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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

LESLIE ROBERT MONDINO,
Debtor.

Case No. 91-05527

COUNTY OF SANTA CLARA,
Plaintiff,

**MEMORANDUM DECISION RE
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
(SUPPORT PAYMENTS UNDER 11
U.S.C. § 523 (a) (5))**

vs.

LESLIE ROBERT MONDINO,
Defendant.

FACTS

Debtor and his spouse were separated for a period prepetition during which the spouse applied for and qualified for AFDC payments for the Debtor's family of six children. The County of Santa Clara, Department of Social Services for Public Assistance made AFDC payments to Mrs. Mondino for the period from March 1988 to October 1988. The County of Santa Clara filed a lawsuit against Debtor and obtained a default judgment in April 1989 for reimbursement for the amount expended on behalf of his family. The Debtor filed this Complaint to have this debt to the County of Santa Clara, which has not been satisfied, determined to be dischargeable.

DISCUSSION

Bankruptcy Code Section 523(a)(5) provides in pertinent part that a discharge under Section 727 does not discharge a debt "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, but not to the extent that (A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any debt which has been assigned to the Federal Government or to a State or any political subdivision of such State),..."

The language of Section 523(a)(5) is clear and unambiguous. This section was amended in 1986 to add the language which includes "other order of a court of record, determination made in accordance with State or territorial law by a governmental unit,..." Furthermore, the legislative history to the amendment notes that the amendments "ensure that support determinations made in accordance with state or territorial law ... are encompassed fully within the statutory language." H.R.Conf. Rep. No. 958, 99th Cong., 2d Sess. 47-48 (1986). It further provides that "[t]his provision will extend the exception to discharge in 11 U.S.C. § 523(a)(5) to embrace support determinations involving various types of processes or procedures...and various forms of determinations. Such determinations may be made by hearing officers or commissioners of agencies, subagencies, departments or courts of counties, municipalities or states -- to cite some examples only." Id.

The County's right to reimbursement from the Debtor arises by operation of law when his family receives public assistance based on his obligation to support his minor children. Cal. Civ. Code §§ 242, 248; Cal. Welf. & Inst. Code § 11477. The Debtor's obligation to support his children continues notwithstanding that they are receiving public assistance. Cal. Civ. Code § 208. The assignment of support rights is also mandated under federal law as a precondition to receiving AFDC funds. 42 U.S.C. § 602(a)(26). Federal Public Health and Welfare law also provides that an obligation arising from support rights assigned to the State are not dischargeable. 42 U.S.C. § 656. Therefore, this Court rejects the Debtor's argument that the spouse's right to support had not yet accrued and could

1 not be assigned to the County.

2 In a case very similar to this one, the Bankruptcy Court for the Northern District of Ohio,
3 interpreting 42 U.S.C. § 656 and the amended Section 523(a)(5), held that a debt for child support
4 pursuant to a judgment granted to a public agency and not pursuant to a divorce decree or separation
5 agreement is nondischargeable. In re Jones, 94 Bankr. 99, 101-03 (Bankr. N.D. Ohio 1988). The
6 Debtor in that case had advanced the same arguments as Mr. Mondino has in this case. As in this
7 case, the State in Jones had reduced its claim against the Debtor based on an assignment of support
8 rights to judgment. Id. at 100.

9 The Debtor's obligation to the County is the type of obligation contemplated under Section
10 523(a)(5). Therefore, the debt is held to be nondischargeable under Section 523(a)(5).

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