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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 02-11420
)
YVONNE KACZMAREK,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
_____)
)
LAUREN A HELBLING, TRUSTEE,) Adversary Proceeding No. 02-1444
)
Plaintiff,)
)
v.) **MEMORANDUM OF OPINION**
)
YVONNE KACZMAREK,)
)
Defendant.)

The chapter 7 trustee filed a complaint to revoke the discharge of the debtor-defendant Yvonne Kaczmarek under 11 U.S.C. § 727(d) on the ground that the debtor failed to comply with a Court order to turnover the non-exempt portion of her 2001 income tax return. The trustee filed a motion for summary judgment, which is unopposed. (Docket 27).¹

JURISDICTION

The Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered in this District by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

¹ The trustee was given leave to file this motion by order entered August 13, 2003. (Docket 28). The order set August 27, 2003 as the date for filing a brief in opposition to the motion. That deadline has passed.

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FACTS AND DISCUSSION

I.

These are the undisputed material facts based on the case file and the evidence offered in connection with the summary judgment motion:

The debtor filed her chapter 7 case on February 14, 2002 and received a discharge on June 12, 2002. (Case No. 02-11420, Docket 1, 11). On May 20, 2002, this Court entered an order granting the trustee's request for turnover of funds, which required the debtor to turn over her \$1,846.00 federal income tax refund (the "Order"). (Case No. 02-11420, Docket 8). The debtor has not complied with the Order. See admission in debtor's pretrial statement. (Docket 14).

II.

Summary Judgment Standard

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(c) (made applicable by FED. R. BANKR. P. 7056); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. The burden is then on the nonmoving party to show the existence of a material fact which must be tried. *Id.* The nonmoving party must oppose a proper summary judgment motion "by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves . . ." *Celotex Corp. v. Catrett*, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be

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viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. Am. Eng'g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). The issue at this stage is whether there is evidence on which a trier of fact could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989).

III.

11 U.S.C. § 727(d)(3)

Bankruptcy Code § 727(d)(3) provides that:

(d) On request of the trustee . . . 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.

11 U.S.C. § 727(d)(3). Section (a)(6) applies where:

(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[.]

11 U.S.C. § 727(a)(6)(A).

IV.

The Summary Judgment Motion

The debtor admits in her trial pretrial statement that she received and used the funds at issue. (Docket 14). The trustee argues that she is entitled to summary judgment revoking the debtor's discharge because the debtor refused to obey the Order directing that those funds be turned over to the trustee. The debtor has suggested that she was not able to comply with the

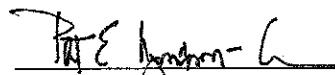
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Order due to hardship, in response to which the trustee argues that hardship is not a defense. It is not necessary to decide that issue, however, because the debtor failed to respond to the summary judgment request and has not provided supporting evidence of the alleged hardship that complies with the summary judgment rules.² As a result, the debtor has not properly identified any material fact which must be tried. The trustee's motion for summary judgment will, therefore, be granted.

CONCLUSION

A separate order will be entered granting the trustee's motion for summary judgment and revoking the debtor's discharge.

Date: 2 Sept 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Lauren Helbling, Esq.
E. Yvonne Harris, Esq.

By: Joyce L. Gordon, Secretary

Date: 9/2/03

² This is part of a pattern of non-compliance, as the defendant failed to (1) file her trial materials on time, (2) include any legal authority for her position when she did file the trial materials, which the Court had specifically instructed her to do, and (3) provide adequate documentation to prove that her client was medically unable to attend the final pretrial, as required by the trial order.

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LAUREN A HELBLING, TRUSTEE,)	Adversary Proceeding No. 02-1444
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)	
v.)	JUDGMENT
)	
YVONNE KACZMAREK,)	
)	
Defendant.)	

For the reasons stated in the memorandum of opinion filed this same date, the plaintiff's motion for summary judgment is granted. (Docket 27). As a result, the plaintiff is granted judgment under 11 U.S.C. § 727(d)(3) and the defendant-debtor's discharge is revoked.

IT IS SO ORDERED.

Date: 2 Sept 2003

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Lauren Helbling., Esq.
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