IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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In the Matter of:

MICHAEL W. RIENDL and
MARGARET A. REINDL,

Debtors,

OPINION and ORDER

02-C-0228-C

MICHAEL W. RIENDL and
MARGARET A. REINDL,

Plaintiffs-Appellees,

v.

EDUCATIONAL CREDIT MANAGEMENT
CORPORATION,

Defendant-Appellant.

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This is an appeal from a final order of the United States Bankruptcy Court in a core proceeding. 28 U.S.C. § 157. Jurisdiction is present. 28 U.S.C. § 158. Appellant Educational Credit Management Corporation contends that the bankruptcy judge erred in finding that repayment of the educational loans obtained by plaintiffs Michael W. Reindl and Margaret A. Reindl would create an undue hardship for them.

Defendant contends that plaintiffs failed to adduce sufficient evidence to support the bankruptcy court's conclusion that requiring them to repay their student loans would work an undue hardship on them within the meaning of 11 U.S.C. § 523(a)(8). This statute makes most student loans nondischargeable "unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents." From my review of the record, I conclude that the bankruptcy court erred in finding plaintiffs' student loans nondischargeable because plaintiffs failed to show that they could not maintain a minimal standard of living for themselves and their dependents if they were forced to repay their loans and they failed to show that they had made good faith efforts to repay the loans.

From the bankruptcy court record, I find the following facts.

RECORD FACTS

Plaintiffs Michael W. Reindl and his wife, Margaret A. Reindl filed a Chapter 7 bankruptcy proceeding on February 20, 2001. On their bankruptcy schedules, they listed appellant Educational Credit Management Corporation as a creditor for the student loans they took out when Michael Reindl attended WWTC for his police officer certificate and Margaret attended for general courses. Although Margaret dropped out before finishing, Michael Reindl completed his courses and secured a job as a police officer.

After the bankruptcy court discharged plaintiffs from their Chapter 7 proceeding, plaintiffs filed an adversary action against defendant, seeking discharge from their student loans. The bankruptcy court found the loans dischargeable.

Plaintiffs have seven children, ranging in age from thirteen to two. Plaintiff Michael Reindl is 38 and a police office in West Salem, Wisconsin. He earned $37,098 in 2001, of which about $2750 was overtime pay. He anticipates that his opportunities for overtime work this year will be limited but his hourly pay rate has gone up $.69. Plaintiff Margaret Reindl is 34. She earns about $4500 a year providing after school care in her home. Plaintiffs estimate that it would cost about $5000 to set up a daycare facility in their home that would enable Margaret Reindl to earn additional annual income of approximately $9000. She has had sporadic full-time employment in the past. She had a job at Gundersen Clinic in La Crosse for a period that she left in August 2001 because she wanted to spend more time with her children. At the time she was earning $9.69 an hour and had health insurance.

Plaintiffs' home mortgage is subsidized by the Rural Housing Service. Their mortgage payment is $621 a month, which includes property taxes. They pay another $25 for insurance and approximately $50 for maintenance. Their food budget is $852 a month, plus food stamps. They budget $200 a month for clothing. Medical assistance covers their medical and dental needs.

Plaintiffs have an average monthly telephone bill of $100 and monthly car payments of $727 plus car expenses of $250, for two vehicles, one of which is a 1999 Chevy Suburban and one is a 1995 Dodge Ram pickup truck. (When they entered bankruptcy, plaintiffs claimed one vehicle. They purchased the Dodge Ram and the Suburban after being granted discharges in their Chapter 7 bankruptcy proceeding.) They pay $60 a month for their daughter Emily to attend a preschool program, $40 a month for cable television, $34 for rental of a French horn for one son and $20 a month for another son to play basketball in the Village of West Salem recreation department. They are paying $300 for a trip that one of their sons is taking to Washington, D.C. with his school group.

In 2001, plaintiffs received a refund of their federal income taxes in the amount of $4,101, which included a child tax credit of $2,296.

Plaintiffs estimate their monthly expenses at $3657. Their net monthly income is at least $3185. (To obtain the $3185 figure, I took the net monthly income from plaintiffs' exhibit #9 ($2,775) and added back 1/12 of their federal tax refund for 2000 of $4,101, or $342 and 1/12 of their state tax refund of $822, or $68.) With a monthly income of $3185 and expenses of $3657, plaintiffs have a net deficit each month of approximately $472.

Plaintiffs' monthly payment obligations on their student loans are $103.25 for Michael's loan and $50.46 for Margaret's. They have sought and obtained deferments on their loan obligations but they have made no payments. They have not shown that they

have any disabilities that would limit their ability to earn income.

OPINION

The Court of Appeals for the Seventh Circuit applies a three-part test for determining "undue hardship" under § 523: 1) the debtors cannot maintain a minimal standard of living for themselves and their dependents if they are forced to repay their student loan, taking into account current income and expenses; 2) additional circumstances exist that indicate that the plaintiffs' financial situation is not likely to improve for a significant portion of the repayment period; and 3) the debtors have made good faith efforts to repay the loan. Matter of Roberson, 999 F.2d 1132, 1135 (7th Cir. 1993) (adopting test set out in Brunner v. New York State Higher Education Services Corp., 831 F.2d 395 (2d Cir. 1987)). See also Goulet v. Educational Credit Management Corp., 284 F.3d 773 (7th Cir. 2002). The burden is on the plaintiffs to establish that their circumstances warrant discharge of the loan, Matter of Roberson, 999 F.3d at 1137, and review of the bankruptcy court's decision is *de novo.* Id.

Although plaintiffs' expenses are modest for the most part, I cannot agree with the bankruptcy judge that they cannot maintain a minimal standard of living if they are forced to repay their student loans. Their budget shows a shortfall each month, but the shortfall would be ameliorated considerably if plaintiff Michael Reindl were to change his withholding statement to account for the fact that he receives back from the federal government more

money than he it is required to remit. It would be ameliorated still more if plaintiffs were not driving extravagant vehicles. A budget item of almost $1000 for the purchase and maintenance of two vehicles undercuts plaintiffs' assertion that they cannot squeeze any money out of their budget for loan repayments. At trial, plaintiff Michael Reindl said he needed a vehicle for work; he did not explain how the family got along with only one car before the bankruptcy.

Plaintiffs are paying almost $140 a month for French horn rental, preschool and cable television and $300 for their son's trip to Washington. Music lessons, preschool, cable television and trips to Washington, D.C. are nice, but they are not necessities. Plaintiffs have an unusually high monthly telephone bill. Halving their telephone expense (by finding a less expensive long distance carrier and not using calling cards) and their car expense (by selling both vehicles and replacing them with one less expensive car or even two less expensive ones) and eliminating preschool, cable and music lessons would produce more than enough savings to make up their monthly deficit, with money left over to make loan payments. I am persuaded that plaintiffs could maintain a minimum standard of living for themselves and their children and still manage to meet their loan obligations.

The second factor requires a showing that plaintiffs' financial situation is not likely to improve for a significant period of time. If, as I have found, plaintiffs cannot show that they would be unable to maintain a minimal standard of living if forced to pay their loans

at this time, it is implausible that they can meet this second factor. Moreover, the likelihood is that plaintiff Margaret Reindl's work opportunities will expand considerably once her younger children are in school full time, which will happen in about four years. Even if she does nothing more than operate an in-home day care service, her own attorney estimates that her income will increase by about $748 a month, which would be enough to cover their monthly deficit and to make loan repayments, even if plaintiffs do not eliminate the unnecessary expenses from their budget.

As for the third factor, I cannot conclude that plaintiffs have made a good faith effort to repay their loans. They have made no payments at all, which hardly suggests good faith. I recognize that the court of appeals has not yet decided whether good faith can be shown by the mere fact of obtaining deferments, Goulet, 284 F.3d at 780 ("While it is hard to see good faith in paying nothing when obtaining payment deferrals, we need not resolve this question . . ."). In this case, however, it is not necessary to rely on the mere lack of payments in finding no good faith. There is the additional consideration that plaintiffs have not maximized their income in an effort to pay back their loans. Plaintiff Margaret Reindl left a secure, reasonably well paying job with health insurance benefits so that she could spend more time with her children. It was her choice not to maximize her income by maintaining full-time employment. Laudable as her choice might be in many respects, it shows a lack of good faith with respect to her own and her husband's student loan

obligations.

Plaintiffs argue that defendant failed to show that Margaret Reindl would have net earnings if she returned to work full time. They allege that daycare expenses, transportation and work clothing would exceed her income. As I have reiterated in the past in other decisions, it is the debtors' burden to show that loan repayment would cause them undue hardship. In this case, it is not defendant's burden to show that plaintiffs would be better off financially if Margaret Reindl returned to work; it is plaintiffs' burden to show the opposite. Plaintiffs failed to meet the burden by not putting in any evidence at trial to support the allegations they are now making.

Plaintiffs are not the stereotyped version of deadbeat debtors, enjoying a lavish lifestyle while neglecting their loan repayment obligations. Nevertheless, they are enjoying comforts and conveniences, such as staying at home with their children, while failing to meet the obligations that they incurred freely and intelligently and that enabled Michael Reindl to obtain his job. It will require some sacrifices for them to make their loan payments but it will not create an *undue* hardship within the meaning of 11 U.S.C. § 523(a)(8). And it will be an invaluable lesson to their children of the importance of shouldering self-incurred obligations.

ORDER

IT IS ORDERED that the decision of the United States Bankruptcy Court discharging plaintiffs Michael W. Reindl and Margaret A. Reindl from their student loan repayment obligation is REVERSED and this case is REMANDED to the bankruptcy court for further proceedings consistent with this opinion.

Entered this 14th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge