

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

IN RE:) CASE NO. 01-65284
)
ROBERT LEO HAYES, SR. and) CHAPTER 7
KATHY A. HAYES,)
)
Debtors.)
) JUDGE RUSS KENDIG
)
) **MEMORANDUM OF DECISION**
)
)
)
)
)

This matter is before the court on Debtor Kathy A. Hayes' (hereafter "Debtor") motion to dismiss her bankruptcy case, Trustee Joanne Paulino's (hereafter "Trustee") corresponding objection, and Trustee's motion for joint administration. Debtor filed her motion to dismiss on February 19, 2002. Trustee filed her objection on March 6, 2002 and her motion for joint administration on March 18, 2002. A hearing was held on April 22, 2002. Present were Joseph Jerger, counsel for Debtor, Debtor, and Trustee. For the following reasons, Debtor's motion to dismiss is **DENIED** and Trustee's motion for joint administration is **GRANTED**.

FACTS

On December 10, 2001, Debtor and her husband, Robert Leo Hayes, Sr., filed a joint chapter 7 petition. On January 2, 2002, Mr. Hayes passed away. Debtor is the beneficiary of Mr. Hayes' two life insurance policies totaling \$61,000.00. This is property of the estate under 11 U.S.C. § 541(a)(5)(c). Debtor has not supplemented her schedules as required by Fed. R. Bankr. P. 1007(h).

ARGUMENTS

Debtor filed a motion to dismiss her bankruptcy case arguing relief is not needed as the life insurance proceeds will enable her to pay her creditors in full and that dismissal would enable her to preserve her credit rating. Debtor served all creditors in her case with a copy of the motion and notice of the hearing. Save for Trustee, none responded or appeared at the hearing.

Trustee responded by saying Debtor has not proven adequate grounds to dismiss her bankruptcy case under 11 U.S.C. § 707(a). This section allows Debtor to dismiss only for cause and Debtor's desire to pay her creditors in full outside of bankruptcy and preserve her credit rating does not constitute cause. Further, Fed. R. Bankr. P. 1016 provides death does not abate

liquidation in a chapter 7 case; the estate is administered as though the death has not occurred.

Trustee requests the court order joint administration of the two estates. Trustee states the filing of a joint case creates two distinct and separate entities under 11 U.S.C. § 302(b). Debtors acquired both joint and separate property and debt during marriage. Identification of joint assets is apparent in the pleadings. Identification of joint debts is easily determinable. Under Fed. R. Bankr. P. 1015(b), appointment of a single trustee and joint administration of estates aids in expedition and minimization of costs. The conflict of interest inherent in administering both a solvent and an insolvent estate can be avoided by careful record keeping.

DISCUSSION

Although a debtor has the absolute right to file bankruptcy, there is no corresponding right to dismiss. In re Turpen, 244 B.R. 431, 434 (B.A.P. 8th Cir. 2000); In re Stephenson, 262 B.R. 871, 873 (Bankr. W.D. Okla. 2001); In re MacDonald, 73 B.R. 254, 256 (Bankr. W.D. Ohio 1987); In re Blackmon, 3 B.R. 167, 169 (Bankr. S.D. Ohio 1980); Laura A. Pawloski, *The Debtor Trap: The Ironies of Section 707(a)*, 7 Bankr. Dev. J. 175, 180-81 (1990).

Pursuant to 11 U.S.C. § 707(a), a court may dismiss a chapter 7 bankruptcy for cause after notice and a hearing. Cause includes unreasonable delay by the debtor prejudicial to creditors, nonpayment of fees or charges, and failure to file schedules. 11 U.S.C. § 707(a). This list is not exclusive. H.R. Rep. No. 595, 95th Cong., 1st Sess. 380 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 94 (1978).

What constitutes cause has been the source of much discussion. Stephenson at 874 (citing Pawloski at 181-93 (discussing different court-developed tests to determine cause to dismiss under 11 U.S.C. § 707(a))). The prevailing approach, at a minimum, requires dismissal not be prejudicial to creditors. Pawloski at 184. *See also* In re Compston, 161 B.R. 636, 638 (Bankr. N.D. Ohio 1993) (“The prevailing view holds that a voluntary Chapter 7 Debtor is entitled to dismissal so long as the such [sic] dismissal will cause no legal prejudice to interested parties.”); In re Klein, 39 B.R. 530, 532 (Bankr. E.D.N.Y. 1984) (citing In re International Airport Inn Partnership, 517 F.2d 510, 512 (9th Cir. 1975), in stating the applicable test is whether “dismissal will cause no legal prejudice to interested parties”).

Dismissal is prejudicial when creditors are forced to pursue claims in state court. Courts have opined such a delayed remedy may not be a speedy or adequate process. In re Hall, 15 B.R. 913, 917 (B.A.P. 9th Cir. 1981) (dismissing case would cause plain legal prejudice); MacDonald at 256 (denying debtor’s motion to dismiss where creditors would be forced to exercise rights in state court); In re Mathis Insurance Agency, 50 B.R. 482, 487 (Bankr. E.D. Ark. 1985) (dismissing case would require creditors to expend additional time and forbearance in collection of claims); In re Martin, 30 B.R. 24, 27 (Bankr. E.D.N.C. 1983) (dismissing adds costs and delay prejudicial to creditors).

Moreover, courts have consistently held, in line with legislative intent, ability to repay

debts does not, in itself, constitute cause for dismissal under 11 U.S.C. § 707. *See In re Achey*, 2002 WL 539036 (Bankr. N.D. Iowa 2002). “It is well established and supported by Legislative History that the fact that a debtor is willing and able to pay his debts outside of bankruptcy does not constitute adequate cause for dismissal under section 707(a).” *Kirby v. Spatz (In re Spatz)*, 221 B.R. 992, 994 (Bankr. M.D. Fla. 1998). *See also In re Williams*, 15 B.R. 655, 655 (E.D. Mo. 1981), *aff’d*, 696 F.2d 999 (8th Cir. 1982); *Blackmon* at 169. “[707(a)] does not contemplate, however, that the ability of the debtor to repay his debts in whole or in part constitutes adequate cause for dismissal. To permit dismissal on that ground would be to enact a non-uniform mandatory chapter 13, in lieu of the remedy of bankruptcy.” H.R. Rep. No. 595, 95th Cong., 1st Sess. 380, 5880 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 94, 94 (1978)

Debtor’s desire to preserve her credit and to pay her creditors outside of bankruptcy fails to provide the cause necessary for dismissal. First, no assurance exists that Debtor’s creditors will be paid outside of bankruptcy. The creditors’ resort to state court remedies of collection is time consuming and costly, causing undue prejudice. Second, Debtor’s sudden ability to pay her creditors in full as cause for dismissal has no basis in case law or legislative history.

Trustee stated adequate measures she can take to avoid the conflict of interest inherent in administering Mrs. Hayes’ solvent estate and Mr. Hayes’ insolvent estate.

Based on the foregoing, Debtor’s motion to dismiss is **DENIED** and Trustee’s motion for joint administration is **GRANTED**.

An appropriate order shall enter.

Russ Kendig
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

**NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 01-65284
)	
ROBERT LEO HAYES, SR. and)	CHAPTER 7
KATHY A. HAYES,)	
)	
Debtors.)	JUDGE RUSS KENDIG
)	
)	ORDER
)	
)	
)	
)	

This matter came before the court on Debtor Kathy A. Hayes' motion to dismiss her bankruptcy case, Trustee Joanne Paulino's corresponding objection and motion for joint administration. A hearing was held on April 22, 2002, and the matter was taken under advisement.

IT IS HEREBY ORDERED Debtor's motion to dismiss is **DENIED**, and consistent with the memorandum of decision, Debtor shall supplement her schedules pursuant to Fed. R. Bankr. P. 1007(h); and

IT IS FURTHER ORDERED Trustee's motion for joint administration is **GRANTED**.

Russ Kendig
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this _____ day of May 2002, the above Memorandum of Decision and Order were sent via regular U.S. Mail to:

Joseph L. Jerger

Bayer, Jerger & Ardis
362 Lexington Avenue
Mansfield, Ohio 44907

Joanne G. Paulino

Millenium Centre-Suite 300
200 Market Avenue North
P.O. Box 24213
Canton, Ohio 44701-4213

Deputy Clerk