NOT FOR PUBLICATION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.	)	**MEMORANDUM**[1]
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

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

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[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.

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

FACTS

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

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

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

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[3] This bankruptcy case was filed before October 17, 2005. Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and 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.

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

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

JURISDICTION

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

ISSUES

Radulovic identifies eight issues in his appeal:

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

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

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

fails to make timely installment payments amount to impermissible penalties.

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

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

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

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

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

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

STANDARD OF REVIEW

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

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

DISCUSSION

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

A. Scope of § 523(a)(15)

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

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

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

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

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

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

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

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

> In some instances, divorcing spouses have agreed to make payments of marital debts, holding the other spouse harmless from those debts, in exchange for a reduction in alimony payments. In other cases, spouses have agreed to lower alimony based on a larger property settlement. If such "hold harmless" **and property settlement obligations** are not found to be in the nature of alimony, maintenance, or support, they are dischargeable under current law. The nondebtor spouse may be saddled with substantial debt and little or no alimony or support. This subsection will make such 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

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

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

B. Whether the Judgment Assessed a Penalty

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

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

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

> "[t]he bankruptcy court's imposition of a $73,000 penalty as an incentive to induce [the debtor] to make timely payments on his debt to [his former spouse], however, is a different matter. The imposition of a penalty is not linked to any provision of the Bankruptcy Code. Section 523(a) contemplates nondischargeability as a method of making whole the special creditors it protects, not providing them with a windfall. We have not discovered any case where a bankruptcy court has included a penalty provision as a way of encouraging the payment of nondischargeable debts. The penalty provision conflicts with the bankruptcy court's own finding that [the debtor] was unable to pay the entirety of the debt owed [his former 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.

Myrvang, 232 F.3d at 1125.

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

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

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

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

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

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

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

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

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

1. The Expert Witness

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

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

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

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

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

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

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

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

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

2. Other Evidence Regarding Alpers' Financial Situation

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

a. The Family Partnership

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

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

b. The Condominium

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

c. Alpers' Net Worth

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

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

d. Expenses Claimed by Alpers

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

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

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

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

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

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

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

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

3. Exclusion of Opinion Testimony by Radulovic

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

D. The Financial Impact of Alpers' New Familial Obligations

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

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

This argument lacks merit.

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

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

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

> [D]eterminations of dischargeability under § 523(a)(15) are likely to depend upon the overall financial position of the particular debtor before a bankruptcy court. [Citation omitted.] ... We therefore hold that, in determining the dischargeability of a 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.

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

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

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

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

E. Calculating Radulovic's Ability to Pay

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Mr. Alpers' Underemployment and Alpers' Unemployment

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

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

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

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

G. Radulovic's Benefit From a Complete Discharge

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

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

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

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

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

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

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

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

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

CONCLUSION

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

[5] After his divorce from Alpers, Radulovic used some of the approximately $460,000 in proceeds from the disposition of 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.