

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

In Re:	)	
	)	<b>JUDGE RICHARD L. SPEER</b>
Michael/Darlene Larick	)	
	)	Case No. 04-3359
Debtor(s)	)	
	)	(Related Case: 03-39800)
Louis Yoppolo, Trustee	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
Darlene Larick	)	
	)	
Defendant(s)	)	

**DECISION AND ORDER**

This cause comes before the Court after a Trial on the Trustee’s Complaint to Revoke Discharge. The Trustee’s Complaint is brought pursuant to 11 U.S.C. § 727(a)(6)(A), and stems from the Debtor’s failure to turnover the nonexempt portion of her 2003 tax refund. Pursuant to 11 U.S.C. § 157(b)(2)(J), this matter is deemed a core proceeding over which this Court has the jurisdictional authority to enter final orders. 28 U.S.C. § 1334.

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**FACTS**

The record of this case shows that on December 9, 2003, the Debtor, along with her now ex-husband, filed a voluntary joint petition in this Court for relief under Chapter 7 of the United States Bankruptcy Code. It was later ascertained that at the time she filed for bankruptcy relief, the Debtor was owed a tax refund, both federal and state. The Trustee's portion of this refund, after accounting for applicable exemptions and prorations, was \$3,979.12. In filing their 2003 tax returns, the Debtor listed her status as "head of household." (Tr. Ex. 4-5). While the Debtor's ex-husband set forth his tax-filing status as "Married, filing separately." (Tr. Ex. 6-7).

On February 2, 2004, the Trustee filed a Motion for Turnover against the Debtor and her ex-husband for the nonexempt portions of their tax refunds. (Tr. Ex. No. 2). After no objection was lodged, and finding the Trustee's Motion to have merit, the Court entered an Order directing that the Debtors comply with the Trustee's request. No appeal was ever taken regarding this Order.

Within a short time after the Order for Turnover was entered, the Debtor's ex-husband turned over to the Trustee his nonexempt portion of his tax refund which, because of a tax offset, amounted to only \$249.00. The Debtor, however, despite receiving her 2003 tax refund, as well as later receiving a 2004 tax refund, has yet to turn over, *or offer to turn over*, any funds to the Trustee, thus leading to the Trustee's instant complaint to revoke discharge.

## **DISCUSSION**

Bankruptcy in this Country is a privilege, not a right. Bankruptcy is also, at least from the debtor's perspective, a voluntary process. In this case, therefore, it was the Debtor who came to this Court seeking relief from her creditors, not the other way around.

By voluntarily invoking the protections of the bankruptcy court, debtors are required to perform certain duties. And, in exchange for performing their duties, a debtor receives the benefit of their bargain: a federal bankruptcy discharge. Among their duties, a debtor is required to turnover property of the estate to the trustee, and to fully cooperate with the trustee in the performance of his duties. 11 U.S.C. §§ 521(3); 542(a). And in this regard, it is well established that, to the extent that it is attributable to prepetition services rendered (such as employment income), any tax refund received by a debtor becomes property of the estate, and thereby subject to administration by the trustee for the benefit of the debtor's creditors.

Of course, it is expected that a debtor will not always like the duties they are required to perform. Yet, the scope of a debtor's duties is not for the Court to decide. The Congress of the United States, not the courts, create the laws in this Country; it is simply the court's function to interpret the laws. Once more, since bankruptcy is a voluntary process, a debtor has the opportunity to decide if those duties imposed upon them – such as turning over the nonexempt portion of their assets to the trustee – are worth the benefits that they are to receive through the bankruptcy process.

But once the bankruptcy process is initiated by a debtor, it is not the debtor's function to pick and choose what aspect of the process they like and don't like. It is absolutely required that a debtor *fully* comply with a court's order. Without such compliance, the bankruptcy process would not function. Reciprocally, a debtor can expect that his or her creditors will also comply with those orders issued which

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operate to their advantage; for example, creditors are expected to comply with the order of bankruptcy discharge.

In this matter, the Trustee's Complaint to Revoke Discharge is premised on the Debtor's failure to comply with this Court's order of February 19, 2004, which set forth that the Debtor was to turnover the nonexempt portions of her tax refunds. In bringing this action, the Trustee relies on 11 U.S.C. § 727(a)(6)(A),<sup>1</sup> which provides:

(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[.]

The party seeking to invoke this section bears the burden of proof to demonstrate, by at least a preponderance of the evidence, its applicability. *Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174, 178 (5<sup>th</sup> Cir. 1992).

The revocation of a debtor's discharge is proper under § 727(a)(6)(A) when, pursuant to a court order, a debtor fails to abide by their duty to turnover the nonexempt portion of their tax refund, so long as these three conditions are present: (1) the debtor had knowledge of the order; (2) a violation of the order exists; and (3) the order violated was specific and definite.<sup>2</sup> At the Trial, the Debtor did not attempt to

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<sup>1</sup>

*See* 11 U.S.C. § 727(d)(3), making this section applicable in the revocation of discharge context.

<sup>2</sup>

*Hunter v. Magack (In re Magack)*, 247 B.R. 406, 410 (Bankr. N.D.Ohio 1999); *Yoppolo v. Walter (In re Walter)*, 265 B.R. 753, 758 (Bankr. N.D.Ohio 2001).

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controvert these elements, admitting to these facts: (1) she knew of her duty to turn over the nonexempt portion of her tax refund to the Trustee; and (2) she had knowledge of this Court's order of turnover directing her to do so. Instead, the Debtor asked that she be excused from complying with this Court's order for turnover.

A party may be excused from complying with a court order when compliance is made fundamentally impossible. And in line with the defense, the Debtor put forth at the Trial that she should be excused from compliance with this Court's order for turnover because the proceeds from her 2003 tax return have already been spent, having been needed to support herself and her children. The difficulty here, however, is that inherent in any impossibility defense is that the circumstances giving rise to the defense must have arisen as the result of events which were entirely outside of the party's control. Thus, a party's desire, even if well-intentioned, that their circumstances would be better served by declining to follow an order from the court is simply not sufficient to excuse compliance. See *Palmigiano v. DiPrete*, 710 F.Supp. 875, 882 (D.R.I. 1989). As was explained earlier by this Court under a very similar set of circumstances:

after spending the refund, the Debtor made no further attempt to comply with this Court order. It is noted for example, that even after being contacted by the Trustee, the Debtor did not attempt to make arrangements to pay her obligation.

In making the above statements, the Court is not trying to imply that it does not sympathize with the Debtor's situation. However, in order to find an inability to comply with a court order it must be shown that the [debtor] was reasonably diligent and energetic in attempting to comply with the court's mandate by taking all reasonable steps within his or her power to ensure compliance. For example, in the context of a tax refund, an inability to comply with a court's order could be found if the debtor never received the refund. On the other hand, while a debtor may need to spend his or her tax refund on certain necessities, such a position does not equate with impossibility or an inability to comply with a court order.

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*Yoppolo v. Meyers (In re Meyers)*, 293 B.R. 417, 419-20 (Bankr. N.D.Ohio 2002). Consequently, no matter how well-intentioned, the fact that the Debtor chose to allocate her tax refund to pay her present obligations, as opposed to allocating it to the Trustee to pay her past obligations, does not relieve her of the responsibility of turning over those funds to the Trustee.

At the Trial, the Debtor also put forth that she should be excused from complying with this Court's order for turnover because it was unfair to require her to turnover \$3,979.12 from her tax refund, while her now ex-husband was only required to turn over \$249.00. Undoubtably, this stance arises from the very acrimonious events which transpired when the Debtor terminated her marriage with her ex-husband. Nevertheless, while the Debtor may feel slighted by having to turn over to the Trustee more than her ex-husband, the manner in which a debtor's assets are collected and then distributed does not involve any inquiry into the emotional strains that may have occurred between a debtor and his or her co-debtor spouse.

Bankruptcy law is designed to handle a debtor's relationship with his or her creditors, not family matters. And when handling this relationship, bankruptcy law treats each individual debtor independent of the other, even if it is a joint bankruptcy petition filed by married debtors. 11 U.S.C. § 302(a). In this way, the purpose of a joint petition is simply for ease of administration and to permit the payment of only one filing fee. It does not create a joint bankruptcy estate. Instead, unless consolidation is ordered, a joint petition filed by a married couple results in the creation of not one, but two separate estates just as if the parties had filed bankruptcy separately, with the assets and liabilities of each being respectively handled. *Matter of Stuart*, 31 B.R. 18 (Bankr. D.Conn.1983). Also important from a legal standpoint, each spouse has a separate and independent interest in their own tax refund. *United States v. Elam*, 112 F.3d 1036, 1038 (9<sup>th</sup> Cir.1997) And when, as here, the parties file their tax returns separately, each party is also only individually liable for their own tax obligations, not that of the other spouse.

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The end result of all of this is that the Debtor had, separate from any claim of her ex-husband, a sole interest in her tax refund. And that despite filing bankruptcy with her ex-husband, this sole interest in her tax refund became apart of her individual bankruptcy estate. Consequently, the Trustee was entitled to pursue the Debtor's tax refund independently, without regards to the status of her ex-husband's tax refund. While this may seem unfair to the Debtor, this is the law. And while the law is not always fair, it is the rule that equity, (that is fairness), follows the law. Thus, regardless as to whether the Debtor was treated unfairly, this Court is bound to implement those rules made by the Congress of the United States.

However, even assuming that this Court could, in the interest of equity and fairness, contravene Bankruptcy law, it would not be appropriate in this matter. At the Trial, it was the Debtor's position that it was not fair to require her to be responsible for paying the Trustee the whole amount of the nonexempt portion of her tax refund because her husband had to only pay to the Trustee a small amount from his tax refund. However, regardless of the merits of this position, it implicitly assumes, – and indeed, the Debtor explicitly acknowledged – that some amount of money was owed to the Trustee. Yet, in the more than 17 months since the Court's order for turnover was entered, the Debtor has never paid to the Trustee any sum of money – and this, despite the fact that she received a large tax refund in 2004, thereby giving her again the means by which to pay something to the Trustee.

Equity, at its base, attempts to reach the fair and just result. But this extends to all of the parties involved. Thus, one fundamental principal of equity is that one who seeks equity, must also do equity. But here, the Debtor has not carried through with her end of this bargain as she has completely ignored the Trustee, despite her acknowledgment that she was required to pay him at least something. Even as it regards her ex-husband, this question arises: The Debtor believes that it was unfair that her ex-husband did not have to pay the Trustee for those amounts attributable to her 2003 income tax refund; but would the Debtor, in the absence of bankruptcy, have given to her ex-husband one half of her 2003 refund when she

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was under no legal obligation to do so? The Court can surmise the answer, and thus asks this additional question: If the Debtor was not willing to give her ex-husband half of her 2003 income tax refund, why should he now be responsible for reimbursing the Trustee for that amount?

In reaching the conclusions found herein, the Court has considered all of the 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 bankruptcy discharge of the Debtor, Darlene Larick, 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, United States Bankruptcy Court, is hereby directed to provide notice of this Order to the Debtor, and all Creditors.

Dated:

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Richard L. Speer  
United States  
Bankruptcy Judge