

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:)	
)	JUDGE RICHARD L. SPEER
Shirley Ann Pinn)	
)	Case No. 00-3247
Debtor(s))	
)	(Related Case: 99-34391)
Bruce C. French, Trustee)	
)	
Plaintiff(s))	
)	
v.)	
)	
Shirley Ann Pinn)	
)	
Defendant(s))	

DECISION AND ORDER

In the above captioned adversary case, the Plaintiff/Trustee, Bruce French, seeks to have the Defendant/Debtor's bankruptcy discharged revoked on the grounds that the Defendant failed to comply with this Court's Order of Turnover dated July 5, 2000. On this issue, the Plaintiff/Trustee filed a Motion for Summary Judgment; no response thereto, however, was filed by the Defendant/Debtor, Shirley Pinn. In support of his Motion for Summary Judgment, the Plaintiff/Trustee attached an affidavit to his Motion, in which he stated, in relevant part, as follows:

On July 5, 2000, almost one year ago, this Court directed the defendant/debtor to turn over to this plaintiff/Trustee the sum of \$2,340.30, representing her non-exempt tax refunds.

To this date, no turnover has been made and the debtor/defendant has been completely uncooperative with the Trustee.

With respect to the above facts, the Defendant, in her Answer to the Trustee's Complaint, admitted that, contrary to this Court's Order of July 5, 2000, no moneys have been turned over to the Trustee.

LEGAL ANALYSIS

Proceedings brought objecting to a debtor's discharge are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(J). Thus, this case is a core proceeding.

This case has been brought before the Court pursuant to the Trustee's Motion for Summary Judgment. The standard for a summary judgment motion is set forth in Fed.R.Civ.P. 56, which is made applicable to this proceeding by Bankruptcy Rule 7056, and provides in pertinent part: A movant will prevail on a motion for summary judgment if, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In coming to a decision under this standard, a court is directed to view all the facts of the case in the light most favorable to the nonmoving party. *Matsushita v. Zenith Radio Corp.*, 475 U.S. 574, 586-88, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986); *see also In re Bell*, 181 B.R. 311 (Bankr. N.D. Ohio 1995). In addition, in cases such as this where the moving party carries the burden of proof at trial, that party must establish that all of the essential elements of their claim are met. *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). To meet this requirement, the moving party must make a showing sufficient for a court to hold that no reasonable trier of fact could find other than for the moving party. *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986).

Although not specifically stated in his Complaint, the statutory authority upon which the Trustee relies to revoke the Debtor's bankruptcy discharge is 11 U.S.C. § 727(d)(3) which provides that:

On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(3) the debtor committed an act specified in subsection (a)(6) of this section.

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In turn, § 727(a)(6) provides, in pertinent part, that:

(a) The court shall grant the debtor a discharge, unless–

(6) the debtor has refused, in the case–

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify[.]

In *Hunter v. Magack (In re Magack)*, this Court held that a trustee who seeks to revoke a debtor's discharge pursuant to subparagraph (A) of § 727(a)(6) must establish three elements by clear and convincing evidence:

(1) the alleged contemnor had knowledge of the order which he is said to have violated;

(2) the alleged contemnor did in fact violate the order; and

(3) the order violated must have been specific and definite.

247 B.R. 406 (Bankr. N.D.Ohio 1999), *citing Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998); *In re Temple*, 228 B.R. 896, 897 (Bankr. N.D.Ohio 1998).

With respect to the first two elements as set forth above, it is clear that the Trustee has carried his burden thereunder as the Defendant has admitted that although she knew of the Court's Order for Turnover, she nevertheless violated the Order by not turning over to the Trustee her 1999 tax refunds. Similarly, with respect to the last element set forth above, it is clear that this Court's Order for Turnover was specific and definite, the Order having provided that: "Wherefore, it is ordered this 5th Day of July, 2000, That the debtor turnover to the Trustee the sum of her non-exempt tax refunds, estimated by the Trustee to be \$2,240.30." Therefore, for these reasons, the Court finds that the Trustee has established that the three requirements as set forth in *In re Magack* have been satisfied. As a consequence, the Defendant's bankruptcy discharge will be revoked in accordance with 11 U.S.C. § 727(d)(3). In reaching the conclusions found herein, the Court has considered all of the

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evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

ORDERED that the Motion for Summary Judgment submitted by the Trustee, Bruce C. French, be, and is hereby, GRANTED.

It is **FURTHER ORDERED** that the bankruptcy discharge of the Defendant, Shirley Ann Pinn, be, and is hereby, Revoked pursuant to 11 U.S.C. § 727(d)(3) and 11 U.S.C. § 727(a)(6)(A).

It is **FURTHER ORDERED** that the Clerk, U.S. Bankruptcy Court, serve a notice of this Order upon the Debtor, Attorney for Debtor, the Trustee, and all the Creditors and Parties in interest.

Dated:

Richard L. Speer
Bankruptcy Judge