

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 01-13383
)	
JEREMIAH MORRIS and)	Chapter 7
MONICA MORRIS,)	
Debtors.)	Adversary Proceeding No. 02-1004
)	
MARVIN A. SICHERMAN,)	Judge Arthur I. Harris
CHAPTER 7 TRUSTEE,)	
Plaintiff,)	
)	
v.)	
)	
MONICA MORRIS,)	
Defendant.)	

MEMORANDUM OF DECISION

Pending before the Court is a motion for summary judgment (Docket #15) filed by Marvin A. Sicherman, the Chapter 7 Trustee. Plaintiff has brought this adversary complaint to revoke and deny Defendant's discharge, pursuant to 11 U.S.C. § 727(d), (a)(2), and (a)(6). On November 22, 2002, Plaintiff filed an amended motion for summary judgment, alleging facts identical to those asserted in the original motion, except correcting clerical errors in the caption and the statement of jurisdiction of the Court. Defendant has not responded to the motion or the amended motion. For the reasons that follow, Plaintiff's amended motion for summary judgment is granted.

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FACTS

On April 13, 2001, Defendant and her husband, Jeremiah Morris, filed a joint petition under Chapter 7 of the Bankruptcy Code. The Debtors were granted a discharge on August 7, 2001, pursuant to 11 U.S.C. § 727. On September 18, 2001, the Court ordered Defendant to appear for an examination. Defendant failed to appear for that examination. On November 14, 2001, the Court ordered Defendant to pay to Plaintiff the sum of \$2,551.00, representing nonexempt tax refunds which are property of the bankruptcy estate. Defendant has failed to comply with that order. This case was transferred to the undersigned judge on October 7, 2002.

DISCUSSION

The Court has jurisdiction in this adversary proceeding pursuant to 28 U.S.C. § 1334(b) and Local General Order No.84, entered on July 16, 1984, by the United States District Court for the Northern District of Ohio. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(J).

The standards for a court to award summary judgment are contained in Federal Rule of Civil Procedure 56(c), as made applicable to bankruptcy proceedings by Rule 7056 of the Bankruptcy Rules. According to Civil Procedure

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Rule 56(c), a court shall render 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 judgment as a matter of law.

The party moving the court for summary judgment bears the burden of showing that “there is no genuine issue as to any material fact and that [the moving party] is entitled to judgment as a matter of law.” *Jones v. Union County*, 296 F.3d 417, 423 (6th Cir. 2002). *See generally Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party meets that burden, the nonmoving party “must identify specific facts supported by affidavits, or by depositions, answers to interrogatories, and admissions on file that show there is a genuine issue for trial.” *Hall v. Tollett*, 128 F.3d 418, 422 (6th Cir. 1997). *See, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986) (“The mere existence of a scintilla of evidence in support of plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.”). In determining the existence or nonexistence of a material fact, a court will view the evidence in a light most favorable to the nonmoving party. *See Tennessee Department of Mental Health & Mental Retardation v. Paul B.*, 88 F.3d

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1466, 1472 (6th Cir. 1996).

Plaintiff requests that the Court revoke Defendant’s discharge pursuant to 11 U.S.C. § 727(d). That section provides that

On request of the 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.

In turn, § 727(a)(6) provides that a debtor’s discharge shall be denied when the debtor has refused

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

* * * *

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify

See, e.g., In re Watson, 247 B.R. 434, 436 (Bankr. N.D. Ohio 2000).

Given the evidence adduced from the parties’ pleadings, submitted affidavits, and stipulations, Plaintiff has shown that Defendant violated lawful orders of the Court to remit nonexempt portions of her tax refund and to appear for an examination. Viewing the evidence before it in the light most favorable to Defendant, and noting that Defendant has failed to respond to the motion for

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summary judgment, the Court finds there are no genuine issues of material fact and that Plaintiff is entitled to a judgment as a matter of law. Plaintiff's motion for summary judgment will be GRANTED.

IT IS SO ORDERED.

/s/ Arthur I. Harris 12/09/2002

Arthur I. Harris

United States Bankruptcy Judge