

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 02-20846
	)	
ERIC L. HALL, SR.,	)	Chapter 7
Debtor.	)	
	)	Adversary Proceeding No. 03-1224
HUNTINGTON NATIONAL	)	
BANK,	)	Judge Arthur I. Harris
Plaintiff,	)	
	)	
v.	)	
	)	
ERIC L. HALL, SR.,	)	
Defendant.	)	

MEMORANDUM OF DECISION

Pending before the Court is a motion for summary judgment (Docket #8) filed by Plaintiff David O. Simon, the Chapter 7 trustee. On June 3, 2003, Plaintiff filed this adversary complaint against Sharon L. Norris, *pro se* Defendant, to revoke, set aside, and object to her discharge, pursuant to 11 U.S.C. § 727(d)(3) and (a)(6)(A). On June 20, 2003, Defendant filed an answer to the complaint (Docket #5). On August 27 2003, Plaintiff filed the instant motion for summary judgment (Docket # 8). For the reasons that follow, Plaintiff's motion for summary judgment is granted.

FACTS

On December 23, 2002, Defendant filed a petition under Chapter 7 of the

Bankruptcy Code. The Debtor was granted a discharge on April 15, 2003, pursuant to 11 U.S.C. § 727 (Case No. 02-24578). On March 17, 2003, the Court ordered Defendant to pay to Plaintiff \$3,900.00, representing the nonexempt portion of the Defendant's tax refund for the year 2002, which is property of the bankruptcy estate (Case No. 02-24578, Docket # 14). According to the affidavit accompanying Plaintiff's motion for summary judgment, Defendant has failed to comply with that order. Defendant has not filed a response to the motion for summary judgment.

#### 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 Federal Rules of Bankruptcy Procedure.

According to Civil Rule 56(c), a court shall render summary judgment

if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as

to any material fact and that the moving party is entitled to a 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 the 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 1466, 1472 (6th Cir. 1996).

Plaintiff requests that the Court revoke Defendant’s discharge pursuant to

11 U.S.C. § 727(d)(3)<sup>1</sup>. 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)(A) provides that a debtor's discharge shall be denied when the debtor has refused "to obey any lawful order of the court, other than an order to respond to a material question 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, and the Plaintiff's submitted affidavit, Plaintiff has shown that Defendant violated a lawful order of the Court to turn over the nonexempt portion of her year 2002 tax refund to Plaintiff. Notwithstanding Defendant's allegations in her Answer that she and Plaintiff reached a verbal agreement for her to satisfy the turnover order by making

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<sup>1</sup>In addition to seeking revocation of the Defendant's discharge under § 727(d)(3), the Plaintiff also seeks *denial* of the Defendant's discharge under § 727(a)(6)(A). While § 727(a)(6)(A) provides a basis to deny the granting of a debtor's discharge, it has no application to the present case, in which the Defendant received her discharge before this adversary complaint was filed.

installment payments to Plaintiff, Defendant has failed to respond to the motion for summary judgment or to produce any evidence admissible under Federal Rule of Civil Procedure 56(e) to show the existence of a material fact.<sup>2</sup>

Viewing the evidence before it in the light most favorable to Defendant, the Court finds there are no genuine issues of material fact and that Plaintiff is entitled to a judgment as a matter of law. Accordingly, Plaintiff's motion for summary judgment will be granted. A separate judgment entry will be entered in accordance with this Memorandum of Decision.

/s/ Arthur I. Harris 11/17/2003  
Arthur I. Harris  
United States Bankruptcy Judge

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<sup>2</sup> See FED. R. CIV. P. 56(e) ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.").