

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 02-14305 )  
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TINA RENEE WILLIAMS )  
)  
Debtor )  
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)  
TINA RENEE WILLIAMS )  
)  
Plaintiff )  
)  
vs. ) PROC. NO. 04-1328  
)  
)  
DONALD L. WILLIAMS )  
J. BRYAN NUGEN )  
)  
Defendants )

**DECISION AND ORDER**  
**REGARDING VIOLATION OF DISCHARGE INJUNCTION**

At Fort Wayne, Indiana, on February 1, 2006

The debtor, Tina Williams, initiated this adversary proceeding seeking damages, including attorney fees, from her ex-husband and his attorney for allegedly violating the discharge injunction by seeking to have her held in contempt of court for the failure to comply with the terms of the settlement agreement that ended the Williams' marriage. The matter is before the court for a decision following trial and the submission of post-trial briefs.

Tina and Donald Williams were divorced on June 27, 2002. Pursuant to the terms of their decree, Tina was, among other things, required to pay all of the uninsured health care costs incurred for the benefit of their daughter. She was also allowed to remain in the couple's former home until it was sold and, while doing so, was to make all of the mortgage payments and to pay all of the utility bills associated with the property. The home did not sell as quickly as the Williams may have

expected and the former Mrs. Williams was not able to meet all of her financial obligations. So, on October 15, 2002, she filed a petition for relief under chapter 7 of the Bankruptcy Code, listing Donald Williams as a creditor. The case proceeded without incident and she received a discharge on January 24, 2003. Over a year later, on May 5, 2004, Mr. Williams, acting through his attorney the defendant Bryan Nugen, filed a petition in the Allen Circuit Court asking that the debtor be found in contempt of court because she had “willfully and intentionally violated” their agreement and that court’s order by, among other things, failing to pay orthodontic expenses that the parties had charged on Mr. William’s credit card, failing to make the mortgage and utility payments on the home and, by doing so, incurring late fees, penalties, and other expenses in connection with the home.<sup>1</sup>

After being served with the petition for contempt, the debtor retained domestic relations counsel who contacted Mr. Nugen and explained that the obligations in question had been discharged in Tina Williams’ bankruptcy and could not be the basis of a contempt action. When Mr. Nugen did not respond, counsel inquired again. Once again, Mr. Nugen failed to respond. He did not amend the contempt petition or clarify the relief he was seeking. Mrs. Williams’ domestic relations counsel eventually found it necessary to file a motion to dismiss portions of the contempt petition, together with a brief in support thereof, based upon her discharge. Still Mr. Nugen did not change course. It was not until after the debtor retained bankruptcy counsel, who filed this adversary proceeding and then a motion for a preliminary injunction, that Mr. Nugen moved to voluntarily dismiss the challenged portions of the contempt petition.<sup>2</sup> In the meantime, the debtor incurred more than

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<sup>1</sup>The allegations concerning contemptuous conduct also included the debtor’s filing bankruptcy and obtaining a discharge.

<sup>2</sup>The state court apparently never ruled on Ms. Williams’ motion to dismiss, which was filed several months prior to this adversary proceeding. The adversary proceeding and the motion for preliminary injunction appear to have been prompted when the state court set the contempt petition, as originally filed, for trial in early February 2005, without addressing the previous motion to

\$5,000 in attorney fees in responding to the challenged allegations, which she seeks to recover in this adversary proceeding.

Section 524 of the United States Bankruptcy Code provides that a bankruptcy discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any debt as a personal liability of the debtor, whether or not discharge of such debt is waived.” 11 U.S.C. § 524(a)(2). Like other injunctions, the discharge injunction of § 524 may be enforced through the civil contempt power in order to compel obedience to the court’s order and to compensate for any damages caused by the non-compliance. Cox v. Zale Delaware, Inc., 239 F.2d 910, 915-16 (7th Cir. 2001); In re Cherry, 247 B.R. 176, 187 (Bankr. E.D. Va. 2000); In re Pincombe, 256 B.R. 774, 782 (Bankr. N.D. Ill. 2000). “To support a finding of contempt, the moving party must establish that an order of the court was in effect, the defendant knew of the order, and the defendant failed to comply with the order.” Kimco Leasing, Inc. v. Knee, 144 B.R. 1001, 1009 (N.D. Ind. 1992). See also, In re Fluke, 305 B.R. 635, 644 (Bankr. D. Del. 2004). It must do so by clear and convincing evidence. Kimco Leasing, Inc., 144 B.R. at 1009. See also, Matter of Rimsat, 208 B.R. 910, 912 (Bankr. N.D. Ind. 1997). The defendant’s “state of mind . . . is irrelevant and therefore good faith, or the absence of an intent to violate the order, is no defense.” Cherry, 247 B.R. at 187.

The defendants do not argue that they did not have knowledge of the bankruptcy or the debtor’s discharge. What they do contend is that they did not violate the discharge injunction because the debts for which they sought to hold the debtor in contempt had not been discharged or they were not attempting to collect payment at all, but were, instead seeking to do something else, such as clarify the distribution of the parties’ property to somehow account for the debtor’s failure

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dismiss.

to pay the bills associated with the home. The latter argument is not really a defense, because an attempt to adjust a property settlement agreement because of obligations that have been discharged is itself a violation of the discharge injunction. Fluke, 305 B.R. at 639-43; In re Tostige, 283 B.R. 462 (Bankr. E.D. Mich. 2002); In re Brabham, 184 B.R. 476, 485-88 (Bankr. D. S.C. 1995). Accordingly, the essential question before the court is whether the debts in question were discharged.

This court was never asked to make a determination of non-dischargeability under § 523(a)(15)<sup>3</sup> and so the only other path which might make these two debts nondischargeable would be to characterize them as alimony, maintenance or support under § 523(a)(5). Yet, any argument that the debts in question were excepted from discharge by § 523(a)(5) is so weak as to be all but completely frivolous.<sup>4</sup> While the court is quite willing to characterize the ongoing obligation to pay the medical expenses for one's children as alimony, maintenance or support, in this case the orthodontic expenses pre-date the Williams' decree. Furthermore, the parties had placed those charges on Mr. Williams' credit card and the settlement agreement specifically gave him the obligation to pay that particular marital debt. To think that a particular debt, incurred prior to date of a property settlement agreement, which is part of the debts one spouse is directed to pay, could somehow constitute a debt for alimony, maintenance or support imposed on the other spouse, simply because the other spouse has the obligation to pay uninsured medical expenses that might be incurred

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<sup>3</sup>This case is governed by the law as it existed prior to October 17, 2005.

<sup>4</sup>The argument that the debts constitute non-dischargeable alimony, maintenance or support is set out in the defendants' portion of the pre-trial order. It has not been advanced in their post-trial brief, which was limited to little more than the argument that the defendants' actions either did not constitute an attempt to "collect, recover or offset" payment of a debt or had some type of reasonable or good faith basis so that sanctions are not appropriate. As such, the court could very well consider the issue to have been waived. It addresses it, however, because the plaintiff bears the burden of proving that court's order has been violated and that requires it to prove not only that the defendants attempted to collect payment of a debt, but also that the debt in question had been discharged.

in the future, is pure fantasy. If the debtor was supposed to pay that debt, the decree would have said so directly. It would not have specifically given the responsibility to Mr. Williams and then simultaneously, silently and surreptitiously imposed it upon the debtor. As for the expenses associated with the home which the former Mrs. Williams was supposed to pay, the court will readily acknowledge that the obligation to provide shelter for someone else constitutes a debt for alimony, maintenance or support. Matter of Balvich, 135 B.R. 327, 335 (Bankr. N.D. Ind. 1991). Nonetheless, the obligation to pay the bills associated with providing your own shelter does not constitute a debt for alimony, maintenance or support owed to someone else.

Whatever obligation the debtor may have owed to Mr. Williams because of the orthodontic bills for their daughter or to make the mortgage payments and pay the utility bills associated with their former residence was discharged in her bankruptcy. Accordingly, if the defendants' actions in the Allen Circuit Court constituted an attempt to collect payment of those debts, they have violated the discharge injunction and may be held in civil contempt of court. On this issue, the defendants argue that they were not seeking payment of a debt, but were merely seeking to clarify the ownership interests of the parties in the property.<sup>5</sup>

If the defendants were not seeking to collect payment of a debt and were, instead, seeking to accomplish something entirely different, they chose a very strange way to put that request before the state court. They alleged that the debtor had "willfully and intentionally violated" the court's orders requiring her to pay certain debts and specifically asked the court to find the debtor "in contempt of court." The whole purpose of a contempt proceeding is to compel someone to comply

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<sup>5</sup>To the extent any effort at "clarification" included some kind of adjustment in the allocation of the property because of the dischargeable debts the debtor did not pay that, in itself, would have been a violation of the discharge injunction. Fluke, 305 B.R. at 639-43; Tostige, 283 B.R. 462; Brabham, 184 B.R. at 485-88.

with the orders of a court and to compensate the beneficiary of those orders for any damages associated with non-compliance. To seek to have someone held in contempt of court for having failed to pay a particular debt can have no purpose other than to force them to pay. This conclusion is not, as the defendants contend, based upon “a hyper-technical and strained reading” of their petition. It is based upon the plain meaning of the words they chose to use in describing the debtor’s actions and the request they made of the Allen Circuit Court. Words have meaning and the defendants are in no position to complain if the words they used are taken at their face value. Furthermore, if the defendants actually meant something other than what they said or intended to say something other than what they actually did, they had plenty of opportunities to correct the problem. Yet, they never did anything to dispel what they now seem to suggest was a terrible misinterpretation of their actions, brought about by the vagaries of notice pleading. Although advised by debtor’s domestic relations counsel that they were improperly attempting to collect a discharged debt, the defendants never responded. Although given every opportunity to clarify the relief that was being sought, whether by a letter designed to allay opposing counsel’s fears or by a formal amendment to the petition, the defendants did nothing until forced to by plaintiff’s motion for a preliminary injunction in this court. Simple misunderstandings are usually quickly corrected. Silence, together with unchanged and apparently determined conduct, in the face of repeated complaints is something entirely different.

The defendants have violated the discharge injunction of § 524 and are in civil contempt of this court’s order discharging the debtor. As a result, the plaintiff is entitled to recover the damages she has sustained because of their disobedience, together with the reasonable attorney fees incurred

in connection with this action.<sup>6</sup> See, Cox, 239 F.2d at 916. See also, Cherry, 247 B.R. at 189; Perviz, 302 B.R. at 370. The evidence presented at trial indicates that the plaintiff incurred attorney fees totaling \$5,348.20 in connection with the state court proceedings and reopening the main bankruptcy case to facilitate the filing of this adversary proceeding. The reality, the necessity and the reasonableness of those fees are not questioned or challenged. They represent the actual damages plaintiff sustained because of the defendants' actions. The plaintiff is also entitled to recover the reasonable attorney fees and costs associated with the prosecution of this adversary proceeding. The court has not yet received evidence on that issue because of its preference to defer hearing evidence concerning the amount of fees associated with litigation until it has determined whether there is a right to recover them.

THEREFORE, plaintiff's counsel shall have thirty (30) days from this date to file an affidavit itemizing the reasonable attorney fees and expenses plaintiff incurred in connection with this adversary proceeding. Defendants shall have fifteen (15) days thereafter within which to file any objections thereto. In the absence of any objections, the court will determine the reasonable amount of plaintiff's attorney fees and expenses without further hearing. The entry of final judgment in this matter will be deferred until the court determines the amount of the fees plaintiff is entitled to recover.

SO ORDERED.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court

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<sup>6</sup>To the extent an award of the attorney fees incurred in prosecution this action may require a finding that the defendants willfully violated the discharge injunction, their actions easily rise to that level. Like a willful violation of the automatic stay, a willful violation of the discharge injunction does not require that one act with the specific intent to violate the injunction but only that, knowing a discharge has been issued, one intend the actions which are found to violate that injunction. Perviz, 302 B.R. at 370; Cherry, 257 B.R. 187-88; Pincombe, 256 B.R. at 783.