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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. 03-11293
)	
DELEA BRATE,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
STEVEN S. DAVIS, TRUSTEE,)	Adversary Proceeding No. 03-1277
)	
Plaintiff,)	
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
DELEA BRATE,)	
)	
Defendant.)	

The chapter 7 trustee filed a complaint to revoke the discharge of the debtor-defendant Delea Brate under 11 U.S.C. § 727(d) on the ground that the debtor failed to comply with a court order to turnover the sum of \$2,586.00 to the trustee. The trustee filed a motion for summary judgment, which is unopposed.¹ (Docket 10).

JURISDICTION

Jurisdiction exists 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 case management scheduling order provides that the deadline for filing dispositive motions was December 12, 2003 and that briefs in opposition were due on or before December 22, 2003. (Docket 9). The deadline for filing opposition to the trustee's motion has, therefore, 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 4, 2003 and received a discharge on May 16, 2003. (Case No. 03-11293, Docket 1 and entry for May 16, 2003). On June 20, 2003, this court entered an order granting the trustee's request for turnover of funds, which required the debtor to turn over \$2,586.00. (Case No. 03-11293, Docket 18, 25). This amount included \$2,685.00 in tax refunds and \$651.00 which the debtor had on deposit in her checking and savings accounts, less a \$750.00 exemption. The debtor has not complied with the Order. See trustee's affidavit. (Docket 10).

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*

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Corp. v. Catrett, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be 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). Subsection (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 that she was ordered to turn over \$2,586.00 to the trustee and that she has not done so. (Docket 7, 8). The trustee argues that he is entitled to summary judgment revoking the debtor's discharge because the debtor refused to obey the court's order. The debtor

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(in her answer) suggests that she did not receive tax refunds for the year 2002 and that she is prepared to surrender the refunds when they are received. The debtor has, however, failed to respond to the summary judgment request and has not provided any evidence supporting these alleged facts. As a result, the debtor has not properly identified any material fact which must be tried. Moreover, it is clear that the debtor has failed to comply with the order insofar as it requires her to turn over the amounts which she had on deposit in her savings and checking accounts. 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: 6 July 2004

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

Served by mail on: Steven Davis, Esq.
Keith Borders, Esq.

By: Joyce L. Gordon, Secretary

Date: 1/6/04

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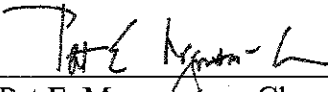
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Plaintiff,)	
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v.)	
)	<u>JUDGMENT</u>
DELEA BRATE,)	
)	
Defendant.)	

For the reasons stated in the memorandum of opinion filed this same date, the plaintiff-trustee's motion for summary judgment is granted. (Docket 10). 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: 6 July 2004



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Steven Davis, Esq.
Keith Borders, Esq.

By: Joyce L. Gordon, Secretary
Date: 1/6/04