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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:)	Bankruptcy Case
)	No. 02-31399DM
DEBORAH KUHMAN STACEY,)	
)	
Debtor.)	
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JOHN STACEY, JR., INDIVIDUALLY, AND)	Adversary Proceeding
AS CUSTODIAN FOR THE BENEFIT OF)	No. 02-3220DM
KENDALL STACEY AND JOHN STACEY III,)	
AND AS GUARDIAN OF KENDALL STACEY)	
AND JOHN STACEY III,)	
)	
Plaintiff,)	
)	
v.)	
)	
DEBORAH KUHMAN STACEY,)	
)	
Defendant.))	

AMENDED MEMORANDUM DECISION

INTRODUCTION

This case raises the question of whether an obligation to fund and maintain an investment account, created in an enforceable Judgment of Dissolution of Marriage (the "Settlement Agreement") exclusively for the debtor's children's college or university education, constitutes child support such that the funds inappropriately removed from that account qualify as a

1 nondischargeable debt under 11 U.S.C. 523(a)(5)¹.

2 Trial took place on July 11, 2003. Appearances were noted
3 on the record. For the reasons stated herein, the court
4 concludes that the debtor's obligation to replace the improperly
5 withdrawn funds is in the nature of child support and therefore
6 nondischargeable under § 523(a)(5).

7 FACTS²

8 John Stacey ("Plaintiff") and Deborah Kuhman Stacey, the
9 debtor and defendant in this adversary proceeding ("Defendant"),
10 were married on March 3, 1984. During their marriage they had
11 two children, Kendall Stacey and John Stacey III. The parties'
12 marital separation on August 10, 1994, ended with a divorce and
13 the Settlement Agreement filed on December 12, 1996. The
14 Settlement Agreement structure provides for (1) division of
15 property, (2) spousal support, (3) child custody and timeshare,
16 and (4) child support. The child support section allocates funds
17 for overall maintenance and support of the children (¶ 17),
18 medical insurance and uninsured medical costs (¶ 18), and private
19 school education and extra-curricular activities (¶ 19). The
20 Settlement Agreement terminates child support payments at the age
21 of 18, assuming the child is not married, self-supporting, or a
22 high school graduate prior to that age (¶ 20). Paragraph 21 of
23 the Settlement Agreement states:

24
25 _____
26 ¹Unless otherwise indicated, all section and rule references
27 are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and the Federal
28 Rules of Bankruptcy Procedure, Rules 1001-9036.

²The following discussion constitutes the court's findings of
fact and conclusions of law. Fed. R. Bankr. P. 7052(a).

1 As and for additional child support, each party
2 shall within sixty days of the execution of this
3 Judgment, deposit the sum of \$50,000 into a joint
4 investment account to be used exclusively to pay
5 for the children's college or university
6 education. This shall include tuition, required
7 fees, room and board, books, and travel costs.
8 Neither party shall be required to pay for any
9 additional costs; provided, however, the parties
10 may agree to use available funds from this
11 account to pay such costs if they so agree. The
12 parties shall consult with their estate planning
13 and/or tax counsel to determine the best method
14 of accomplishing the foregoing.

15 Pursuant to the Settlement Agreement, each party opened two
16 investment accounts, one for each child, and deposited a total of
17 \$25,000 in each account in three separate installments over
18 separate calendar years. Neither party contested that the
19 sequential deposits were to protect against the imposition of
20 gift tax in the event the taxing authorities characterized the
21 accounts as gifts to the children. Such a protective structure
22 follows from the Settlement Agreement instruction to consult
23 estate counsel regarding deposits.

24 Before the children reached university age, Defendant
25 withdrew \$29,000 from Kendall Stacey's account and \$29,887.96
26 from John Stacey III's account. In superior court, Defendant
27 testified that she used the money for private school tuition for
28 the children and was unaware at that time that she could not
withdraw the funds as needed. Pl.'s Ex. 2, 3-4. On September
13, 2001, Plaintiff filed a motion asking the court to order
Defendant to replenish the accounts as well as assign him
custodial rights on the account.³ The superior court granted

³Defendant held custodial authority on the accounts prior to the motion.

1 both requests, ordering Defendant to replenish the accounts plus
2 interest at the legal rate of 10%. Two weeks subsequent to that
3 order (the "Superior Court Order")⁴, Defendant filed a Chapter 7
4 bankruptcy petition naming the two children as creditors owed a
5 total of \$58,887.96.

6 On August 19, 2002, Plaintiff filed a Complaint to Determine
7 the Nondischargeability of Debt under § 523(a)(5)⁵. Defendant
8 answered the complaint on September 16, 2002, characterizing the
9 debt as a property settlement rather than child support, thus
10 dischargeable. On December 20, 2002, Plaintiff filed a Motion
11 for Summary Judgment. This court denied that motion based on the
12 genuinely disputed issues surrounding the exact nature of the
13 debt.

14 At trial, Plaintiff contended that the plain language in
15 paragraph 21 of the Agreement connotes "child support" and
16 therefore no ambiguity exists as to the nature of the support.
17 Pl.'s Trial Br., 5, lines 25-28. In addition, Plaintiff asked
18 this court to defer to the Superior Court Order finding that the
19 funds were solely meant to support the children's university
20 education. Def.'s Trial Br., 6, lines 2-9.

21 Defendant agreed that the money from the accounts belonged
22 to the children and not to either spouse, but characterized the
23 funds as part of a property settlement for the benefit of the

24 ⁴Superior Court of California, County of San Mateo, No.
25 F022471, In Re the Marriage of Petitioner: Deborah Kuhman Stacey
26 and Respondent: John Markell Stacey, filed May 9, 2002

27 ⁵Plaintiff did not seek relief under 523(a)(4), "for fraud or
28 defalcation while acting in a fiduciary capacity . . .", and at
trial Plaintiff's counsel reiterated that Plaintiff was not
seeking relief on that basis.

1 children. Defendant's Trial Brief, 5, lines 12-15. Because such
2 a characterization takes the funds out of the enumerated
3 exceptions of § 523(a), Defendant requested that the debt be
4 discharged.

5 DISCUSSION

6 Section 523(a)(5) excepts from an individual debtor's
7 discharge any debt owed to a spouse, former spouse, or child of
8 the debtor for alimony, maintenance or support in connection with
9 a separation agreement, divorce decree or other order of a court
10 of record. See 11 U.S.C. 523(a)(5). A debtor discharges a
11 liability designated as alimony, maintenance, or support unless
12 such liability is actually in the nature of alimony, maintenance,
13 or support. 11 U.S.C. 523(a)(5)(B). These exceptions to
14 discharge depart from the "fresh start" principle of bankruptcy
15 in favor of enforcing familial obligations as a public policy.
16 Shaver v. Shaver, 736 F.2d 1314, 1315-1316 (9th Cir. 1984).
17 Hence, in order for Defendant to discharge the debt at issue, the
18 court would have to conclude that the investment fund was not in
19 the nature of support for her children.

20 California Family Code § 3901(a) requires that parents
21 continue the duty of support imposed by § 3900⁶ "as to an
22 unmarried child who has attained the age of 18 years, is a full-

24 ⁶"Subject to this division, the father and mother of a minor
25 child have an equal responsibility to support their child in the
26 manner suitable to the child's circumstances." Cal. Fam. Code Ann.
27 § 3900 (2003).

1 time high school student, and who is not self-supporting, until
2 the time the child completes the 12th grade or attains the age of
3 19 years, whichever occurs first." Although the Family Code does
4 not require parents to provide college tuition to their children,
5 it does allow them to agree to provide additional support, as
6 well as authorizes the court to inquire as to whether an
7 agreement to provide additional support has been made. Cal. Fam.
8 Code Ann. § 3901(b) (2003). The Settlement Agreement executed by
9 both Plaintiff and Defendant contains such a contractual
10 agreement to pay for their children's post-majority education.
11

12 However, this court need not affirmatively rule on whether
13 this contractual child support obligation conflicts with
14 California law because federal law dictates whether an obligation
15 arising out of a divorce decree or settlement agreement is
16 nondischargeable support under § 523(a)(5). Seixas v. Booth (In
17 re Seixas), 239 B.R. 398, 402 (9th Cir. BAP 1999). Congress did
18 not include specific language to restrict § 523(a)(5) to only
19 those obligations owed to minor children. Therefore, a
20 contractual obligation to pay a child's post-majority college
21 education expenses may still be nondischargeable under federal
22 law, even though California state law imposes no such obligation.
23 Seixas, 239 B.R. at 402.
24

25 Furthermore, bankruptcy courts, in determining the nature of
26 a debt, are not bound by the labels used in the state court, nor
27 are they required to accept the language chosen by the parties to
28 define terms of a contract as conclusive of their intended

1 meaning. Seixas, 239 B.R. at 402. It then follows that in this
2 case, the court cannot merely accept the seemingly unambiguous
3 wording of paragraph 21 to determine conclusively the nature of
4 the debt as child support. Nor does the Superior Court Order's
5 characterization of the funds as child support bind the
6 bankruptcy court to a similar conclusion. "The intent of the
7 parties and substance of the obligation are the touchstone of the
8 § 523(a)(5) analysis in the Ninth Circuit." Seixas, 239 B.R. at
9 404.

10
11 Shaver set out factors to guide the court in determining
12 whether allocation of funds within a settlement agreement is "in
13 the nature of alimony, maintenance, or spousal support" or
14 alternatively, a dischargeable debt arising from a property
15 settlement. See Shaver, 736 F.2d at 1314 (whether debtor's
16 contractual obligation to make monthly payments to former wife
17 constituted spousal support or a property settlement). Such
18 factors include whether the agreement explicitly called for
19 spousal support outside of the clause in question, the presence
20 of minor children, and a significant imbalance in the earning
21 capacity of the parties. Id. at 1316. There, because no other
22 provision in the divorce decree allocated support, the obligee
23 maintained custody of three minor children, and possessed no job
24 related skills while the debtor owned his own car dealership, the
25

1 court found the obligation to be in the nature of spousal
2 support, thus nondischargeable.⁷ Shaver, 736 F.2d at 1317.

3 Although courts commonly apply these factors to determine
4 whether an obligation constitutes spousal support, those factors
5 do not directly carry over as easily to determine obligations in
6 the nature of child support. Seixas, 239 B.R. at 404. Thus,
7 courts must look at the surrounding circumstances and all other
8 relevant information revealing whether the parties intended a
9 particular obligation to be in the nature of child support. Id.
10 In Seixas, the court looked at the plain language and purpose of
11 the contract clause in question, similar language as paragraph 21
12 in the Settlement Agreement, and found that although it was
13 labeled as "ADDITIONAL BENEFITS FOR CHILDREN," its sole purpose
14 created support for the children throughout their college
15 education. Id. at 405. The court also took notice that no other
16 provision of the agreement set aside money for their children and
17 that the obligation was of limited duration, before affirming the
18 bankruptcy court's finding that the obligation constituted child
19 support and should not be discharged. Id.

21
22 Using a combination of the factors applied in Shaver and in
23 Seixas persuades this court to conclude that the debt at issue is
24 in the nature of child support. First, looking past the label
25 "as additional child support", the plain and unambiguous purpose
26

27 ⁷The Shaver Court also noted in its findings that the obligor
28 claimed the payments as tax deductible, and to be deductible the
payments must constitute support. 736 F.2d at 1315 n. 1.

1 of the paragraph exclusively provides protection and support for
2 the university education of the children. Next, unlike Shaver,
3 other provisions in the Settlement Agreement do allocate support
4 for the children, but only to the extent required by California
5 state law. Only this paragraph offers any support to the
6 children upon reaching the age of majority. Also, although the
7 paragraph allows for the parties to stipulate to use of the funds
8 beyond the enumerated provisions within the paragraph, the
9 obligation limits itself in duration to extend only from the time
10 of first deposit, through graduation from the college or
11 university.
12

13 Additional factors in support of the court's conclusion
14 stand in direct conflict with the arguments of the Defendant.
15 The timing and structure of the deposits to minimize a tax burden
16 does not affect the court's qualification of the nature of the
17 debt because taxing authorities are not bound by the parties'
18 assigned labels or characterization of debt. Kritt v. Kritt (In
19 re Kritt), 190 B.R. 382, 389 (9th Cir. BAP 1995). Therefore, the
20 deposit installments were nothing more than safeguarding the
21 parties from adverse tax consequences. Finally, the court
22 rejects the Defendant's characterization of the funds as property
23 settlement because both parties already fulfilled their property
24 settlement obligations to one another. For example, each party
25 retaining one of the two cars, and half of the proceeds from the
26 sale of the family home, both represent portions of the property
27 settlement. Even without such specific evidence of property
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1 settlement, paragraph 21 of the Settlement Agreement directs that
2 funds already owned by each of the parties be allocated to the
3 children's college education, through the investment accounts.
4 Hence, even if the source of the accounts' deposits originated
5 from the property settlement, Defendant's obligations under
6 paragraph 21 of the Settlement Agreement were for child support.

7 Even if the Defendant filed bankruptcy prior to initial
8 funding of the accounts, the court would still conclude that
9 paragraph 21 is in the nature of child support, thus a
10 nondischargeable obligation.

11
12 So, too, Defendant's obligation to replace the \$58,887.96
13 (plus interest) as ordered in the Superior Court Order bear the
14 same label. The court rejects Defendant's contention that once
15 she made the two \$25,000 deposits for her children's education
16 her "support" obligations ended. To do so would elevate form
17 over substance, constitute irresponsible disregard for the
18 essence of the Superior Court Order, and ignore the true nature
19 of her obligation, namely to adhere to, and be bound by, her
20 agreement to provide for her children's college education.
21 Stated otherwise, her obligation to restore the removed funds was
22 just as much a nondischargeable obligation as was her obligation
23 to fund those accounts in the first place.

24
25 DISPOSITION

26 The court finds Defendant's debt to be nondischargeable and
27 has issued its judgment on August 4, 2003, consistent with this
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1 Amended Memorandum Decision.

2 Dated: August 29, 2003

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/s/ _____
Dennis Montali
United States Bankruptcy Judge