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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:)	
)	
RALPH MAY, JR.,)	Case No. 01-20206-B-13J
)	
Debtor.)	
)	
_____)	
RALPH MAY, JR.,)	
)	
Plaintiff)	Adv. No. 05-2303-B
)	
vs.)	
)	
COUNTY OF RIVERSIDE DEPT. OF)	Docket Control No. N/A
)	
CHILD SUPPORT,)	Date: September 26, 2006
)	
Defendant(s).)	Time: 9:30 a.m.

On or after the calendar set forth above, the court issued the following ruling. The official record of the ruling is appended to the minutes of the hearing.

Because the ruling constitutes a "reasoned explanation" of the court's decision under the E-Government Act of 2002 (the "Act"), a copy of the ruling is hereby posted on the court's Internet site, www.caeb.uscourts.gov, in a text-searchable format, as required by the Act. However, this posting does not constitute the official record, which is always the ruling appended to the minutes of the hearing.

DISPOSITION AFTER ORAL ARGUMENT

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the

1 motion. Accordingly, both movant and respondent have consented to the
2 resolution of the motion and all disputed material factual issues
3 pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

4 Federal Rule of Civil Procedure 56, made applicable to this
5 proceeding by Bankruptcy Rule 7056, provides that summary judgment is
6 appropriate if the pleadings, depositions, answers to interrogatories,
7 admissions on file, and declarations, if any, show that there is "no
8 genuine issue of fact and that the moving party is entitled to
9 judgment as a matter of law."

10 The defendant, County of Riverside Department of Child Support
11 Services, filed this countermotion for summary judgment against
12 plaintiff Ralph E. May on his one-count complaint to determine whether
13 a pre-petition debt for foster care costs (the "Debt") owed to
14 defendant was discharged in plaintiff's chapter 13 case. Defendant
15 argues that summary judgment is appropriate because the undisputed
16 facts before the court entitle plaintiff to judgment as a matter of
17 law.

18 The motion is granted to the extent set forth herein. Defendant
19 is entitled to summary judgment on the complaint because the Debt is
20 non-dischargeable under 42 U.S.C. § 656(b). The parties have
21 submitted a stipulated statement of facts (Dkt. No. 48) which the
22 court incorporates by reference.

23 Section 42 U.S.C. § 656 provides:

24 (a) Collection processes

25 (1) The support rights assigned to the State or secured
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1 on behalf of a child receiving foster care maintenance
2 payments shall constitute an obligation owed to such
3 State by the individual responsible for providing such
4 support. Such obligation shall be deemed for collection
5 purposes to be collectible under all applicable State and
6 local processes pursuant to section 608(a)(3) of this
7 title.

8
9 (2) The amount of such obligation shall be--

10 (A) the amount specified in a court order which
11 covers the assigned support rights, or

12 (B) if there is no court order, an amount
13 determined by the State in accordance with a
14 formula approved by the Secretary.

15 (3) Any amounts collected from a noncustodial parent
16 under the plan shall reduce, dollar for dollar, the
17 amount of his obligation under subparagraphs (A) and (B)
18 of paragraph (2).

19
20 (b) Nondischargeability

21
22 A debt (as defined in section 101 of Title 11) owed under State law to
23 a State (as defined in such section) or municipality (as defined in
24 such section) that is in the nature of support and that is enforceable
25 under this part is not released by a discharge in bankruptcy under
26 Title 11.

1 (West 2001).

2 As an initial matter, the court notes that the statement in
3 Plaintiff's opposition that Section 656 is applicable through 11
4 U.S.C. § 523(a)(18) is wrong. "[S]ection 656(b) provides an
5 independent basis upon which to find a child support debt
6 nondischargeable in any bankruptcy proceeding under Title 11." County
7 of Santa Cruz v. Cervantes (In re Cervantes), 219 F.3d 955, 962 (9th
8 Cir. 2000). While it would be convenient for Congress to place all
9 exceptions to discharge within the Bankruptcy Code itself, there is no
10 requirement that it do so. Cervantes, 219 F.3d at 961 (citation
11 omitted) ("Congress need not write every law affecting discharge into
12 Title 11 of the United States Code").

13 The court finds that the Debt is non-dischargeable under 42
14 U.S.C. § 656(b). "Section 656(b) prohibits the discharge of a debt
15 (1) owed under state law to a state or municipality, (2) that is "in
16 the nature of support," and (3) that is enforceable under part D of
17 Title IV of the Social Security Act." Cervantes, 219 F.3d at 962. It
18 is undisputed that this debt is owed under state law and that it is
19 owed to a municipality. See 11 U.S.C. § 101(40) ("'municipality'
20 means political subdivision or public agency or instrumentality of a
21 State").

22 The court further finds that the debt is both "in the nature of
23 support" and "enforceable under part D of Title IV of the Social
24 Security Act." The court takes judicial notice pursuant to Federal
25 Rule of Evidence 201 of the Judgment from the Superior Court of
26 California, County of Riverside attached as exhibit A to the
27 defendant's answer (Dkt No. 28). Specifically, paragraph 3(b)
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1 provides: "Defendant(s) shall pay child support for the period
2 01/01/97 to 09/30/99 in the total amount of \$27,012.00." (P. 1,
3 paragraph 3(b) of Judgment (page 5 of Dkt. No. 28). The judgment
4 issued May 15, 2000. It is final and not subject to collateral
5 attack. The language used in the Judgment is consistent both with
6 Section 656 and with Public Law 98-378, Section 11 which placed the
7 following language in Section 656: "or secured on behalf of a child
8 receiving foster care maintenance payments." Public Law 98-378 also
9 made additional changes to Parts D and E of the Social Security Act as
10 part of The Child Support Enforcement Amendments of 1984.

11 Plaintiff's interpretation of Section 656(a)(1) in his response
12 is correct. However, in reaching his opposite conclusion about the
13 effect of that Section here, he failed to take into account the state
14 court judgment itself. The changes made by Public Law 98-378 make
15 clear that the Debt is not just foster care maintenance payments. It
16 is child support due while plaintiff's daughter was in foster care
17 that is being used to defer the county's expenses for that foster
18 care. Non-custodial parents have an obligation to support their
19 children. That is why the first sentence of Section 656(a)(1) reads
20 in the alternative: "The support rights [1] assigned to the State or
21 [2] secured on behalf of a child receiving foster care maintenance
22 payments...." (West 2001). Support is due from a non-custodial
23 parent either (1) if the other parent has custody or (2) if the state
24 has custody. Under the language used in the Judgment, this is a
25 support debt "secured on behalf of a child receiving foster care
26 maintenance payments...."

27 The Debt is therefore directly analogous to debts incurred under
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1 the Aid to Families with Dependent Children (AFDC) program. Under
2 AFDC the municipality pays the parent with custody. If the child is
3 placed in foster care, the municipality pays the foster family. In
4 either case, the municipality may obtain a judgment for support to
5 recoup its costs. That happened here. The court therefore finds that
6 the holdings in both Cervantes, supra, and Leibowitz v. County of
7 Orange (In re Leibowitz), 217 F.3d 799 (9th Cir. 2000), apply here.
8 "[A] debt for child support to a county is both "in the nature of
9 support" and enforceable under Title IV-D of the Social Security Act."
10 Cervantes, 219 F.3d at 961; Leibowitz, 217 F.3d at 800-801.

11 Plaintiff's debt to defendant meets all three criteria from
12 Cervantes. It is therefore non-dischargeable in bankruptcy under 42
13 U.S.C. § 656(b).

14 The court will issue a minute order granting the motion.
15 Defendant shall submit a form of judgment that states the debt
16 embodied in the May 15, 2000 Judgment from the Superior Court of
17 California, County of Riverside is nondischargeable pursuant to 42
18 U.S.C. § 656(b).

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