



divorced on October 6, 1992, pursuant to an Order of the Court of Common Pleas of Lehigh County.

As part of the divorce decree, the Common Pleas Court incorporated by reference a Marital Settlement Agreement (“MSA”) dated August 27, 1992, signed by appellant and appellee. The MSA provided, inter alia, that appellee would maintain custody of Alexandria and that appellant would pay \$1,000 per month in child support. Two additional provisions of the MSA are at issue in this appeal: (1) paragraph 9 of the MSA, providing that appellant will pay for Alexandria’s college education and (2) paragraph 10(b) of the MSA, providing that appellant will pay the mortgage on the couple’s marital home at 3501 Congress Street in Allentown, Pennsylvania (“3501 Congress”).

Appellant filed a voluntary bankruptcy petition pursuant to Chapter 13 of the Bankruptcy Code, 11 U.S.C. § 1301 et seq., on April 5, 1999, in the United States Bankruptcy Court for the Eastern District of Pennsylvania. On June 21, 1999, appellant filed a Chapter 13 plan in the Bankruptcy Court.

On July 15, 1999, appellee filed a Proof of Claim in the Bankruptcy Court alleging that appellant owed her alimony, maintenance or support in the total amount of \$173,750.99--\$9,492.37 for past due child support, \$56,180.02 as the principal balance owed to her on the mortgage on 3501 Congress, \$8,078.60 in missed payments on the mortgage and \$100,000 for their daughter’s four-year undergraduate education. Appellant filed an objection to appellee’s proof of claim on October 27, 1999.

On December 23, 1999, the Bankruptcy Court conducted a hearing on appellant’s objections to appellee’s proof of claim. On January 11, 2000, the Bankruptcy Court issued an

Order overruling appellant's objections to appellee's proof of claim and dismissing those objections with prejudice. On January 20, 2000, appellant filed a Notice of Appeal of this Order.

Appellant filed a brief in support of his appeal in this Court on March 9, 2000. Appellee filed a brief in response on March 19, 2000; appellant filed a reply on March 27, 2000.

## **II. STANDARD OF REVIEW**

A district court's appellate review of a bankruptcy court decision is two-fold. The bankruptcy court's findings of fact are reviewed under a clearly erroneous standard. See In re Ciciliano, 13 F.3d 748, 750 (3d Cir. 1994); Fed.R.Bankr.P. 8013. Under a clearly erroneous standard, it is the "responsibility of an appellate court to accept the ultimate determination of the fact-finder unless that determination either is completely devoid of minimum evidentiary support displaying some hue of credibility or bears no rational relationship to the supportive evidentiary data." Fellheimer, Eichen & Braverman, P.C. v. Charger Techs., Inc., 57 F.3d 1215, 1223 (3d Cir. 1995); Seaway Painting, Inc. v. D.L. Smith Co., 242 B.R. 834, 837 (E.D.Pa. 1999). Due regard must be given to the bankruptcy court's opportunity to judge first-hand the credibility of the witnesses. See id.; Fed.R.Bankr.P. 8013. The bankruptcy court's conclusions of law are subject to plenary review. See Gianakas v. Gianakas, 917 F.2d 759, 762 (3d Cir. 1990).

## **III. DISCUSSION**

In the Bankruptcy Court, appellee argued that her claim was entitled to priority under § 523 of the Bankruptcy Code, 11 U.S.C. § 523 ("§ 523"). Section 523 provides, in relevant part, that a discharge of debts under the Bankruptcy Code does not discharge an individual debtor from any debt "to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree

or other order of a court of record...but not to the extent that...(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support....” 11 U.S.C.A. § 523(a)(5) (West Supp. 2000). The determination whether a debt constitutes alimony, maintenance or support is to be made according to federal law. See Gianakas, 917 F.2d at 762 (citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 364 (1977)).

A determination that an obligation is in the nature of alimony, maintenance or support--as distinguished from a property settlement--depends on the intent of the parties at the time the settlement agreement was signed. See id. Determination of the intent of the parties in drafting a settlement agreement is a question of fact for the bankruptcy court to decide and is subject to the clearly erroneous standard on appeal. See Boyle v. Donovan, 724 F.2d 681, 683 (8th Cir. 1984) (per curiam). In Gianakas, the Third Circuit held the intent of the parties requires consideration of three factors: (1) the language and substance of the agreement in the context of surrounding circumstances, using extrinsic evidence if necessary; (2) the parties’ financial circumstances at the time of the settlement; and, (3) the function served by the obligation at the time of the divorce or settlement. 917 F.2d at 763.

The Bankruptcy Court found that the MSA “clearly binds [appellant] to obligations of support...[, that] a review of the parties financial circumstances at the time the MSA was executed reveals that [appellee] was in a far inferior financial position at the time the MSA was executed...[and] that the function served by the obligations in question at the time of the signing of the MSA and at the time of the Decree of Divorce, which was entered less than six weeks after

execution of the MSA, was one of support for [appellee] and Alexandria.” Because such findings were not clearly erroneous, this Court affirms the Bankruptcy Court.

**A. Educational expenses**

Paragraph 9 of the MSA provides, “Husband agrees to assume, pay and be solely responsible for the total cost of providing the minor child with a four-year undergraduate college education which shall include, without limitation, tuition, room, board, books and other fees imposed by the college, university or other institution of higher learning.” Record on Appeal (“Record”), ex. 10.

Appellant’s daughter enrolled at Cedar Crest College in Allentown, Pennsylvania, in August, 1999. Appellant completed loan applications for his daughter’s education, but those applications were rejected. At a hearing in front of the Bankruptcy Court, appellant testified that the cost of his daughter’s annual education was approximately \$26,000 and she received grants from Cedar Crest totaling approximately \$8,000 and from the state totaling approximately \$6,600. According to appellant, his daughter satisfied the remaining \$11,000 with private loans which appellee’s current husband guaranteed. Appellant has made no financial contribution towards his daughter’s college education.

Appellant argues that the Bankruptcy Court erred in finding paragraph 9 of the MSA to be in the nature of support because the text of the paragraph does not say that it is intended to be in the nature of support and there was no testimony in the Bankruptcy Court that it was intended as a support obligation. Appellant also argues that the Bankruptcy Court erred in valuing Alexandria’s education at \$100,000 because she is paying only \$1,000 out of pocket annually and \$17,311.48 including student loans annually. Finally, appellant argues that the Bankruptcy Court

should not have included Alexandria's expenses to live on campus because Cedar Crest College is within two miles of 3501 Congress and the decision to live on campus is a life style choice rather than a necessity.

In determining the parties' intent, the Bankruptcy Court properly considered the three factors set forth in Gianakas. The question for this Court, then, is whether the Bankruptcy Court's finding was clearly erroneous.

With respect to the first factor listed in Gianakas--the language and substance of the agreement--appellant is correct that the MSA does not say that it is in the nature of support. In many cases, "neither the parties nor the divorce court contemplated the effect of a subsequent bankruptcy" when a settlement agreement is signed. Gianakas, 917 F.2d at 762. Nonetheless, the language and substance of the agreement requires appellant to provide a benefit to Alexandria--specifically, a "start in life comparable to that which [appellant] enjoyed." Boyle, 724 F.2d at 683. The Bankruptcy Court's finding that the language and substance of the MSA evinces the parties' intent to create a support obligation is therefore supported by some evidence of record. Accordingly, this Court concludes such a finding is not clearly erroneous.

As to the second factor listed in Gianakas--the parties' financial circumstances at the time the MSA was signed--Bankruptcy Court found that appellant enjoyed earnings of \$50,000-\$60,000 per year in 1992 and found that appellee did not work during the parties' marriage and had little, if any, earning capacity. Appellant does not dispute this finding and it is supported by the testimony before the Bankruptcy Court.

Finally, as to the third factor listed in Gianakas--the function served by the obligation at the time of the divorce or settlement--the Eighth Circuit has noted that an agreement to pay for a

college agreement “could be considered as providing for the economic safety of the [children] during their college years,” and an agreement with such a provision could be seen as evincing an intent to support the children. Boyle, 724 F.2d at 683; see also Harrell v. Sharp, 754 F.2d 902, 905 (11th Cir. 1985) (holding that agreements to pay for college expenses are non-dischargeable in bankruptcy). This Court agrees with the analysis of the Eighth Circuit in Boyle and concludes that the Bankruptcy Court was not clearly erroneous in finding that the function served by appellant’s obligation to pay for Alexandria’s college education was in the nature of support.

In light of all of the forgoing, this Court concludes that the Bankruptcy Court was not clearly erroneous in finding that appellant’s obligation to pay for Alexandria’s college education was in the nature of support. The Court will therefore turn to appellant’s arguments that the Bankruptcy Court erred in allowing the full \$100,000 claim.

Appellant argues that the Bankruptcy Court should have reduced his obligation under paragraph 9 of the MSA to exclude the grants that Alexandria obtained--making the total cost of her education approximately \$74,000, not \$100,000. On that issue, appellant testified in the Bankruptcy Court that the cost of Alexandria’s education, including tuition, room and board, was approximately \$26,000 per year without reduction for any grants. In addition, the parties submitted an invoice to the Bankruptcy Court from Cedar Crest College which detailed Alexandria’s college expenses.<sup>1</sup> Based on this evidence the Bankruptcy Court found appellant’s obligation to be \$100,000.

Paragraph 9 of the MSA sets forth appellant’s support obligation as including, “*without limitation*, tuition, room, board, books and other fees imposed by the college....” (emphasis

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<sup>1</sup>A copy of the invoice is not included in the record before this Court.

added). The MSA does not contain a provision for set off of grants or a requirement that Alexandria obtain grants to help pay for her education. Although requiring appellant to pay for Alexandria's education when she can obtain grants may be arguably unreasonable, federal courts in bankruptcy proceedings do not review the reasonableness of state-imposed alimony and support payments. See Fraser v. Fraser, 196 B.R. 371, 377 (E.D.Tex. 1996) (citing Forsdick v. Turgeon, 812 F.2d 801, 803-04 (2d Cir. 1987)). Moreover, there was no evidence before the Bankruptcy Court that Alexandria would continue to receive such grants in the future.

Appellant also argues that the Bankruptcy Court should have excluded Alexandria's room and board because the decision to live on campus is a lifestyle choice, not an educational expense, and therefore such expenses are unreasonable. As discussed above, paragraph 9 of the MSA requires appellant to pay all expenses--including room and board--for Alexandria's education, "without limitation." This provision clearly contemplates appellant paying for Alexandria to live on a college campus, and the "without limitation" language supports appellee's argument that it is applicable even if Alexandria attends school close to home. As discussed above, federal courts in bankruptcy proceedings do not review the reasonableness of state-imposed support and alimony awards. See Fraser, 196 B.R. at 377.

The Bankruptcy Court's finding that the amount of appellant's support obligation for his daughter's college education was \$100,000 is supported by the evidence and is not "completely devoid of minimum evidentiary support displaying some hue of credibility." Fellheimer, Eichen & Braverman, P.C., 57 F.3d at 1223. Accordingly, this Court concludes that the Bankruptcy Court's finding was not clearly erroneous.

## **B. Mortgage payments**

Paragraph 10(b) of the MSA provides, in relevant part, “Upon execution of this Agreement, Husband agrees to assume, pay and be solely responsible for the note or loan agreement and the first mortgage lien [on the marital home] to Meridian Bank as necessary support to help Wife meet her financial needs as well as those of the minor child, and Husband agrees to fully pay and excuse said mortgage to be satisfied on or before July, 1999, the anticipated date the parties’ minor child will graduate from high school.” Pursuant to this provision, appellant was required to pay the monthly mortgage payments on the marital home and, on or before July, 1999, to satisfy the mortgage (the “balloon payment”).

Appellant last made a payment on the mortgage on 3501 Congress in September, 1998; since that time, appellee’s second husband has paid the mortgage in monthly installments of \$811.80. Appellant did not make the balloon payment in July, 1999 or any time thereafter.

Appellant argues that the Bankruptcy Court erred in ruling that the parties intended the balloon payment to be in the nature of support because: (1) the language of paragraph 10(b) does not support such a conclusion; (2) the balloon payment came due after Alexandria reached adulthood; and, (3) the other evidence in front of the Bankruptcy Court supported a conclusion that the parties intended the balloon payment to be a property settlement.

With respect to the first factor of Gianakas--the language and substance of the agreement in the context of surrounding circumstances--appellant argues that the Bankruptcy Court misread the MSA and ignored the evidence on this point. Paragraph 10(b) of the MSA states that appellant is responsible for the mortgage on 3501 Congress “to help Wife meet her financial needs as well as those of the minor child, and Husband agrees to fully pay and cause said mortgage to be satisfied on or before July, 1999....” According to appellant, the “comma after

the words ‘minor child’ effectively separates the subsequent language regarding the balloon payment obligation from the previous language regarding ‘necessary support.’” Brief of Appellant, p. 8. Appellant would have the Court apply the language regarding the purpose of the payments as applying only to the monthly mortgage payments, and not to the balloon payment obligation which comes after the comma.

Appellant argues that the timing of the balloon payment, when considered in light of the language of paragraph 10(b), supports a conclusion that the parties intended the balloon payment to be a property settlement. In this vein, appellant points to the fact that the balloon payment was to be made one month after Alexandria reached the age of majority--and appellant’s child support obligation under the MSA terminated--suggests that the parties did not intend the balloon payment to provide support for Alexandria. Appellant also relies on the language of paragraph 10(b) itself, specifically to the statement of intent, which refers to helping “wife meet her financial needs as well as those of the minor child....” (emphasis added). According to appellant, the reference to helping the minor child means the parties intended such a support obligation to terminate when the child--Alexandria--was no longer a minor.

It is appellant’s position that the MSA, in whole, does not evince the parties’ intent to have appellant continue supporting appellee. Specifically, appellant points to paragraph 7 of the MSA--which sets forth appellant’s child support requirements--and paragraph 10 of the MSA--which deals with a variety of property issues. Appellant argues that because paragraph 7 of the MSA terminated his child support obligation when Alexandria turned 18 and imposed no alimony payments, the parties’ intent was to end all support payments when Alexandria reached the age of 18. Appellant further argues that because paragraph 10(e) requires appellee to split

any proceeds of sale on 3501 Congress if she sold it before Alexandria reached the age of majority, but does not impose such an obligation for after Alexandria reached the age of majority, the MSA evinces the intent of the parties to provide housing until Alexandria reached the age of majority, but not thereafter.

Appellant relies on the district court opinion in Gianakas, which noted that a court can find an intent to create a support obligation, in part, from structuring an obligation to “be paid in installments rather than a lump sum....” Gianakas v. Gianakas, 112 B.R. 737, 742 (W.D.Pa. 1990). It is appellant’s position that the parties’ decision to alter appellant’s obligation on the mortgage from monthly payments to a balloon payment evinces an intent to use the balloon payment as a property settlement.

Finally, appellant argues that the evidence before the Bankruptcy Court of the circumstances surrounding the signing of the MSA mandates a conclusion that the balloon payment was not intended in the nature of support, but rather as a property settlement. In support of this argument, appellant points to his testimony before the Bankruptcy Court that the balloon payment was intended as a property settlement and to a letter dated June 8, 1992, from appellee’s attorney to appellant’s attorney discussing the MSA. In that letter, appellee’s attorney stated, “You are reminded that the marital home is Mrs. Grovatt’s property settlement.”

Appellant’s reading of paragraph 10(b) is a fair one and appellant has presented some evidence in support of his position that the balloon payment was intended as a property settlement for appellee. However, the Bankruptcy Court’s reading of paragraph 10(b) as evincing an intent to create a support obligation is also supported by the evidence and is not “completely devoid of minimum evidentiary support displaying some hue of credibility.”

Fellheimer, Eichen & Braverman, P.C., 57 F.3d at 1223. Accordingly, this Court concludes that the Bankruptcy Court's finding was not clearly erroneous.

Moreover, even if the Bankruptcy Court was clearly erroneous in finding that the language and substance of the MSA supports a conclusion that the parties intended the balloon payment to be in the nature of support, such error would not be sufficient to warrant reversing the Bankruptcy Court. The language and substance of the agreement is only the first factor of the Gianakas test for the parties' intent. The other factors in Gianakas--the parties' relative financial situation at the time the MSA was signed and the function served by the obligation at the time of the divorce or settlement--support the Bankruptcy Court's conclusion that paragraph 10(b) of the MSA was intended as a support obligation.

The second factor of the Gianakas test is the parties' financial circumstances at the time of the settlement. In this vein, the Third Circuit has stated that the "facts that one spouse had custody of minor children, was not employed, or was employed in a less remunerative position than the other spouse are aspects of the parties financial circumstances at the time the obligation was fixed shed light on the inquiry into the nature of the obligation as support." Gianakas, 917 F.2d at 763. The parties do not dispute that appellee had custody of Alexandria--a minor child. In addition, as discussed above, the Bankruptcy Court found that appellee did not work during the parties' marriage, that appellee had little, if any, earning capacity at the time of the parties' divorce, and that appellant had earnings of \$50,000 to \$60,000 at the time of the divorce.

The third factor of the Gianakas test is the function served by the obligation at the time of the divorce or settlement. The Third Circuit noted that an "obligation that serves to maintain daily necessities such as food, housing and transportation is indicative of a debt intended to be in

the nature of support.” Id. There is no question that appellant’s obligation provided a daily necessity--housing--to appellee. Appellant argues that if the balloon payment had been intended to provide such a necessity, appellant could have continued to make mortgage payments, rather than a balloon payment. As discussed above, federal courts sitting in bankruptcy are not tasked with evaluating the reasonableness of the method in which the parties to a settlement agreement accomplished their goals. See Fraser, 196 B.R. at 377. The Bankruptcy Court’s finding that the balloon payment was designed to support appellee was not without evidentiary foundation, given that it provided her with housing.

After consideration of the three Gianakas factors, this Court concludes that the Bankruptcy Court’s finding that the mortgage obligation--including the balloon payment--was intended as a support obligation was not clearly erroneous because it was not completely devoid of minimum evidentiary support. Accordingly, the Court affirms the Bankruptcy Court’s decision with respect to the mortgage issue.

#### **IV. CONCLUSION**

The Bankruptcy Court did not commit clear error when it determined that appellant’s obligations to pay for his daughter’s education and for the mortgage on 3501 Congress were

intended to be support obligations. Accordingly, the decision of the Bankruptcy Court is affirmed.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**