

SEP 29 2006

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	WW-06-1040-McKD
)		
ALEKSANDAR P. RADULOVIC,)	Bk. No.	04-24771
)		
Debtor.)	Adv. No.	05-01078
)		
ALEKSANDAR P. RADULOVIC,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
KATHLEEN M. ALPERS,)		
)		
Appellee.)		
)		

Argued and Submitted on September 13, 2006
at Seattle, Washington

Filed - September 29, 2006

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Samuel J. Steiner, Bankruptcy Judge, Presiding

Before: McMANUS,² KLEIN AND DUNN, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata, including claim preclusion and issue preclusion. See 9th Cir. BAP Rule 8013-1(a).

² Hon. Michael S. McManus, Chief Bankruptcy Judge for the Eastern District of California, sitting by designation.

1 The appellant, Aleksandar P. Radulovic ("Radulovic"), who is
2 also the debtor in the underlying chapter 7 case, appeals from an
3 adverse judgment determining that a debt owed to his former
4 spouse, Kathleen M. Alpers ("Alpers"), is partially
5 nondischargeable pursuant to § 523(a)(15).³ After properly
6 excluding the testimony of an expert witness, then weighing the
7 evidence concerning the parties' assets, liabilities, incomes,
8 and expenses, the bankruptcy court correctly determined that the
9 debt was partially nondischargeable and then imposed reasonable
10 repayment terms on Radulovic. We AFFIRM.

11
12 **FACTS**

13 In 1998, Radulovic divorced Alpers. A divorce decree was
14 entered by an Utah state court in June 1998. That decree
15 included a provision compelling Radulovic to pay Alpers \$1
16 million. To satisfy a portion of this judgment, Radulovic
17 transferred stock valued at \$535,000 to Alpers.

18 In April 2004, the parties returned to the Utah state court
19 in order to modify the decree. The state court entered a
20 judgment against Radulovic for \$465,000, representing the balance
21 owed to Alpers under the original decree.

22 Radulovic did not pay. Instead, on November 17, 2004, he
23 filed a chapter 7 bankruptcy petition. Alpers countered by
24

25 ³ This bankruptcy case was filed before October 17, 2005.
26 Unless otherwise indicated, all chapter, section and rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
28 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
enacted and promulgated prior to the effective date, October 17,
2005, of the Bankruptcy Abuse Prevention and Consumer Protection
Act of 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23.

1 commencing an adversary proceeding seeking a determination that
2 § 523(a)(15) made the state court's judgment nondischargeable.

3 In the adversary proceeding, the bankruptcy court determined
4 that \$365,000 of the \$465,000 state court judgment in favor of
5 Alpers was nondischargeable. The bankruptcy court ordered
6 Radulovic to repay this amount by making installment payments of
7 \$4,500.00 per month. In the event Radulovic failed to pay an
8 installment within five days of its due date, interest would
9 accrue on the nondischargeable amount at the federal rate. In
10 addition, the unpaid balance awarded by the bankruptcy court,
11 with accrued interest, would be due and payable immediately.⁴
12 This appeal ensued.

14 JURISDICTION

15 The bankruptcy court had jurisdiction under 28 U.S.C.
16 §§ 157(b)(2)(I) and 1334 to determine the dischargeability of a
17 debt under § 523(a)(15). We have jurisdiction under 28 U.S.C.
18 §§ 158(a)(1) and (c)(1) to hear this appeal.

20 ISSUES

21 Radulovic identifies eight issues in his appeal:

22 1. Whether § 523(a)(15) makes nondischargeable only
23 obligations to hold a former spouse harmless from marital debts
24 owed to third parties.

25 2. Whether awarding interest and accelerating the
26 nondischargeable portion of the debt in the event the debtor

27 ⁴ The terms of repayment are found only in the bankruptcy
28 court's oral findings and are not in its judgment.

1 fails to make timely installment payments amount to impermissible
2 penalties.

3 3. Whether the bankruptcy court erred in excluding the
4 testimony of a financial consultant proffered by Radulovic to
5 interpret Alpers' financial situation.

6 4. Whether the bankruptcy court erroneously disregarded
7 evidence of Alpers' assets, income, and expenses when considering
8 the detriment likely to be caused by Radulovic's discharge.

9 5. When calculating Alpers' expenses for purposes of
10 § 523(a)(15)(B), whether the bankruptcy court should have
11 considered the financial impact of her new husband and children.

12 6. Whether the bankruptcy court miscalculated Radulovic's
13 ability to repay the state court judgment.

14 7. Whether the bankruptcy court erroneously failed to
15 consider Alpers' unemployment and her present husband's
16 "underemployment" when evaluating the detriment caused by
17 Radulovic's discharge.

18 8. Whether the bankruptcy court correctly assessed the
19 benefit of a discharge to Radulovic.

20 21 **STANDARD OF REVIEW**

22 On appeal, a bankruptcy court's legal conclusions are
23 reviewed de novo and its findings of fact are reviewed for clear
24 error. Graves v. Myrvang (In re Myrvang), 232 F.3d 1116, 1120
25 (9th Cir. 2000). In the context of an appeal from a judgment
26 determining a debt to be nondischargeable, the issues often
27 present mixed questions of law and fact. Murray v. Bammer (In re
28 Bammer), 131 F.3d 788, 792 (9th Cir. 1997). Such issues are

1 reviewed "de novo because they require consideration of legal
2 concepts and the exercise of judgment about the values that
3 animate legal principles." Id.

4 5 **DISCUSSION**

6 In this appeal, Radulovic argues that his debt to Alpers is
7 not the type of nonsupport debt excepted from discharge by
8 § 523(a)(15). On the other hand, if it is potentially
9 nondischargeable, the bankruptcy court nonetheless should have
10 discharged the debt because Radulovic cannot afford to pay any
11 part of it. To the extent he could afford the debt, the benefit
12 of a bankruptcy discharge to Radulovic outweighed any detriment
13 the discharge would have caused Alpers.

14 15 A. Scope of § 523(a)(15)

16 Radulovic argues that § 523(a)(15) comes into play only in
17 the context of a divorce where one of the former spouses agrees,
18 or is ordered, to pay a marital debt and hold the other spouse
19 harmless from that debt. If the spouse shouldering that debt
20 later files a chapter 7 petition, in the circumstances described
21 in § 523(a)(15), the "hold harmless" obligation owed to the
22 former spouse may be declared nondischargeable.

23 Because Radulovic's obligation is not based on an agreement
24 to indemnify Alpers from any marital debt, he believes
25 § 523(a)(15) is not applicable. This argument is based on
26 Radulovic's interpretation of Myrvang, 232 F.3d at 1120-21, and
27 Greenwalt v. Greenwalt (In re Greenwalt), 200 B.R. 909, 915
28 (Bankr. W.D. Wash. 1996).

1 However, there is nothing in Myrvang indicating either that
2 the debt declared nondischargeable was based on an agreement to
3 hold the nonfiling spouse harmless from a marital debt, or that
4 only a "hold harmless" obligation is made nondischargeable by
5 § 523(a) (15).

6 In Greenwalt, the bankruptcy court was confronted with a
7 divorce decree that required the debtor spouse to indemnify the
8 other spouse from certain marital debts. Nothing in the
9 Greenwalt decision suggests that only such hold harmless
10 obligations are made nondischargeable by § 523(a) (15).

11 While the court in Greenwalt made a distinction between
12 debts owed to third-party creditors and a debt owed to the former
13 spouse's parents, this distinction was made solely in the context
14 of balancing the benefits of a discharge to the debtor with the
15 detriments of a discharge to his former spouse. Greenwalt, 200
16 B.R. at 914-15. "In balancing the benefit of the discharge to
17 the debtor versus the detriment to the other party, the court
18 must assess the totality of the circumstances." Greenwalt, 200
19 B.R. at 914. If the debtor was permitted to discharge the debt
20 to the parents, the bankruptcy court concluded that the parents
21 were unlikely to pursue collection from their daughter, the
22 debtor's former spouse. Therefore, the benefit of a discharge to
23 the debtor outweighed any detriment it would have caused the
24 former spouse.

25 Nowhere in its decision did the bankruptcy court in
26 Greenwalt determine that only a debtor's obligation to indemnify
27 a former spouse from marital debts could fall within the scope of
28 § 523(a) (15). Indeed, that issue was never before the court.

1 Nor is there anything in the statutory language limiting the
2 reach of § 523(a)(15) to hold harmless obligations. Section
3 523(a)(15) provides in relevant part: "A discharge under section
4 727 ... does not discharge an individual debtor from any debt
5 ... [not in the nature of support] that is incurred by the debtor
6 in the court of a divorce or separation or in connection with a
7 separation agreement, divorce decree or other order of a court of
8 record...." [Emphasis added.]

9 The legislative history makes clear that by enacting
10 § 523(a)(15), Congress sought to make any nonsupport obligation,
11 whether it is characterized as a hold harmless obligation, a
12 property settlement, or any other type of debt assessed in the
13 context of a divorce, nondischargeable unless the debtor lacks
14 the ability to pay it, or whenever a bankruptcy discharge
15 benefits the debtor more than it harms the former spouse. The
16 following appears in the legislative history:

17 In some instances, divorcing spouses have agreed to
18 make payments of marital debts, holding the other
19 spouse harmless from those debts, in exchange for a
20 reduction in alimony payments. In other cases, spouses
21 have agreed to lower alimony based on a larger property
22 settlement. If such "hold harmless" **and property**
23 **settlement obligations** are not found to be in the
24 nature of alimony, maintenance, or support, they are
25 dischargeable under current law. The nondebtor spouse
26 may be saddled with substantial debt and little or no
27 alimony or support. This subsection will make such
28 obligations nondischargeable in cases where the debtor
has the ability to pay them and the detriment to the
nondebtor spouse from their nonpayment outweighs the
benefit to the debtor of discharging such debts.

[Emphasis added.] 140 Cong. Rec. H10,752 (daily ed. October 4,
1994).

The courts have had no difficulty determining that a debt
owed directly to a former spouse and not based on an indemnity

1 obligation may be nondischargeable under § 523(a)(15). See,
2 e.g., Gamble v. Gamble (In re Gamble), 143 F.3d 223, 225 (5th
3 Cir. 1998). The Ninth Circuit, for example, in Short v. Short
4 (In re Short), 232 F.3d 1018 (9th Cir. 2000), upheld the
5 bankruptcy court's determination that a nonsupport obligation was
6 nondischargeable under § 523(a)(15). That obligation did not
7 require the debtor to indemnify the nonfiling spouse from a
8 marital debt owed to a third person. Rather, the debt was based
9 on a loan by the nonfiling spouse to the debtor made during their
10 marriage. The divorce decree required the debtor to repay this
11 loan to the nonfiling spouse.

12 Section 523(a)(15) makes no reference to a requirement that
13 the debt in question be owed, in the first instance, to a third
14 party, as opposed to the former nonfiling spouse. Therefore, the
15 bankruptcy court made no error when it determined that the state
16 court judgment was the type of debt that could be declared
17 nondischargeable, in whole or in part.

18 19 B. Whether the Judgment Assessed a Penalty

20 Radulovic contends that the bankruptcy court made a mistake
21 when it provided in its judgment that the nondischargeable
22 portion of the debt would accrue interest and become immediately
23 due and payable in the event Radulovic failed to make timely
24 installment payments to Alpers. According to Radulovic, imposing
25 interest and accelerating the debt in this fashion is an
26 impermissible penalty. In support of this, Radulovic relies on
27 the Myrvang decision.

1 In Myrvang, the bankruptcy court determined that a portion
2 of a divorce-related debt was nondischargeable under
3 § 523(a)(15). It permitted the debtor to repay the
4 nondischargeable debt in regular installments over five years.
5 But, if the debtor failed to make timely installment payments, a
6 judgment would be entered for the full amount of the unpaid
7 nondischargeable debt plus a \$73,000 penalty. Myrvang, 232 F.3d
8 at 1120. The bankruptcy court based the contingent award of the
9 penalty on its powers under § 105(a).

10 The debtor challenged the imposition of the penalty and the
11 Ninth Circuit agreed that it had been improperly imposed under
12 § 105(a). While it concluded that the bankruptcy court could
13 impose a five-year repayment schedule,

14 "[t]he bankruptcy court's imposition of a \$73,000
15 penalty as an incentive to induce [the debtor] to make
16 timely payments on his debt to [his former spouse],
17 however, is a different matter. The imposition of a
18 penalty is not linked to any provision of the
19 Bankruptcy Code. Section 523(a) contemplates
20 nondischargeability as a method of making whole the
21 special creditors it protects, not providing them with
22 a windfall. We have not discovered any case where a
23 bankruptcy court has included a penalty provision as a
24 way of encouraging the payment of nondischargeable
25 debts. The penalty provision conflicts with the
26 bankruptcy court's own finding that [the debtor] was
27 unable to pay the entirety of the debt owed [his former
28 spouse] and its decision to grant a partial discharge.
Plainly, if the bankruptcy court agrees that requiring
[the debtor] to pay the entirety of his obligation to
[his former spouse] would leave him in a state of
penury, it makes little sense to order [the debtor] to
pay a penalty provision if he fails to make a payment
that nearly equals the sum of his indebtedness.

25 Myrvang, 232 F.3d at 1125.

26 Here, however, no penalty was imposed. Radulovic is
27 required to pay interest on the debt only if he defaults and, in
28

1 the event he defaults, the debt becomes immediately due and
2 payable. These provisions are not penalties.

3 The acceleration of a debt has been widely held not to
4 constitute a penalty. See, e.g., Jacobson v. McClanahan, 264
5 P.2d 253, 254-55 (Wash. 1953); B-M-G Inv. Co. v.
6 Continental/Moss-Gordin, Inc., 320 F. Supp. 968, 973 (N.D. Tex.
7 1969); In re Mill City Plastics, 129 F. Supp. 86, 90 (D. Minn.
8 1955). In fact, the judgment in Myrvang included a provision
9 requiring payment in full in the event the installments were not
10 paid timely. No assertion was made that this provision amounted
11 to a penalty.

12 The same is true with respect to the award of interest.
13 Courts have generally concluded that interest on a monetary
14 judgment is an element of compensation for the use of the
15 plaintiff's money, and is not a penalty. See, e.g., Dishman v.
16 UNUM Life Ins. Co. Of America, 269 F.3d 974, 988 (9th Cir. 2001);
17 IBT Int'l, Inc. v. Northern (In re Int'l Admin. Svcs., Inc.), 408
18 F.3d 689, 710 (11th Cir. 2005).

19 Additionally, interest accruing on a nondischargeable debt
20 is itself nondischargeable. See Great Lakes Higher Educ. Corp.
21 v. Pardee (In re Pardee), 218 B.R. 916, 925 (9th Cir. BAP 1998),
22 affirmed, 193 F.3d 1083 (9th Cir. 1999). For example, in Bruning
23 v. United States, 376 U.S. 358 (1964), the Supreme Court
24 determined that interest accruing on a nondischargeable tax debt
25 was nondischargeable. See also Ward v. Bd. of Equalization of
26 Cal. (In re Artisan Woodworkers), 204 F.3d 888 (9th Cir. 2000).

27 The bankruptcy court could have simply declared \$365,000 of
28 the state court judgment nondischargeable and permitted Alpers to

1 collect that amount with interest until paid. Instead, it
2 permitted Radulovic to pay the nondischargeable portion of the
3 state court judgment in installments without interest. Only if
4 an installment was not paid timely, would the judgment accelerate
5 and begin to accrue interest. These provisions are not
6 penalties. They are incentives to make timely payments to
7 Alpers. If Radulovic is unwilling to take advantage of these
8 incentives, Alpers will receive no more than the bankruptcy court
9 could have awarded to her in the first instance.

10 The bankruptcy court did not abuse its discretion by
11 providing that the nondischargeable portion of the state court
12 judgment would become immediately due and payable, with interest,
13 if Radulovic failed to make timely installment payments.

14
15 C. Exclusion of Expert Testimony and Failure to Consider Other
Evidence Regarding Alpers' Finances

16 1. The Expert Witness

17 Radulovic next argues that the bankruptcy court erroneously
18 excluded the testimony of a purported expert, Daniel J.
19 Cunningham, who was prepared to testify regarding Alpers'
20 financial situation. Mr. Cunningham, who does business as "The
21 Business Ferret," has an educational background in psychology,
22 and a significant portion of his work experience is as a
23 salesman. In recent years, he has acted as a financial
24 consultant, primarily to businesses.

25 Before the bankruptcy court excluded Mr. Cunningham's
26 testimony, Radulovic's counsel made an offer of proof. See Fed.
27 R. Evid 103(a)(2). Mr. Cunningham intended to testify that
28 Alpers had "wrongly classified her assets and liabilities from a

1 financial analysis standpoint" and that the valuation of her
2 assets had not decreased "from the time of the divorce to the
3 present."

4 On the valuation issue, Mr. Cunningham would establish that
5 there was a "different valuation" of Alpers' house and that she
6 had "misstated the value of stocks as of the current period...."

7 This offer of proof is difficult to understand. If Mr.
8 Cunningham was not qualified to opine as to the value of any type
9 of property, and there is nothing in the record suggesting he was
10 so qualified, it appears that Mr. Cunningham's testimony was
11 offered solely to interpret Alpers' financial records for the
12 bankruptcy court. Those records consisted of limited credit card
13 records, bank statements, and tax returns.

14 Both testimony and documents concerning Alpers' assets,
15 liabilities, income, and expenses, were introduced at the trial.
16 This evidence is typical of that introduced in disputes under
17 § 523(a)(15) and its meaning and relevance can be easily
18 understood by the trier of fact without the assistance of an
19 expert.

20 Federal Rule of Evidence 702 provides that "[i]f scientific
21 technical or other specialized knowledge will assist the trier of
22 fact to understand the evidence or to determine a fact in issue,
23 a witness qualified as an expert by knowledge, skill, experience,
24 training, or education, may testify thereto in the form of an
25 opinion or otherwise, if (1) the testimony is based upon
26 sufficient facts or data, (2) the testimony is the product of
27 reliable principles and methods, and (3) the witness has applied
28 the principles and methods reliably to the facts of the case."

1 A trial court has wide discretion when deciding whether the
2 testimony of an expert witness will be helpful to its
3 understanding and ascertaining the relevant facts. See Salem v.
4 United States Lines Co., 370 U.S. 31, 35 (1962).

5 In the present case, the bankruptcy court ruled that the
6 testimony described in the offer of proof would not have been
7 helpful to its consideration of the facts relevant to the
8 § 523(a)(15)(B) analysis. This decision is supported by the
9 record and was not an abuse of discretion.

10 2. Other Evidence Regarding Alpers' Financial Situation

11 Radulovic also contends that the bankruptcy court failed to
12 consider evidence of Alpers' assets, income, and expenses
13 indicating that the detriment caused her by granting his
14 bankruptcy discharge would be insignificant. In particular he
15 believes that the bankruptcy court did not take into account: (a)
16 Alpers' receipt of distributions from a family partnership; (b)
17 her option to purchase a condominium; (c) the availability of
18 substantial assets previously received from Radulovic; and (d)
19 statements in Alpers' written budget that conflicted with her
20 testimony.

21 **a. The Family Partnership**

22 The bankruptcy court noted that Radulovic had been aware of
23 Alpers' membership in a family partnership at the time of the
24 divorce but had not established that she was receiving any
25 distributions from it. At the trial in the bankruptcy court,
26 Alpers testified that she had "never collected any money" from
27 the family partnership, that it was a "poorly designed tax
28

1 strategy by her parents," and that she never had an interest in
2 the assets held in the partnership.

3 **b. The Condominium**

4 With respect to Alpers' option to purchase a condominium,
5 Alpers testified that, while she was uncertain about the value of
6 her option, she was actually losing money on the condominium.
7 While Radulovic introduced the 2003 and 2004 tax records showing
8 an appreciation of \$50,000 for the condominium, he produced no
9 evidence of the condominium's value at the time of the trial in
10 September 2005. Nor did he produce evidence tending to show that
11 the appreciation of the condominium from 2003 to 2004 would
12 continue in 2005 at the same rate, if at all.

13 **c. Alpers' Net Worth**

14 As discussed in more detail below, Alpers is not employed
15 outside of her home. She cares for eight children, including an
16 autistic child. Her new husband is disabled with a broken back
17 and is unable to work on a full time basis. Because of this
18 household situation, Alpers' monthly expenditures exceed her
19 income by approximately \$1,000. Alpers' net worth, then, is what
20 she must rely upon for the support of herself and her family.

21 In this circumstance, and assuming as argued by Radulovic
22 that Alpers has a net worth of approximately \$450,000, including
23 \$200,000 for the value of the condominium (a value that is not
24 supported by the record), the bankruptcy court was not clearly
25 erroneous when it found and concluded that the burden of a
26 complete discharge would fall unfairly upon Alpers.

1 **d. Expenses Claimed by Alpers**

2 The bankruptcy court attributed college expenses for the
3 parties' children to Alpers. Radulovic maintains that this was
4 an error because he is the only one obligated to pay tuition
5 expenses.

6 The parties' divorce decree, however, requires Radulovic to
7 provide only "at least one-half of the college tuition expenses."
8 Consequently, it was not unreasonable to conclude that Alpers
9 will also be contributing to the college education of her
10 children.

11 Moreover, Alpers testified that she is obligated on a loan
12 for the financing of her daughter Kelsie's first semester in
13 college. Radulovic testified that he will be paying only half of
14 Kelsie's tuition but he admitted at the trial that he still had
15 not paid anything toward her college tuition expenses.

16 Radulovic also argues that Alpers' budget is "obfuscated and
17 misleading" because she lists the entire mortgage amount as an
18 expense, "lists expenses for the van they own and Alpers drives
19 as [sic] solely her husband's expense," and lists credit card
20 payments as recurring expenses. These allegations merely suggest
21 inconsistencies in some of the evidence but Radulovic fails to
22 explain why they are significant or warrant reversal or any
23 change in the result.

24 At trial, Alpers testified regarding these alleged
25 inconsistencies. She explained, for example, her use of various
26 credit cards, who paid the monthly balances, and why balances
27 were carried on certain cards. Alpers also explained how she and
28 her current husband divide their household bills.

1 Finally, it must be kept in mind that Alpers stated a prima
2 facie case under § 523(a)(15) when she proved that Radulovic's
3 debt was incurred in the course of a divorce proceeding and was
4 not in the nature of support. Jodoin v. Samayoa (In re Jodoin),
5 209 B.R. 132, 138-39 (9th Cir. BAP 1997). The burden then
6 shifted to Radulovic to establish the affirmative defenses made
7 available by subdivisions (A) and (B) of § 523(a)(15). Id. It
8 was his burden to prove that he could not afford to pay any
9 portion of the state court judgment, or that the benefit to him
10 of a discharge outweighed the resulting detriment to Alpers.

11 Consequently, complaints about the clarity of Alpers'
12 evidence on issues that Radulovic was required to prove are
13 particularly unpersuasive.

14 On this record, we cannot say that the bankruptcy court made
15 any clearly erroneous finding of fact regarding Alpers' financial
16 situation or that it came to an erroneous conclusion regarding
17 the relative detriment she would suffer if the state court
18 judgment was discharged in its entirety.

19 3. Exclusion of Opinion Testimony by Radulovic

20 Nor was it an error for the bankruptcy court to bar
21 Radulovic's testimony regarding the value of certain real
22 property owned by Alpers and its ability to generate income. He
23 had no personal knowledge of the property or its ability to
24 produce income, and he had no qualifications as an expert to give
25 any opinion, including an opinion of value. See Fed. R. Evid.
26 701.

1 D. The Financial Impact of Alpers' New Familial Obligations

2 Radulovic argues that, when weighing the detrimental
3 consequences of a bankruptcy discharge to Alpers, the bankruptcy
4 court erroneously considered the financial impact of Alpers'
5 remarriage. Her new husband, David Alpers, is recovering from a
6 broken back that affects his ability to work full time, and with
7 his children added to the household, Alpers now cares for a total
8 of eight children.

9 This was allegedly an error because § 523(a)(15)(B) makes a
10 nonsupport obligation nondischargeable if the detriment caused by
11 a discharge "to a spouse, former spouse, or child of the debtor"
12 outweighs the benefit to the debtor of a discharge. According to
13 Radulovic, by considering the financial impact on Alpers of her
14 new family, the bankruptcy court considered the detriment caused
15 by a discharge to persons who were not the spouse, former spouse
16 or child of the debtor.

17 This argument lacks merit.

18 The benefit to the debtor of a discharge and its detriment
19 to his former spouse must be ascertained and weighed as of the
20 time of the trial and projected into the future. In re Jodoin,
21 209 B.R. at 142; Wellner v. Clark (In re Clark), 207 B.R. 651,
22 656 (Bankr. E.D. Mo. 1997). This requires the court to consider
23 the totality of the debtor's and the former spouse's financial
24 circumstances. Greenwalt, 200 B.R. at 914. Their financial
25 circumstances may include, without limitation, present,
26 continuing, and future financial obligations, employability,
27 household and business expenses, and income. In re Clark, 207
28 B.R. at 656.

1 This analysis requires the court to consider the debtor's
2 and the former spouse's current family situation. If either has
3 new children or has remarried, the resulting financial impact
4 must be assessed.

5 In Short, for instance, after the debtor divorced his former
6 spouse, he began to cohabit with a "live-in romantic companion."
7 The debtor and his companion also operated a business together.
8 When the former spouse sought a determination that a nonsupport
9 obligation was nondischargeable under § 523(a)(15), the
10 bankruptcy court considered the companion's income when
11 evaluating both the debtor's ability to pay as well as the
12 relative benefits and burdens caused by a discharge. After
13 determining that the debt was nondischargeable, the debtor
14 appealed. The Ninth Circuit held:

15 [D]eterminations of dischargeability under § 523(a)(15)
16 are likely to depend upon the overall financial
17 position of the particular debtor before a bankruptcy
18 court. [Citation omitted.] ... We therefore hold that,
19 in determining the dischargeability of a
20 divorce-related debt, a bankruptcy court may consider
the income of a debtor's live-in romantic companion
whenever the debtor and his or her live-in romantic
companion are economically interdependent or form a
single economic unit.

21 Short, 232 F.3d at 1023-24.

22 The analysis is a two-way street. If a former spouse's
23 finances improve because of a new marriage or any other reason,
24 the debtor may argue that any detriment to the former spouse of a
25 discharge is outweighed by its benefit to the debtor. So, for
26 example, if the debtor's former spouse in Short had remarried a
27 billionaire, chances are that the benefit to the debtor of a
28

1 discharge would outweigh any possible detriment it might cause to
2 his former spouse.

3 Here, to understand Alpers' financial situation required the
4 bankruptcy court to take account of her new household. This was
5 not an error.

6 7 E. Calculating Radulovic's Ability to Pay

8 Radulovic argues that the bankruptcy court's finding and
9 conclusion that he had the ability to pay a portion of the state
10 court judgment is based on a miscalculation of his disposable
11 income. He also maintains that the bankruptcy court excluded or
12 discounted as excessive, some of his living expenses, including
13 rent, gifts, costs incurred to visit his children, and savings
14 for retirement.

15 After deducting approximately \$4,266 a month for taxes and
16 medical insurance, the bankruptcy court found that Radulovic had
17 remaining income of approximately \$12,400 per month. Then the
18 bankruptcy court deducted a further \$3,158, consisting of \$1,958
19 for child support and \$1,200 for alimony, leaving Radulovic with
20 approximately \$9,100 per month from which he could pay Alpers and
21 provide for his own maintenance and support.

22 According to Radulovic, the bankruptcy court should have
23 deducted \$4,099 for taxes and medical insurance and \$3,098 for
24 support payments. But, when one subtracts these amounts from
25 Radulovic's gross monthly income of \$16,666, one arrives at
26 \$9,469, more than the \$9,100 estimated by the bankruptcy court.

27 While \$9,469 on its face seems more than enough to both
28 support Radulovic and repay a portion of his debt to Alpers, the

1 budget he presented to the bankruptcy court indicated that
2 nothing would remain after payment of living expenses. The
3 bankruptcy court, however, found that many of Radulovic's living
4 expenses were excessive and unreasonable.

5 These expenses included \$530 to visit with his children
6 twice a month, \$2,250 for rent, \$600 for food, and \$2,166 to fund
7 a retirement plan. The bankruptcy court concluded that if
8 Radulovic eliminated or reduced these expenses, he could afford
9 to pay \$4,500 a month to Alpers.

10 Radulovic's quibbles with these findings and conclusions
11 were not persuasive to the bankruptcy court and their repetition
12 on appeal fails to convince us that the bankruptcy court abused
13 its discretion.

14 Although he budgeted for two visits per month to see his
15 children, Radulovic testified that in a six-month period he
16 visited them only once. Given this history, it would have been
17 unreasonable to allow Radulovic to continue budgeting \$530 per
18 month for this expense.

19 Radulovic also testified about his residence and his efforts
20 to rent a less expensive home. When asked about his efforts,
21 Radulovic replied only that the rent he pays now is a bargain
22 because he "managed to talk them down on the rent." Whether this
23 represents a bargain is debatable, and the debtor gave no
24 specific testimony as to what efforts he had made to find cheaper
25 housing.

26 Even though Radulovic budgeted \$600 a month for food, his
27 budget also included \$150 for restaurant meals and entertainment
28 (excluding \$100 for business entertainment) and \$160 for work

1 lunches. This brings his potential overall monthly food budget
2 to more than \$900.

3 The bankruptcy court considered the entire amount, \$2,166,
4 budgeted by Radulovic for retirement savings to be excessive. In
5 arriving at this conclusion, the court noted Radulovic's youth,
6 36 years of age, and the fact that he was a self-made millionaire
7 by the age of 30, and his recent annual earnings in excess of
8 \$200,000. Given this past, the bankruptcy court did not commit
9 clear error when it concluded that the debtor had ample time and
10 ability to save for retirement after he repaid \$365,000 to
11 Alpers.

12 While Radulovic alluded to the possibility that he might
13 lose his job in the future, his testimony was merely speculative,
14 without any references to concrete evidence suggesting a
15 likelihood that he will lose his job and then be unable to find
16 new employment in his chosen career.

17 Finally, Radulovic contends that the bankruptcy court did
18 not correctly total the expenses it excluded from his budget
19 because, when added, those expenses come to only \$4,308. The
20 court imposed monthly payments of \$4,500 on Radulovic.

21 It is clear from the bankruptcy court's oral findings and
22 conclusions, however, that it was highlighting the more obvious
23 examples of expenses that were unreasonable and excessive. There
24 are others. For instance, the debtor's budget set aside \$400 a
25 month for a vacation for himself and his children. Radulovic
26 testified, however, that in the preceding seven years, he had not
27 taken his children on a vacation.

28

1 Based on the foregoing, this court concludes that the
2 bankruptcy court's findings and conclusions regarding Radulovic's
3 ability to pay Alpers are amply supported by the record.

4
5 F. Mr. Alpers' Underemployment and Alpers' Unemployment

6 According to Radulovic, the bankruptcy court failed to
7 consider the "underemployment" of David Alpers and Alpers'
8 refusal to work despite her college degree. The record is to the
9 contrary.

10 The bankruptcy court received testimony that Mr. Alpers has
11 a broken back and is currently in recovery. He is working part-
12 time.

13 While evidence indicated that Alpers is not employed outside
14 of the home, she cares for eight children, one of whom is
15 autistic.

16 Thus, the record does not suggest that the bankruptcy court
17 failed to consider the relevant evidence. The bankruptcy court
18 merely failed to interpret the factual record as urged by
19 Radulovic. Nonetheless, its findings on these points are
20 supported by the record and they are not clearly erroneous.

21
22 G. Radulovic's Benefit From a Complete Discharge

23 Radulovic finally argues that the bankruptcy court failed to
24 make any findings with respect to the benefit he would receive
25 from a complete discharge of the state court judgment. See 11
26 U.S.C. § 523(a)(15)(B).

27 This argument ignores the bankruptcy court's findings about
28 Radulovic's income and expenses. It found that, after deducting

1 income taxes, medical insurance, and support obligations,
2 Radulovic netted approximately \$9,100 every month. In the event
3 of a complete discharge of the judgment, the benefit to Radulovic
4 was obvious - he would keep this net income without paying
5 anything to Alpers and continue to live the rather extravagant
6 lifestyle outlined in his budget.

7 Radulovic's attempt to buttress his argument that he would
8 have benefitted by a complete discharge by comparing himself to
9 the debtors in Jodoin and Myrvang is unpersuasive. The relevant
10 comparison is to Alpers.

11 Nevertheless, a comparison to the plight of the debtors in
12 Jodoin and Myrvang does not aid Radulovic's cause.

13 In Jodoin, the debtor earned \$75,000 less than Radulovic.
14 Jodoin, 209 B.R. at 142-43. And, the entire obligation owed by
15 the debtor in Jodoin to the former spouse, not just a portion of
16 it as in this case, was declared non-dischargeable. Jodoin, 209
17 B.R. at 134 n.4. While the amount declared nondischargeable in
18 Jodoin, \$44,082, was considerably less than in this case, it
19 represented the entire obligation owed by the debtor. The
20 bankruptcy court had no reason to consider whether that debtor
21 should repay an even larger obligation.

22 While the debtor in Myrvang may have been college educated,
23 and Radulovic is not, education, particularly without regard to a
24 debtor's experience and income, is not determinative in the
25 application of § 523(a)(15). Myrvang, 232 F.3d at 1120.

26 In general, we are not persuaded that the findings of fact
27 are clearly erroneous. Nor are we persuaded that this case is
28 distinguishable from Jodoin and Myrvang. The bankruptcy court's

1 basic finding, one that is well-supported by the record, was that
2 Radulovic is a young man who has been successful in business and
3 who is likely to continue that success in the future.⁵ Based on
4 this finding, the bankruptcy court concluded both that Radulovic
5 had the ability to pay Alpers, and that the benefit to him of a
6 complete discharge was outweighed by the detriment it would cause
7 Alpers.

8
9 **CONCLUSION**

10 We conclude that the bankruptcy court did not err when it
11 determined that \$365,000 of the state court judgment in favor of
12 Alpers was nondischargeable under § 523(a)(15). Its findings of
13 fact regarding Radulovic's ability to pay, as well as the
14 relative benefit and burden that a discharge would have caused,
15 are not clearly erroneous. Also, the exclusion of testimony from
16 Radulovic's financial consultant was appropriate because that
17 testimony was unlikely to assist the bankruptcy court to
18 understand Alpers' finances. AFFIRMED.

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26 ⁵ After his divorce from Alpers, Radulovic used some of
27 the approximately \$460,000 in proceeds from the disposition of
28 his I-Link stock, on travel, gifts for friends, and a down
payment on a house for his parents. This discretionary spending
suggests that Radulovic is also optimistic about his financial
future.