UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

CASE NO. 00-20136

GORDON S. EGGLESTON and
BRENDA K. EGGLESTON,

Debtors. **DECISION & ORDER**

BACKGROUND

On January 21, 2000, Gordon S. Eggleston and Brenda K. Eggleston (the "Debtors") filed a petition initiating a Chapter 7 case. On the Schedules and Amended Schedules required to be filed by Section 521 and Rule 7001, the Debtors: (1) indicated that they were due Federal and New York State 1999 Income Tax Refunds of $3,845.00, $425.00 of which had been assigned to their bankruptcy attorney; (2) indicated that they had cash-on-hand of $45.00 and $15.00 on deposit in a checking account; (3) on Schedule C claimed a permissible cash exemption of $2,500.00 in their Income Tax Refunds, pursuant to New York Debtor and Creditor Law (the "DCL")Section 283(2)[1]; and (4) indicated that they had $20,964.11 in unsecured debts.

A minute report of the Section 341 Hearing conducted by the Debtors' Trustee (the "Trustee") on February 29, 2000, indicated that there were non-exempt assets available for administration and distribution which consisted of the non-exempt portion of the Debtors' Income

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[1] DCL Section 283(2) provides that:

> 2. Contingent alternative bankruptcy exemption. Notwithstanding section two hundred eighty-two of this article, a debtor, who (a) does not elect, claim, or otherwise avail himself of an exemption described in section fifty-two hundred six of the civil practice law and rules; (b) utilizes to the fullest extent permitted by law as applied to said debtor's property, the exemptions referred to in subdivision one of this section which are subject to the five thousand dollar aggregate limit; and (c) does not reach such aggregate limit, may exempt cash in the amount by which five thousand dollars exceeds the aggregate of his exemptions referred to in subdivision one of this section or in the amount of two thousand five hundred dollars, whichever amount is less. For purposes of this subdivision, cash means currency of the United States at face value, savings bonds of the United States at face value, the right to receive a refund of federal, state and local income taxes, and deposit accounts in any state or federally chartered depository institution.

New York Debtor and Creditor Law § 283(2) (2000).

Tax Refunds and a TAP/PELL tuition refund of approximately $1,400.00 (the "TAP/PELL Grant Payment").

On May 31, 2000, the Trustee filed a motion (the "Turnover Motion") which requested that the Court issue an Order directing the Debtor, Brenda Eggleston, to turnover to him, as Trustee, the amount of the TAP/PELL Grant Payment. The Turnover Motion alleged that: (1) the Debtor had received the TAP/PELL Grant Payment in the amount of $1,406.97 from Monroe Community College ("MCC") post-petition; (2) the payment, which was designated as a refund, represented the portions of her educational grants from New York State and the Federal Government which were not directly applied to tuition or other expenses incurred at MCC; and (3) the Trustee had demanded the turnover of the amount of the Payment at the Debtors' Section 341 Meeting of Creditors, but Brenda Eggleston had failed to pay over this property of the estate.

On the return date of the Turnover Motion, the Debtor, Brenda Eggleston,[2] and the Trustee appeared and agreed that: (1) the TAP/PELL Grant Payment was part of the financial aide package that the Debtor had obtained through MCC, where she was enrolled; (2) the underlying grants had been determined and fully approved prior to the filing of her petition on January 21, 2000; (3) the TAP/PELL Grant Payment had been sent to her by MCC post-petition on or about February 22, 2000; (4) the grants were intended to assist her with tuition as well as housing, travel expenses, books, lunches and other miscellaneous expenses in connection with her education; (5) the proceeds of the grants had first been applied directly by MCC to pay her tuition;[3] (6) although the grants were designed or intended to assist her with incidental expenses incurred in connection with her education, there were absolutely no restrictions placed on her use of the TAP/PELL Grant Payment once she

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[2] On the return date, the Debtor, Brenda Eggleston, discharged her attorney and decided to proceed pro se.

[3] MCC has no residential students. If the Debtor was living on campus at a residential institution with a meal plan, the institution would have directly applied the Payment to board and meals.

received it; and (7) neither the Trustee nor Brenda Eggleston were aware of any specific Federal or New York State exemptions that applied to the Payment.

DISCUSSION

The Debtor, Brenda Eggleston, is a hardworking, sacrificing spouse and mother who has made a sincere effort to improve herself for her own benefit and the benefit of her family by returning to school to further her education while also maintaining employment. However, her family had substantial financial problems, incurred in part because of the birth of their first child.

As a result of their financial hardship, the Debtors elected to file a voluntary Chapter 7 case. In Chapter 7, in exchange for a discharge from all dischargeable debts, a debtor is required to surrender any and all non-exempt assets for administration and distribution to creditors. Although at times garnishments, foreclosures, repossessions and collection letters and telephone calls from unpaid creditors influence the timing of the filing of a voluntary bankruptcy case, in the end the debtors elect when to file a petition.

In this case, the Debtors were represented by counsel when they filed, so they were fully informed of all of their rights, and they must have balanced their ability to exercise possession and control over non-exempt assets, including any payments or refunds due them such as the TAP/PELL Grant Payment, against any consequences from the collection actions of their creditors.

Section 541 makes "property of the bankruptcy estate" all interests, both legal and equitable, that a debtor has in property. It is undisputed that at the time of the filing of the Debtors' petition, Brenda Eggleston's financial aide package, which included the TAP/PELL grants, had been fully approved and would ultimately be paid to her or for her benefit as long as she met all of the necessary requirements, including continued attendance at MCC. By the time she filed her petition on January 21, 2000, she had met those requirements and was entitled to receive the full amount of the grants, either through direct payments to MCC or payments to her. It is also undisputed that:

(1) neither Brenda Eggleston nor the Trustee has presented the Court with any specific Federal or New York State Statute or Court decision which would make the TAP/PELL Grant Payment exempt; and (2) the payment is not cash as defined by Section 283(2) of the DCL.

Although it may seem unfair that this TAP/PELL Grant Payment, apparently meant to assist a truly needy individual in improving themselves by furthering their education, must be turned over to the Trustee because it is non-exempt property of the estate, that is something which the New York State Legislature and the United States Congress may wish to address.

As set forth above, in exchange for a discharge, which in this case will relieve the Debtors of in excess of $20,000.00 of unsecured debt, they must surrender all of their non-exempt assets. The TAP/PELL Grant Payment is a non-exempt asset which is property of the estate that was due Brenda Eggleston at the time of the filing of her petition.

CONCLUSION

Within ten (10) days of this Decision & Order, the Debtors shall turnover to the Trustee the sum of $1,406.97, or they shall otherwise make arrangements with the Trustee for the repayment of this amount on terms and conditions acceptable to him in his sole discretion. The Trustee may obtain a judgment against the Debtors in the amount of $1,406.97, or any unpaid portion, if this amount is not paid within ten (10) days or in accordance with the terms and conditions otherwise agreed to by the Trustee and the Debtors.

IT IS SO ORDERED.

_____/s/_____
HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dated: August 7, 2000