

**United States Bankruptcy Court
District of New Mexico**

Document Verification

Case Title: Louise L. Curley v. Johnson Williams
Case Number: 99-01107
Nature of Suit:
Judge Code: S
Reference Number: 99-01107 - S

Document Information		
Number:	25	
Description:	Memorandum Opinion By [17-1] Motion For Summary Judgment in his favor and against the pltf as to whether the of Pltf is non-dischargeable under Sec. 523 (a) (5). The Def. request that pltf's claim be dismissed. by Johnson Williams, [18-1] Motion For Abstention as grounds that the Court ... may dismiss... or suspend all proceedings in a case under this title... if (1) the interests of creditors and the dbtr would be better served by such dismissal or suspension by Johnson Williams .	
Size:	5 pages (15k)	
Date Received:	02/07/2000 12:59:25 PM	Date Filed: 02/07/2000 Date Entered On Docket: 02/07/2000
Court Digital Signature		View History
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

JOHNSON WILLIAMS and
FRIEDA BILLY WILLIAMS,
Debtors.

No. 7-99-10616 S

LOUISE L. CURLEY,
Plaintiff,
v.

Adv. No. 99-1107 S

JOHNSON WILLIAMS,
Defendant.

**MEMORANDUM OPINION ON DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT AND MOTION FOR ABSTENTION**

This matter is before the Court on the defendant's Motion for Summary Judgment and Motion for Abstention and the response thereto filed by plaintiff. These are core proceedings under 28 U.S.C. § 157(b)(2)(A) and (I). For the reasons set forth below, the Court finds that the motions are not well taken and should be denied.

SUMMARY JUDGMENT MOTION

Summary judgment is proper only if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. F.R.Civ.P. 56(c). The complaint in this case seeks a determination 1) that a debt owed by defendant is in the nature of child support despite language in a Divorce Decree entered by the District Court of the Navajo Nation, and 2) that discharging this community debt results in a benefit to debtor that outweighs the detrimental consequences to his former spouse.

Defendant's motion for summary judgment is only directed at the first cause of action, and frames the issue as whether the bankruptcy court can overlook language in the divorce decree which states "Plaintiff is not required to pay any child support; that child support shall be at his sole discretion." Basically, he urges that full faith and credit should be given to this judgment, which would prohibit modification of its language.

In Young v. Young (In re Young), 35 F.3d 499, 500 (10th Cir. 1994), the Court of Appeals for the Tenth Circuit summarized a two part test established by Sampson v. Sampson (In re Sampson), 997 F.2d 717 (10th Cir. 1993) for determining whether an obligation to a former spouse was in the nature of support:

First, the court must divine the spouses' shared intent as to the nature of the payment. This inquiry is not limited to the words of the settlement agreement, even if ambiguous. Indeed, the bankruptcy court is required to look behind the words and labels of the agreement in resolving the issue. Second, if the court decides that the payment was intended as support, it must then determine that the substance of the payment was in the nature of support at the time of the divorce- i.e., whether the surrounding facts and circumstances, especially financial, lend support to such a finding.

(Citations omitted.) Therefore, the issue before the Court is not whether full faith and credit should be given to the divorce decree. Instead, the issue is the parties' shared intent and whether the substance of the contemplated payments were in the nature of support at the time of the divorce. The divorce decree is only one piece of evidence that should be considered in this

determination.

With her response to the motion for summary judgment, plaintiff attached an affidavit that states "We discussed the matter and he agreed to pay our mortgage in lieu of child support... Not only did Mr. Williams agree to pay this mortgage in lieu of child support but he was ordered by the Court to pay it as a community debt." Therefore, the Court finds that there is a genuine issue of material fact relating to whether the debt owed plaintiff is in the nature of support. Summary judgment should be denied.

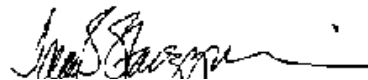
ABSTENTION MOTION

Defendant also filed a motion for abstention under §305(a)(1), claiming that the issues of this case primarily involve child support, child support arrears and the interpretation of a divorce decree, which are issues best resolved by the court entering the divorce decree. This adversary proceeding to determine dischargeability of debt is a core proceeding that arises only under Title 11. See 28 U.S.C. § 157(b)(2)(I). Mandatory abstention does not apply. See 28 U.S.C. § 1334(c)(2) (Mandatory abstention applies only in non-core "related to" cases.) Therefore, abstention is only permissive, or discretionary, under 28 U.S.C. § 1334(c)(1): "Nothing ... prevents a district court in the interest of justice, or in the interest of comity with State courts or

respect for State law, from abstaining from hearing a particular proceeding."

The Court finds that it should not abstain in this matter. First, the issues involved are federal questions resolved according to federal bankruptcy law, not state, or more precisely, Navajo Nation domestic relations law. Young, 35 F.3d at 500. Next, there are no allegations that there is a pending Navajo Nation court action. Therefore, the issues of comity with the courts or respect for the laws of the Navajo Nation are not implicated. In fact, the normal duties of the bankruptcy court include determining whether debts are owed, how much is owed, and the nature of those debts. Abstention would not be appropriate.

Orders will be entered herewith denying the motion for summary judgment and the motion to abstain.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on the date file stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, mailed, or delivered to the listed counsel and parties.

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