AO 450 (Rev. 5/85) Judgment in a Civil Case

02-1049

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
2005 FEB 17 PM 2:14
BY CLERK
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United States District Court

District of Vermont

BRIAN D. FORANT,
Appellant,

v.

CORINNE R. (DEVENGER) BROCHU,
Appellee.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 1:04-CV-269

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Memorandum of Decision (Doc. No. #11) filed February 17, 2005, the decision of the Bankruptcy Court is AFFRIMED.

FILED
2005 FEB 22 AM 10 25
US BANKRUPTCY COURT
DISTRICT OF VERMONT

Date: February 17, 2005

RICHARD PAUL WASKO
Clerk

(By) Deputy Clerk

JUDGMENT ENTERED ON DOCKET
DATE: 12/17/2005

AO 72A
(Rev.8/82)

UNITED STATES DISTRICT COURT
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DISTRICT OF VERMONT
FEDERAL BUILDING
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Civil Action No. 1:04-CV-269 Date February 17, 2005

Brian Forant vs. Corinne Brochu

NOTICE TO LITIGANTS

If you wish to appeal the enclosed judgment or order, you must file a Notice of Appeal within 30 days after entry of the judgment or order appealed from (or 60 days if the United States or an officer or agency of the United States is a party). Fed.R.App.P. 4(a)(1). (Effective November 1, 2003, the fee for filing an appeal will increase to $255.00)

If you wish to appeal but are unable to file your Notice of Appeal within 30 days [or 60 days if applicable] after the date of entry shown on line 2 below, then you have an additional 30 days to file a Motion for Extension of Time. The Motion for Extension of Time **must** be filed within 30 days after the date on line 3 below. Every Motion for Extension of Time must contain an explanation which demonstrates "good cause" or "excusable neglect" for failure to file the Notice of Appeal within the time limit required. Fed.R.App.P. 4(a)(5).

PLEASE TAKE NOTICE

1. Judgment filed — February 17, 2005
2. Date of Entry of Judgment on the docket of this court — February 17, 2005
3. Notice of Appeal **MUST** be filed on or before — March 21, 2005

Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

BRIAN D. FORANT, Appellant	:	
v.	:	CIVIL NO. 1:04CV269
CORINNE R. (DEVENGER) BROCHU, Appellee	:	

MEMORANDUM OF DECISION

Although the purported errors on appeal are somewhat difficult to discern from the pro se pleadings, the central issues in this adversary proceeding, as framed by the Bankruptcy Court (Colleen A. Brown, B.J.) are: (1) whether Brian Forant's 401k retirement account and a 75% portion of his Vermont Municipal Employee's Retirement Account (hereinafter "VMERA") are part of his bankruptcy estate; and, (2) if so, whether his discharge pursuant to 11 U.S.C. § 523(a)(15) excepts his obligation to transfer those accounts to his former wife pursuant to a family court final divorce decree. See Memorandum of Decision Granting Anew the Plaintiff's Motion for Summary Judgment (Bankr. D. Vt. Aug. 27, 2004)(hereinafter "Summary Judgment Decision") at 2.

The Bankruptcy Court found, inter alia, under the circumstances presented in this case, Corinne (Devenger) Brochu was the owner of the retirement accounts prior to Forant's filing for bankruptcy protection and, therefore, the

accounts were not subject to discharge. For the reasons set forth below, the ruling of the Bankruptcy Court is AFFIRMED.

The District Court has jurisdiction over appeals from final judgments of the Bankruptcy Court. 28 U.S.C. § 158(a). It will not disturb a Bankruptcy Court's findings of fact unless clearly erroneous. See, e.g., In re Parrotte, 22 F.3d 472, 474 (2d Cir. 1994). Legal determinations, however, are subject to de novo review. Id.; In re Donahue, 232 B.R. 610, 613 (D. Vt. 1999).

The facts underlying this dispute are straightforward and undisputed. Mr. Forant and Ms. Brochu's final divorce decree dated January 23, 2002 transferred 100% of the property rights of Forant's 401K savings plan and 75% of the property rights to the marital portion of his VMERA pension plan to Brochu. On May 8, 2002, Forant filed for bankruptcy relief, and this dispute arose concerning whether these accounts are excepted from discharge. See generally Summary Judgment Decision at 3-4.

Under 11 U.S.C. § 523(a)(15), debts incurred "in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record" are excepted from the discharge which may otherwise be afforded a debtor. Furthermore, "[it] is a fundamental tenet of bankruptcy law that the 'bankruptcy estate' is

comprised of whatever interests, legal and equitable, that a debtor has on the date of the filing of his or her bankruptcy case." In re M. Hutchins, 306 B.R. 82, 97 (Bankr. D. Vt. 2004).

As a result of a valid Vermont divorce decree, and prior to his filing for bankruptcy, Mr. Forant had no interest in the totality of his 401k retirement account and in 75% of his VMERA account. See Morton v. Nat'l Bank of New York City, 866 F.2d 561, 564 (2d Cir. 1989)(automatic bankruptcy stay does not relieve parties from obligation to comply with non-conflicting state laws). Ms. Brochu's "rights to the distributive award vested upon the entry of the Judgment of Divorce." In re Greenwald, 134 B.R. 729, 731 (Bankr. S.D.N.Y. 1991). Accordingly, as Judge Brown correctly found, see Summary Judgment Decision at 7, these accounts never became part of his bankruptcy estate and therefore could not be subject to discharge.

For substantially the reasons set forth in Judge Brown's Summary Judgment ruling, the decision of the Bankruptcy Court is AFFIRMED.

SO ORDERED.

Dated at Brattleboro, Vermont, this 17th day of February, 2005.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge

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Message-Id:<76404@vtd.uscourts.gov>
Subject:Activity in Case 1:04-cv-00269-JGM Forant v. Devenger "Order on Motion for R
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U.S. District Court

District of Vermont

Notice of Electronic Filing

The following transaction was received from kbl, entered on 2/17/2005 at 11:11 AM EST and filed on 2/17/2005

Case Name: Forant v. Devenger
Case Number: 1:04-cv-269
Filer:
Document Number: 10

Docket Text:
ORDER denying as moot [9] Motion for Request for Relief of Debt on Appeal. Signed by Judge J. Garvan Murtha on 02/17/2005. (This is a text only Order.) (kbl,)

The following document(s) are associated with this transaction:

1:04-cv-269 Notice will be electronically mailed to:

Kevin Jay Purcell ustpregion02.vt.ecf@usdoj.gov,

1:04-cv-269 Notice will be delivered by other means to:

Corinne R Devenger
P.O. Box 603
Hardwick, VT 05843-0603

Brian D Forant
P.O. Box 382
Hardwick, VT 05843-0382

Other Orders/Judgments

1:04-cv-00269-JGM Forant v. Devenger

U.S. District Court

District of Vermont

Notice of Electronic Filing

The following transaction was received from wjf, entered on 2/17/2005 at 11:42 AM EST and filed on 2/17/2005

Case Name: Forant v. Devenger
Case Number: 1:04-cv-269
Filer:
Document Number: 11

Docket Text:
MEMORANDUM of DECISION - Bankruptcy Court's ruling on Motion for Summary Judgment is AFFIRMED.. Signed by Judge J. Garvan Murtha on 02/17/2005. (wjf,)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1070689342 [Date=2/17/2005] [FileNumber=76449-0] [57ca3499cbe68f007d07f4cd318441d148eb7d852ed5358b0f4bcbebf8f6e784833bd7ab23f3aeb73f8ad2fb7505803b6518ec8dc8cc847212731d3176bcd287]]

1:04-cv-269 Notice will be electronically mailed to:

Kevin Jay Purcell ustpregion02.vt.ecf@usdoj.gov,

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Corinne R Devenger
P.O. Box 603
Hardwick, VT 05843-0603

Brian D Forant
P.O. Box 382
Hardwick, VT 05843-0382

Other Orders/Judgments

1:04-cv-00269-JGM Forant v. Devenger

U.S. District Court

District of Vermont

Notice of Electronic Filing

The following transaction was received from wjf, entered on 2/17/2005 at 2:37 PM EST and filed on 2/17/2005

Case Name: Forant v. Devenger
Case Number: 1:04-cv-269
Filer:
WARNING: CASE CLOSED on 02/17/2005
Document Number: 12

Docket Text:
JUDGMENT in favor of Appellee against Appellant. The decision of the Bankruptcy Court is AFFIRMED. Signed by Clerk on 02/17/2005. (Attachments: # (1) Notice to Litigants)(wjf,)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1070689342 [Date=2/17/2005] [FileNumber=76534-0] [0d95f55395357d029d9fde89df6658bda09e1b74afc5a6dd3811c1b0d4a5a599aff9f 2e5ca48a2a986373c078cd476d18a6e9533244e7c93f43c50c8e370662b]]
Document description: Notice to Litigants
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1070689342 [Date=2/17/2005] [FileNumber=76534-1] [7ce7e839954ddd90665d23e5bddaf57cb548425e9619fae2f422319a71564276a4e2c da6955f4502cf4b0232c069be19e1a6b9e795be4453b38e8e826d4b3c3e]]

1:04-cv-269 Notice will be electronically mailed to:

Kevin Jay Purcell ustpregion02.vt.ecf@usdoj.gov,

1:04-cv-269 Notice will be delivered by other means to:

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