

THIS OPINION IS NOT INTENDED FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 98-54160
)	
WILLIAM J. EDIE,)	CHAPTER 7
)	
)	JUDGE MARILYN SHEA-STONUM
Debtor.)	
)	ORDER DENYING MOTION TO
)	DISMISS VOLUNTARY PETITION

This matter came before the Court on the Motion to Dismiss Voluntary Petition (the "Motion") filed by William J. Edie ("Debtor") and the objection thereto filed by Richard Wilson, the chapter 7 trustee (the "Trustee"). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a) and (b)(1) and by the Standing Order of Reference entered in this District on July 16, 1984.

I. FINDINGS OF FACT

On December 28, 1998, Debtor filed a petition under chapter 7 of the Bankruptcy Code. Debtor's Schedules list nonpriority unsecured claims with an aggregate value of \$7,678.19. Debtor's Schedules indicate that, at the time of the filing, Debtor had no non-exempt assets available for the payment of his unsecured creditors. The Motion states, however, that Debtor will be receiving an inheritance as a result of the recent death of his mother, and that "Debtor will be able to and intends to pay his creditors with this

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At the hearing on the Motion, Debtor's counsel stated that Debtor's inheritance

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inheritance, outside the protection of the bankruptcy court." Motion, at 1.¹ The Trustee opposes the Motion on the basis that it is in the best interest of the bankruptcy estate if Debtor's creditors were paid through the bankruptcy proceeding. Specifically, the Trustee noted that many commercial creditors lack procedures to reinstate collection efforts after the receipt of a notice of a bankruptcy filing by a specific debtor. No creditors of Debtor or other parties in interest have opposed the Motion.

II CONCLUSIONS OF LAW

Section 707(a) of the Bankruptcy Code provides that the court may dismiss a case under chapter 7 only after notice and a hearing and only "for cause." Fed. R. Bankr. P. 1017 further provides that "a case shall not be dismissed on motion of the petitioner . . . prior to a hearing on notice as provided in Rule 2002."²

consists of approximately \$2,400; as a result of his mother's death, Debtor also is able to realize upon his interest as a beneficiary of an individual retirement account held by Debtor's mother. Debtor and the Trustee dispute whether or not Debtor's interest in this individual retirement account constitutes an asset of the bankruptcy estate pursuant to 11 U.S.C. § 541(a)(5). The Court is not resolving that dispute at this time.

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Relying on In re Wolfe, 12 B.R. 686 (Bankr. S.D. Ohio 1981), Debtor contends that the Trustee lacks standing to oppose the Motion. Contrary to the holding of Wolfe, courts frequently have determined that a trustee does have standing to oppose a debtor's motion to dismiss a chapter 7 case, even when no creditors have objected to dismissal. See, e.g., Penick v. Tice (In re Penick), 732 F.2d 1211, 1213 (4th Cir. 1984); Gill v. Hall (In re Hall), 15 B.R. 913, 915 (Bankr. 9th Cir. 1981); In re Klein, 39 B.R. 530, 534 (Bankr. E.D.N.Y. 1984); In re Jennings, 31 B.R. 378, 380 (Bankr. S.D. Ohio 1983); In re Carroll, 24 B.R. 83, 84 (Bankr. N.D. Ohio 1982). This Court agrees with the reasoning of those courts, including the explanation set forth in Hall that "[t]he trustee is . . . better suited to weigh all the factors which might be relevant to whether a dismissal should be allowed. Where a small unsecured creditor may fail to recognize the ramifications of a dismissal motion the trustee will be able to protect that creditor's interest." Hall, 15 B.R. at 916.

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In the context of the voluntary dismissal of a chapter 7 case, courts have denied such motions when the dismissal will cause legal prejudice to interested parties. When unscheduled assets have become available for distribution to unsecured creditors, or the debtor seeks to dismiss a case in order to exempt assets that would otherwise be available for creditors, many courts have held that dismissal of the case would prejudice those creditors and have denied the debtor's motion to dismiss. See, e.g., Hall, 15 B.R. at 917 (reversing order granting motion to dismiss chapter 7 case when dismissal would prejudice creditors, i.e., debtors intended to file homestead declaration if their case was dismissed which would prevent debtors' creditors from receiving any distribution); In re Compston, 161 B.R. 636, 637-38 (Bankr. N.D. Ohio 1993); Klein, 39 B.R. 530 (denying debtor's motion to dismiss chapter 7 case when debtor failed to list valuable assets in schedules and the trustee's recovery of those assets would yield a substantial dividend to the creditor body, explaining that "[t]he court has no assurance that debtor's assets will be distributed to the creditor body if it relinquishes its jurisdiction in ordering dismissal"); Carroll, 24 B.R. at 86-87 (denying voluntary motion to dismiss when dismissal could result in potentially non-exempt asset being dissipated and lost by debtor or debtor transforming that asset into exempt property).

In this case, Debtor has failed to establish "cause" for the dismissal of his case. The prospects of Debtor's unsecured creditors receiving equitable payment will be enhanced by the Trustee's distribution to them of that portion of Debtor's inheritance which is determined to be non-exempt. Therefore, the Motion shall be, and hereby is, denied.

IT IS SO ORDERED.

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MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 6/22/99