

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

IN RE: §
§
KENNETH DAVID CARTWRIGHT AND § CASE NO. 01-20547-RLJ-7
DONNA JO CARTWRIGHT, §
§
Debtors §

DONNA JO CARTWRIGHT, §
§
Plaintiff §
§
v. § ADVERSARY NO. 01-2020
§
TEXAS GUARANTEED STUDENT §
LOAN CORPORATION, §
§
Defendant. §

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Debtor, Donna Jo Cartwright, brought this adversary proceeding seeking a determination that her educational student loans, on which she is obligated to the Defendant, Texas Guaranteed Student Loan Corporation, should be discharged on “undue hardship” grounds under section 523(a)(8) of the Bankruptcy Code.

Findings of Fact

1. Donna Jo Cartwright is married to Kenneth David Cartwright. They filed their joint voluntary petition under Chapter 7 of the Bankruptcy Code on April 30, 2001.
2. Donna Jo Cartwright is indebted to Texas Guaranteed Student Loan Corporation (TGSLC)

in the sum of \$24,894.71, with interest accruing at the rate of \$5.98 per day for student loans guaranteed by TGSLC. Pretrial Order III-1.

3. In July, 1995, Donna Jo Cartwright's student loans were consolidated and restructured. The consolidation amount was \$22,205.61, with interest accruing at 9%, to be repaid with monthly payments of \$200.00 for 239 months, beginning August 15, 1995, and a 240th and final payment of \$59.59. Defendant's Ex. 1.

4. Both prior to and after the loan consolidation, Donna Jo Cartwright requested and received numerous deferments of payments on the student loans. Plaintiff's Exs. 2-17.

5. The deferments were based on Donna Jo Cartwright's disabilities resulting from her debilitating medical problems.

6. Donna Jo Cartwright has been a diabetic for 29 years. She experiences numerous effects from the diabetes. She has eye, feet, and hand problems. She has had 6-7 eye surgeries within the last year and a half. The numbness in her hands causes her to struggle with relatively simple tasks. Donna Jo Cartwright takes several medications to alleviate the symptoms associated with the diabetes. Donna Jo Cartwright also experiences high blood pressure. Her medical condition has deteriorated over time and she expects it to continue to worsen.

7. Her last full time job was in 1991. Around this time, she experienced a "mental and physical collapse," culminating in an attempted suicide on Labor Day 1991.

8. Donna Jo Cartwright regularly sees a doctor for her diabetes, as well as a psychiatrist (every two months) and a psychologist (once or twice a week).

9. Donna Jo Cartwright presently works part time at the Seventh Day Adventist Church.

Because of her condition, she is limited to working 14-16 hours a week.

10. At the time of trial, Kenneth Cartwright had two jobs. He was chaplain at the Lubbock State School and served as a pastor at the New Home United Methodist Church. However, he is in the process of leaving his job at the Methodist Church. He testified that out of “conscience and conviction” he is returning to the Seventh Day Adventist Church.

11. Donna Jo Cartwright’s take-home pay is approximately \$600.00 a month. Kenneth Cartwright’s salary from the Lubbock State School is \$3,097.00 a month. After deductions, his net pay is \$1,931.47. He testified that after quitting his job as a pastor at the Methodist Church, he will as a result lose the \$466.00 a month he earns from the church.

12. Kenneth Cartwright testified that he is required to be licensed as a pastor with a church to hold his position as chaplain at the Lubbock State School. In this regard, he was, at the time of trial, seeking his license with the Seventh Day Adventist Church. He will not, however, be paid by the Seventh Day Adventist Church.

13. The Cartwrights have historically donated in excess of 10% of their income to the church. This “tithe” has been approximately \$500.00 a month. While Kenneth Cartwright was with the Methodist Church, the tithe was split approximately 50/50 between the Methodist Church and the Seventh Day Adventist Church.

14. Specifically, for the months of July through September, 2001, the Cartwrights’ tithe was in the amount of \$543.00 a month. For the months of October through December, 2001, the tithe was in the amount of \$460.00 a month.

15. Upon Kenneth Cartwright leaving the Methodist Church, the Cartwrights intend to

contribute their entire tithe to the Seventh Day Adventist Church.

16. Other than the tithe, TGSLC has no objection to the Cartwrights' monthly expenses.

17. According to Kenneth Cartwright, the Cartwrights' monthly expenses are approximately \$3,100.00; their total take-home pay is approximately \$2,400.00 a month.

18. The Cartwrights' claim of expenses is generally supported by Plaintiff's Exhibit 35 which purports to outline expenses on a monthly basis from July, 2001, through December, 2001. The court's review of Exhibit 35 reflects that total expenses, not including the monthly tithe, run approximately \$2,560.00 a month. Including the tithe, the monthly expenses approach the \$3,100.00 figure testified to by Mr. Cartwright. However, the monthly expenses also reflect significant car repair expenses that should not be repeating.

19. Donna Jo Cartwright testified that a tithe is "expected." She further testified that they receive no direct benefit from the tithe. She did not testify or offer evidence that the tithe was required for membership to the church.

20. Kenneth Cartwright first testified that as a pastor he is required to tithe. Upon further questioning, however, he said it was his "understanding" that the tithe was required. He did not know if his pastor's license would be revoked if he failed to contribute a tithe in at least the amount of 10% of their income.

21. If appropriate, these findings of fact shall be considered conclusions of law.

Conclusions of Law

A. Jurisdiction

22. The court has jurisdiction over this matter under 28 U.S.C. § 1334 and 11 U.S.C. §

523(a)(8). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

B. Standard for Dischargeability of Student Loans

23. An “[educational] loan made, insured, or guaranteed by a governmental unit” is nondischargeable unless excepting such loan from discharge would impose an “undue hardship” on the debtor. 11 U.S.C. § 523(a)(8) (2000).

24. Section 523(a)(8), therefore, guides the inquiry of whether Donna Jo Cartwright’s student loans are dischargeable. Accordingly, the legal standard which Donna Jo Cartwright must meet to have her student loans declared dischargeable is the “undue hardship” test. *See id.*

25. To decide the issue of “undue hardship,” this court first applies the *Brunner* test. *See Nary v. The Complete Source (In re Nary)*, 253 B.R. 752, 761 (N.D. Tex. 2000); *Educational Credit Mgmt. Corp. v. McLeroy (In re McLeroy)*, 250 B.R. 872, 878-79 (N.D. Tex. 2000). Under the *Brunner* test, a debtor satisfies the undue hardship test by establishing:

(1) that the debtor cannot maintain, based on current income and expenses, a ‘minimal’ standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.

Brunner v. N.Y. State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987).

26. The first element of the *Brunner* test requires a determination of what constitutes a “minimal standard of living.” *Id.* While a definition has yet to be definitively provided, “[c]ourts universally require more than temporary financial adversity and typically stop short of utter hopelessness.” *In re Nary*, 253 B.R. at 761, quoting *Tenn. Student Assistance Corp. v. Hornsby (In re Hornsby)*, 144 F.3d 433, 437 (6th Cir. 1998). “Mere financial adversity is insufficient, for that

is the basis of all petitions in bankruptcy. On the other hand, the Bankruptcy Code does not require that the debtor live in abject poverty before a student loan may be discharged.” *Yapuncich v. Montana Guaranteed Student Loan Program (In re Yapuncich)*, 266 B.R. 882, 888 (Bankr. D. Mont. 2001)(internal quotations omitted).

27. The Cartwrights’ take-home pay is approximately \$2,400.00 a month. Their expenses, including the tithe, exceed their income by the approximate amount of the tithe.¹

28. The court rejects the Cartwrights’ argument that they cannot meet all their expenses even if the tithe were eliminated. The Cartwrights have consistently donated approximately \$500.00 a month as a tithe and, despite such, have maintained a minimal standard of living. This reflects that they have been able to adjust their lifestyle to accommodate the tithe.

29. While the tithe runs in the approximate amount of \$500.00 a month, the student loan payment called for under the consolidation entered into in 1995 is \$200.00 a month.

30. This court is guided by the analysis set forth in *In re Lynn*, 168 B.R. 693 (Bankr. D. Ariz. 1994) when confronted with the issue of whether a tithe is an appropriate expense in the undue hardship determination under section 523(a)(8). *See In re McLeroy*, 250 B.R. at 877.

31. Section 523(a)(8) is a “neutral law, which is not designed to promote or restrict religious beliefs.” *In re Lynn* 168 B.R. at 700. Congress intended that section 523(a)(8) “be applied to all

¹While it appears that the student loans here are solely the obligation of Donna Jo Cartwright, the great weight of case law holds that a court must combine the income and expenses of both spouses in determining whether one spouse’s student loans are dischargeable. *See Nary v. The Complete Source (In re Nary)*, 253 B.R. 752, 763 (N.D. Tex. 2000); *White v. United States Dep’t of Educ. (In re White)*, 243 B.R. 498, 509 n. 9 (Bankr. N.D. Ma. 1999) (listing numerous cases holding that the income of a non-borrower spouse must be included in the undue hardship *Brunner* analysis). Indeed, the parties here did not raise this as an issue in dispute.

debtors who have obtained student loans funded by the government.” *Id.*

32. Under the first prong of the *Brunner* test, Donna Jo Cartwright must meet the specific burden of establishing that the tithe is an appropriate expense. *Id.*

33. Donna Jo Cartwright failed to meet this burden. The Cartwrights have tithed for several years and are committed to continuing to tithe. Donna Jo Cartwright testified that the tithe is “expected.” Kenneth Cartwright testified that it was his “understanding” that, as a pastor, he is required to tithe. His testimony was unclear on whether he would lose his pastor’s license if he failed to tithe, however. Moreover, no evidence was provided that a tithe is required for membership in the Seventh Day Adventist Church.

34. The court appreciates Kenneth Cartwright’s position that he is expected to tithe as a pastor in the church. If he were to lose his license, the Cartwrights’ financial situation would suffer. Without his license, he could not then serve as a chaplain at the Lubbock State School, which provides the main source of income for the Cartwrights.

35. Accordingly, the court finds that the Cartwrights’ present tithe of approximately \$500.00 a month is an unwarranted expense. However, because of Kenneth Cartwright’s position as a pastor in the church, a smaller donation on Mr. Cartwright’s part alone, in an amount minimally necessary to maintain his status with the church, is appropriate. This still frees-up a significant portion of the amount presently being donated to pay towards Donna Jo Cartwright’s student loans. The court finds that the Cartwrights can pay a minimum of \$200.00 a month against the student loans. Such payments are sufficient to pay off the student loans according to the consolidation agreement reached in 1995.

36. Based on the foregoing, the court finds that, based on the Cartwrights’ current income and

expenses, they can maintain a minimal standard of living and still repay the student loans.

37. Given the Cartwrights' failure to meet the first prong of the *Brunner* test, it is not necessary for the court to address the second and third prongs.

38. A partial discharge is recognized in this district as an appropriate remedy in student loan cases. *See In re Nary*, 253 B.R. 752, 767 (N.D. Tex. 2000). However, neither party has requested a partial discharge and, indeed, the evidence is insufficient to allow the court to fashion a partial discharge.

Conclusion

39. Upon the foregoing, the court concludes that Donna Jo Cartwright has failed to meet her burden to establish that excepting the student loan from discharge would impose an undue hardship on her and her dependents.

40. The court will prepare an order.

41. If appropriate, these conclusions of law shall be considered findings of fact.

SIGNED March 27, 2002.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE