

1111 U.S.C. § 523(a) (5)
42 U.S.C. § 602(a)
42 U.S.C. § 656(b)
R.C.W. Title 26
Social Security Act § 402(a) (26)

Knight v. Washington Dept. of Social & Health Serv., Adversary No. 88-0537
In re Knight, Case No. 388-02640-ELP7

6/27/90

CEL

Unpublished

The debtor seeks a determination of whether child support arrearages and child support, which have been assigned by the mother of the debtor's child to the State of Washington in order for her to receive public assistance, are dischargeable obligations.

The court distinguished the case relied upon by the debtor, In re Ramirez, 795 F.2d 1494 (9th Cir. 1986), because it was decided under California law which did not allow a mother to seek back support incurred prior to an order. Washington law does allow the state to seek reimbursement for back support.

Based on the legislative history of 42 U.S.C. § 602(a) and 42 U.S.C. § 656(b), the court found that Congress intended that assigned support obligations would not be dischargeable in bankruptcy. Thus, the debtor's obligation to the State of Washington was nondischargeable.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:)	Case No. 388-02640-P7
)	
THOMAS EDWARD KNIGHT,)	
)	
Debtor.)	
_____)	
THOMAS EDWARD KNIGHT,)	Adversary No. 88-0537
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
WASHINGTON DEPARTMENT OF)	
SOCIAL AND HEALTH SERVICES,)	
TERRI L. COOK, and WILLIAM K.)	
COOK, a Minor Child, through)	
his Guardian ad Litem, JOHN P.)	
WULLE,)	
)	
Defendants.)	
_____)	

The debtor, Thomas Edward Knight, seeks in this adversary proceeding a determination that the obligation asserted against him by the Washington Department of Social Services, Terri L. Cook, and William K. Cook, a minor child, through his Guardian ad Litem, John P. Wulle, for child support arrearage and child support is a dischargeable obligation.

By stipulated facts the parties agree that the child has been a recipient of public assistance since his birth July 3, 1979, and that Terri L. Cook is the putative mother and the debtor the putative father.

On February 4, 1988 a paternity action was filed in the State of Washington against the debtor on behalf of the minor child. In 1987 the mother assigned her rights to child support, including those of past support obligations, to the state to receive public assistance which the state provided. On March 7, 1988, Knight signed an affidavit admitting paternity which affidavit was submitted to the state court on March 14, 1988.

By May 9, 1988, Knight had not filed an appearance in the state court action, but on May 9, 1988 an attorney, Michael E. Evans, requested of the state time to file an appearance until June 8, 1988 and the state agreed to delay seeking a default until June 8, 1988.

On June 7, 1988, the debtor filed his voluntary Chapter 7 bankruptcy petition in the State of Oregon staying the Washington action.

The stay was thereafter lifted and the state court entered its Summary Judgment and Order that the debtor was the natural father of the child, that the surname of the child shall be Cook, fixing current child support commencing July 1, 1990 at \$427 per month until the child reaches the age of eighteen, earlier emancipation or further order of the court, and judgment in favor of the State of Washington for \$10,000 against the defendant debtor as reimbursement for back support payable at the rate of \$88 per month until paid.

It was further ordered that continuing medical and dental coverage be provided for the child.

The operative statutes are 11 U.S.C. § 523(a)(5) and Social Security Act §§ 402(a)(26) as amended, 42 U.S.C.A. § 602(a)(26), 656(b), and Title 26, Domestic Relations, of the Revised Code of Washington.

The plaintiff debtor makes ingenious arguments relating to the timing of the assignment, and the absence of support order at the time of the filing of the petition, but the court finds them unconvincing.

Debtor relies on In re Ramirez, 795 F.2d 1494 (9th Cir. 1986).

However, that case was based upon the court's interpretation of California law, and the court concluded that in that case, the obligation did not arise from a "separation agreement, divorce decree or property settlement," and that because under California law a mother could not claim reimbursement for money paid out in support of a child prior to an order of the court directing the father to pay support to meet the current needs of the child, there was nothing to assign to the county as an accrued obligation.

As in State of Oregon v. Richards, 45 B.R. 811 (D.C. Or. 1984), the Washington statute allows the state to seek reimbursement for support and other services previously furnished the child, under its Domestic Relations statutes and as Judge Frye noted in the Richards case

". . . the court believes that the debt at issue is non-dischargeable under section 656(b). This conclusion is based upon the legislative history of sections 602(a)(26) and 656(b). This legislative history indicates that the rights to be assigned under 602(a)(26) include child support obligations that have not yet been reduced to the form of a judgment, order, or agreement. S. Rep. No. 1356, 93rd Cong. 2nd Sess. reprinted in 1974 U. S. Code Cong. and Ad. News 8133, 8152. The same report indicates that the assigned support obligations would become debts owed directly to the State by the absent spouse. Id. at 8153. Finally, the report states:

[A] provision has been included to assure that the rights of the wife and child are not discharged in bankruptcy merely because the support obligation is a debt to the State." Id.

Richards at 816.

The facts in this instant proceeding in many respects closely track those in Mullally v. Carter, 67 B.R. 535 (N.D. Ill. 1986), wherein the day before trial on a support issue the debtor filed his petition in bankruptcy.

Congressional history indicates clearly that its intent is to favor parental responsibility for child support as an obligation that must be met even though a fresh start free from other dischargeable obligations may be

burdened thereby, and the amendments to the earlier statutory concept which limited the exception to unassigned debts served to remove obstacles to collection for the provider of the support, whether a government assignee or other entity entitled to reimbursement for or provision for the support due the child.

Therefore, the court finds the obligation determined to be due to the State of Washington in the Summary Judgment and Order in the Superior Court of that State of Washington in and for the County of Clallam, Docket Number 88-5-00019-4 from the Respondent, Thomas E. Knight, is a non-dischargeable obligation in the bankruptcy case of the debtor, Thomas E. Knight.

Each party shall bear his or its own costs in this adversary proceeding for determination of dischargeability.

This Memorandum Opinion contains the court's Findings of Fact and Conclusions of Law, and pursuant to Bankruptcy Rule 7052 they will not be separately stated.

DATED this _____ day of June, 1990.

C. E. LUCKEY
Bankruptcy Judge