

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically at the time and date indicated, which may be materially different from its entry on the record.



Russ Kendig
United States Bankruptcy Judge

Dated: 09:47 AM March 13, 2015

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

IN RE:) CHAPTER 7
)
DENNY R. SHEAR AND) CASE NO. 13-62566
JUDYTH A. SHEAR,)
) JUDGE RUSS KENDIG
Debtors.)
) **MEMORANDUM OF OPINION**
) **(NOT FOR PUBLICATION)**

Two motions are before the court: Debtors' motion to reopen their case and an application to waive the filing fee associated with the reopening. The court has subject matter jurisdiction of this matter under 28 U.S.C. § 1334(b) and the order of reference, General Order 2012-7, dated April 4, 2012. In accordance with 28 U.S.C. § 1409, venue in this district and division is proper. This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the court.

BACKGROUND

Debtors filed a chapter 7 case on October 18, 2013. The court initially waived the case filing fee pursuant to 28 U.S.C. § 1930(f)(1) but the order was later vacated by joint motion of the chapter 7 trustee and debtors. Debtors thereafter paid the filing fee in full.

Debtors did not timely file proof of completion of the postpetition financial management course and the case was closed without discharge on August 6, 2014.

On December 30, 2014, Debtors filed two motions: a motion to reopen and a motion to waive the filing fee. They also filed certificates indicating they completed the financial management course on February 10, 2014. On March 6, 2015, the court issued a Notice of Intent to Deny the motions for lack of prosecution. In response, Debtors submitted orders on the motions for the court's review.

DISCUSSION

The court recently issued an opinion addressing a motion to reopen and a request to waive the filing fee on similar facts. In re Ayers, Case No. 13-62672 (Bankr. N.D. Ohio March 12, 2015). The court will not restate the law set forth in that opinion.

Unlike Ayers, the delay between closing and reopening in this case is not as long. Coupled with the fact that Debtors timely took the financial management course, the court will grant the motion to reopen. Counsel, however, will again be required to submit an explanation for the delay.

Regarding the fee waiver request, the application represents that Debtors' monthly income is \$3,190 per month, payment of the \$260 filing fee would be an "extreme hardship," and the court previously waived the initial case filing fee. The latter representation is incorrect. Although the fee was initially waived, that order was vacated. According to the joint motion between Debtors and the chapter 7 trustee, Debtors included a tuition expense in their budget that was their daughter's expense. Without this expense, Debtors had the wherewithal to pay the case filing fee, which they paid in full on March 7, 2014. Consequently, reliance on the previous fee waiver is misplaced. Regardless, as Ayers established, eligibility is determined contemporaneously with the waiver request. Debtors have not provided a sufficient foundation for the court to assess their current eligibility and therefore the request will be denied.

An order will be issued immediately.

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