Deasy
Bankruptcy Judge

EXHIBIT A

Original and Amended Schedule J Expenses

Expense	Original Amount	Amended Amount
Rent or Mortgage Payment	$800.00	$790.00
Electricity or Heating Fuel	0.00	140.00
Water and Sewer	0.00	65.00
Telephone	0.00	80.00
Food	250.00	400.00
Clothing	50.00	0.00
Laundry and Dry Cleaning	100.00	0.00
Medical Expenses	25.00	0.00
Transportation	250.00	100.00
Recreation	100.00	0.00
Renter's Insurance	10.00	108.00
Life Insurance	35.00	32.33
Auto Insurance	77.00	35.67
Prior Years Taxes	200.00	200.00
Auto Payment	441.00	441.00
Total	$2,338.00	$2,392.00