IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

CYNTHIA FAYE GREENWOOD,

Plaintiff-Appellee,

v.

EDUCATIONAL CREDIT MANAGEMENT CORPORATION,

Defendant-Appellant.

ORDER

02-C-0067-C

- -

In an order entered in this case on April 25, 2002, I held that the bankruptcy court had acted correctly when it determined that plaintiff-appellee Cynthia Faye Greenwood should have her student loans discharged. Defendant-appellant Educational Credit Management Corporation has filed a timely motion for reconsideration of that holding, arguing that it was error to find plaintiff's student loan dischargeable even if plaintiff did not meet the third prong of the applicable test. I construe the motion as one brought pursuant to Fed. R. Civ. P. 59(e). I agree with defendant that I erred in deciding this case, but not in the way defendant alleges. Therefore, I will modify my previous decision, but re-affirm the decision of the bankruptcy court.

Defendant is correct that the Court of Appeals for the Seventh Circuit has held that a debtor hoping to discharge a student loan obligation must meet each of the three elements of the test set out in In re Roberson, 999 F.2d 1132, 1135 (7th Cir. 1996) (adopting test articulated by court in Brunner v. New York State Higher Education Services Corp., 831 F.2d 395, 396 (2d Cir. 1987)). Goulet v. Educational Credit Management Corp., 284 F.3d 773, 777 (7th Cir. 2002) (holding that if debtor fails to establish any element of test, he has not met test). It was error to find as I did that plaintiff's evidence on the first two prongs was so strong that it was unnecessary to decide whether plaintiff had shown that she had made a good faith effort to repay her loans. However, it was also error to find that plaintiff had not made any effort to repay her loans. In making this finding, I misread the hearing transcript in which plaintiff was asked whether she had made any payments on her loans and answered "yes," Tr. at 22, and I failed to review defendant's Exh. #1, showing the details of plaintiff's loan. As I read this document now, it seems to show that plaintiff made payments on her first three loans from defendant; in fact, it appears that she reduced each of those three loans by about half.

Moreover, unlike Mr. Goulet, who the court of appeals agreed had not made any significant efforts to obtain employment or apply available income to his student debt, Goulet, 284 F.3d at 780, plaintiff has made concerted efforts both to find employment and to reduce her expenditures. In the seven months from the time she was fired from her

previous job until she found her present one, she sent out at least 30 résumés. She received only one job offer and that was for her present job. She has held 21 jobs over the past 15 years and has lost eight of those. She is earning $10.30 an hour in her present job, with the opportunity to earn commissions. Her earnings history shows that she is making more money in her present job than she has ever made in any other job. There is no evidence in the record that someone with plaintiff's qualifications and experience could earn more in today's job market. Plaintiff's expenditures are modest. The $450 she spends for food and the $75 she spends for clothes seem high, but she testified that she cuts back in both these areas whenever she has a financial emergency in another area, which seems to be a frequent occurrence. She testified that she did not eat out, that she used rags in place of paper products whenever possible, that she spent only $10 a month on entertainment, that her furniture was primarily castoffs and that much of her income went to repairs on her 1987 truck and her aging trailer home.

On reconsideration, I find that plaintiff meets all three prongs of the Roberson-Brunner test. She would suffer undue hardship if the loans were not discharged because she is living in a financially precarious state and would be unable to maintain her already minimal standard of living if she is forced to repay the loans; the state of affairs is likely to persist, given her previous employment record; and she has made good faith efforts to repay the loans, as shown by the payments she made on the first three loans and her efforts to

secure and maintain her present employment.

ORDER

IT IS ORDERED that the motion of defendant-appellant Educational Credit Management Corporation to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) is DENIED; upon reconsideration, the order entered in this case on April 25, 2002, is modified as explained in this order and the decision of the United States Bankruptcy Court discharging plaintiff-appellee Cynthia Faye Greenwood's student loan obligation is AFFIRMED.

Entered this 23rd day of July, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge