

THIS OPINION IS NOT INTENDED
FOR PUBLICATION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division

IN RE:

THOMAS & JULIANNE LAVISKY,

Debtors.

IN PROCEEDINGS UNDER CHAPTER 7

CASE NO.: 02-15220

JUDGE RANDOLPH BAXTER

FILED
2004 FEB 23 PM 4:00
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

ORDER

The matter before the Court is the Debtors' motion to reopen their Chapter 7 case for the purpose of filing an adversary complaint seeking a determination of dischargeability of a certain student loan debt. Relief is sought under § 350(b) of the Bankruptcy Code and Bankruptcy Rules of Procedure 5010, 4007(b) and 9024. [11 U.S.C. §350 (b); Fed. R. Bankr. P. 5010, 4007(b), and 9024]. The Court acquires core matter jurisdiction over the instant matter pursuant to 28 U.S.C. §§ 157(a) and (b), 28 U.S.C. § 1334, and General Order Number 84 of this District. Following a duly noticed hearing, the following findings and conclusions are rendered:

The Debtors' Chapter 7 case was filed on May 14, 2002. They received a discharge on September 5, 2002. The case was closed on January 31, 2003. Debtors listed the United States Department of Education (D.O.E.) as a creditor in their schedules. The schedules allege that the D.O.E. holds a claim for a student loan made to codebtor Julianne Lavisky in 1993.

Debtors assert that Mrs. Lavisky has suffered from a heart condition known as Paroxysmal Supraventricular Tachycardia. This condition purportedly relates to a problem with the heart valves and its passageways. Mrs. Lavisky underwent open heart surgery in 1995 to correct the condition. Subsequent to the surgery and over a period of years, she experienced heart palpitations. She has undergone further testing in an attempt to determine if she still

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suffered from some kind of heart problem. The testing has proved inconclusive. Doctors have concluded that further surgery was necessary for her, but not advisable because of the danger imposed. (See Debtor's Brief in Support).

Debtors attempted to file an adversary complaint prior to the closing of their case. They requested a medical report from Mrs. Lavisky's treating physician to support the complaint. However, the physician was out of his office for four (4) months due to his own illness. The case closed just prior to the receipt of the medical report.

The Debtors have six children. Mrs. Lavisky has been unemployed for the past 14 years and takes care of the children. Her husband, codebtor Thomas Lavisky, is employed. No objection has been filed to the motion.

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Section 350 provides in part:

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

11 U.S.C. § 350(b). Bankruptcy Rule 5010 provides that "[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code."

Section 350(b) permits a bankruptcy case to be reopened for one of three reasons: to administer estate assets; to accord relief to the debtor; or for other cause. Beyond these reasons, however, no particular criteria are set forth as to when a case should or should not be reopened. As a result, motions to reopen cases are decided on a case by case basis. Section 350(b) confers upon the bankruptcy court broad discretion in determining whether to reopen a case and its decision to grant or deny a motion to reopen is binding, absent a clear abuse of discretion. In re

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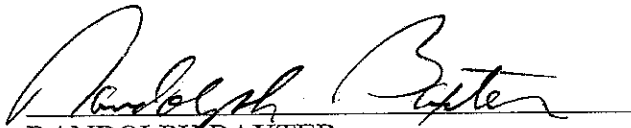
Rosinski, 759 F.2d 539, 540-41 (6th Cir.1985); see also In re Blossom, 57 B.R. 285, 287 (Bankr. N. D.Ohio 1986). A bankruptcy court is to consider the equities of each case with an eye toward the principles which underlie the Bankruptcy Code when exercising its discretion. In re Kapsin, 265 B.R. 778, 779 -781 (Bankr N. D.Ohio 2001).

In the instant case, the Debtors attempted to obtain a medical report to support the filing of a complaint seeking discharge of the subject student loan. Unfortunately, Mrs. Lavisky's treating physician was ill and did not provide the report until after their case closed. Section 350(b) allows the court to accord relief to a Debtor, upon good cause shown. Herein, it is appropriate to grant the relief requested.

Accordingly, the Debtors' motion to reopen their Chapter 7 case is hereby granted.

IT IS SO ORDERED.

Dated, this 3RD day of
February, 2004


RANDOLPH BAXTER
UNITED STATES BANKRUPTCY JUDGE