

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 03-18160
)
JEANETTE R. LEWIS and) Chapter 7
WILLIAM C. LEWIS, JR.,)
) Judge Arthur I. Harris
Debtors.)

ORDER DISMISSING ESTATE OF WILLIAM C. LEWIS, JR., AND
VACATING DISCHARGE ORDER (DOCKET #9) AS IT PERTAINS TO THE
ESTATE OF WILLIAM C. LEWIS, JR.

On June 6, 2003, a voluntary Chapter 7 petition was filed on behalf of Jeanette R. Lewis and the Estate of William C. Lewis, Jr. According to the petition, William C. Lewis died on March 12, 2002, more than a year before the Chapter 7 petition was filed. While Bankruptcy Rule 1016 includes provisions for a debtor who dies *after* a bankruptcy case has been commenced, probate estates such as the Estate of William C. Lewis, Jr., are not eligible to file a Chapter 7 case. *See In re Goerg*, 844 F.2d 1562, 1565-66 (11th Cir. 1988); 2 *Collier on Bankruptcy* (15th Ed. Rev.) at ¶ 109.03[1].

Therefore, (1) the motion to dismiss the Estate of William C. Lewis, Jr. (Docket # 17), is granted, and (2) the order of discharge (Docket #9), which erroneously included a discharge of the Estate of William C. Lewis, Jr., is vacated as it pertains to the Estate of William C. Lewis, Jr., pursuant to Bankruptcy Rule 9024 and Fed. R. Civ. P. 60(a) and (b). *See also In re Midkiff*, 343 F.3d 1194

(10th Cir. 2003)(Bankruptcy Rule 9024 authorizes court to vacate discharge order separate and apart from revocation of discharge order).

IT IS SO ORDERED.

/s/ Arthur I. Harris 01/06/2004

Arthur I. Harris

United States Bankruptcy Judge