

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CYNTHIA FAYE GREENWOOD,

Plaintiff-Appellee,

v.

EDUCATIONAL CREDIT MANAGEMENT  
CORPORATION,

Defendant-Appellant.  
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OPINION AND ORDER

02-C-0067-C

Defendant-appellant Educational Credit Management Corporation has appealed from a decision of the United States Bankruptcy Court finding that plaintiff-appellee Cynthia Faye Greenwood could discharge her student loan in bankruptcy. Defendant contends that the bankruptcy court erred in determining that plaintiff could not maintain a minimal standard of living for herself if she were required to repay her student loan, that the same circumstances would continue throughout the loan repayment period and that plaintiff had made a good faith effort to repay her loan. I conclude that although the bankruptcy court erred in some of its findings, it acted correctly in concluding that plaintiff's educational loans should be discharged.

## BANKRUPTCY COURT'S FINDINGS OF FACT

At the trial of this matter, the bankruptcy court found as fact the following.

Plaintiff is 51 years old, well spoken and intelligent. She has completed a paralegal program. Her student loan debt is approximately \$20,000.

Plaintiff is working as a debt collector. She earns \$10.30 an hour, or about \$20,000 a year. Her take home pay is \$1200 a month. She has never earned more than \$20,000. Her present job allows her the opportunity to earn commissions but her commissions to date have been modest. She has not demonstrated the skills that would enable her to earn large commissions.

Plaintiff's expenditures exceed her income by several hundred dollars each month. She has received small tax refunds regularly, each about \$150. She lives in a trailer and pays \$216 a month for her lot and payment on the trailer. She pays \$103 a month for utilities and \$450 for groceries, which include pet food, cosmetics and cleaning supplies. She has medical insurance. She is driving a truck she bought new in 1987. She spends \$50 a month on cigarettes. She borrows money from her mother regularly. She has medical problems that are chronic and require medications. She is an alcoholic. Plaintiff's alcoholism and depression have kept her from repaying her student loans.

Plaintiff's current income and expenses do not allow her to maintain a minimal standard of living, let alone pay her student loan debt. Her earnings history shows that she

is not likely to earn much more than the \$20,000 she is earning at the present time, which is as much as she has ever earned in the past. She has deferred payments on her student loans and has tried to complete her education in an effort to repay her loans.

#### ADDITIONAL FINDINGS

From the evidence presented at the trial, the bankruptcy court could have found that plaintiff's income fluctuates considerably from year to year, that her present job does not allow her to seek additional part-time work because of her employer's requirement that she be available to work flexible hours, that she spends \$80 a month for her telephone, \$100 on home maintenance, about \$75 a month on clothing, \$25 on laundry, \$113 on medical and dental expenses not covered by insurance, \$165 for gasoline and truck repairs, \$10 for recreation and \$10 for charitable contributions, \$24 for homeowners insurance, \$14.22 for life insurance, \$20 for pet care, \$100 for roofing payments, \$30 for gifts and \$10 for stationery and writing supplies. (Presumably, she spends a considerable amount on alcohol because she testified that she drinks six out of seven nights a week but she did not list alcohol as an expense.)

In addition, the bankruptcy court could have found that plaintiff has been employed at her present job for a year and a half and that she has switched jobs eight times in the past five years, 13 times in the past ten years and 21 times in the past 15 years. She has been

fired from a job on eight occasions. The longest time she spent at one job was five years. It took her about seven months to find her present job after losing her last one. She had no other job offers despite sending out 30 résumés. She was enrolled in an advanced degree program at Viterbo College in La Crosse, Wisconsin, but never completed the research paper that was a prerequisite for the degree because she was hospitalized for three weeks in April 1998. Although she had 18 months in which to complete the paper, or until March of 1999, she did not do so, even after paying \$200 for an extension of time. When plaintiff saw an internal medicine specialist in June 2001, the doctor described her as a “well-nourished, healthy- appearing, well-developed, white female in no apparent distress.” The past medical history contained in the medical reports did not refer to alcoholism or depression. The report did show that she was taking dicyclomine on an as needed basis for “history of irritable bowel syndrome.” Dft.’s Exh. #2 at 2. Between then and the date of the trial (November 20, 2001), plaintiff returned to the doctor only once, for removal of ear wax. Id. at 1.

## OPINION

In a comprehensive revision of bankruptcy law in 1978, Congress reclassified student loan debt as an obligation that could be discharged only upon proof of an “undue hardship.” 11 U.S.C. § 523(a)(8). Its rationale was plain: it was concerned about the “rising incidence

of consumer bankruptcies of former students motivated primarily to avoid payments of educational loan debt.” In re Brunner, 46 B.R. 752, 754 (S.D.N.Y. 1985) (quoting Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 137 at 140 (1973)). Its language was not so plain. It did not explain what it meant by the term undue hardship, leaving it to the courts to supply their own definition. Most have adopted the definition formulated by the District Court for the Southern District of New York in In re Brunner, 46 B.R. at 756, and approved by the Court of Appeals for the Second Circuit in Brunner v. New York State Higher Education Services Corp., 831 F.2d 395, 396 (2d Cir. 1987), under which a debtor may have her debts discharged if she shows that with her current income and expenses, she cannot maintain a minimal standard of living for herself and her dependents if she is forced to repay her loans, that additional circumstances exist that indicate that this state of affairs is likely to persist for a significant portion of the repayment period and that she has made good faith efforts to repay the loan. See, e.g., In re Roberson, 999 F.2d 1132, 1135 (7th Cir. 1996) (adopting undue hardship test set out in Brunner).

Defendant does not contend that the bankruptcy judge erred in finding that plaintiff could not make loan repayments out of her current income. Although there are places in her budget that could be reduced, such as food, pet care and life insurance, these reductions would not go far toward bringing her budget into balance, let alone enable her to make loan

repayments. Plaintiff has no reserves for any unexpected emergency, whether for dental work, trailer maintenance or truck repairs. The bigger question is whether the bankruptcy judge was correct when he found that plaintiff met the second prong of the undue hardship showing: that plaintiff's present circumstances are likely to continue throughout the loan repayment period. Clearly, the bankruptcy judge gave plaintiff the benefit of doubt in this regard but just as clearly, her past history gives no reason to believe that plaintiff will suddenly turn into a valued and productive employee. As a technical matter, the bankruptcy judge erred in finding that plaintiff suffers from depression and alcoholism in the absence of any medical evidence that these were current conditions. (The extent of plaintiff's nightly drinking was never explained.) On the other hand, plaintiff's lack of initiative, her inability to obtain a job consistent with her apparent skills, her inability to hold a job of any kind and her inability to finish her degree suggest a degree of emotional problems. However, it is not necessary to understand the reasons for plaintiff's checkered work history and pattern of unfinished efforts in order to find that the next seven to ten years are not likely to improve plaintiff's financial situation enough to enable her to make payments on her loan. Plaintiff is not a new young college graduate who has not found her niche; she is a 51 year old woman who has been in the work force for approximately 30 years. Her pattern is established and obvious to any observer. For reasons lay persons may not understand, she lacks the ability to work up to her potential, to obtain and hold a job that will enable her to live a financially

comfortable life and pay off her debts and generally, to take responsibility for her life. She is still borrowing money from her mother in order to meet her routine monthly expenses.

It was bad judgment for plaintiff to borrow more money for education when she had not repaid the money she had borrowed earlier and worse judgment for her not to finish the degree she had started when she had the opportunity to do so. But bad judgment seems to be another one of plaintiff's character traits that increases the odds against her becoming either a capable and reliable member of the work force or a frugal money manager.

It is easy for defendant to say that plaintiff should obtain a more challenging and more highly paid job or one that would allow her to work a second, part-time job. It is highly unlikely that plaintiff could manage such a feat, however desirable it would be for her to do so.

On the third prong, good faith effort to repay her debt, plaintiff's showing is so weak as to be non-existent. All she has done is apply for extensions and seek additional education (borrowing more money to do so). If the evidence on the first two prongs were close, the lack of evidence on this prong would tip the scale. It is not close, so it makes no difference that she did not do much to demonstrate any commitment to repaying her loans. The fact is that she is incapable of doing so.

ORDER

IT IS ORDERED that the decision of the United States Bankruptcy Court discharging plaintiff-appellee Cynthia Faye Greenwood's student loan is AFFIRMED.

Entered this 25th day of April, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge