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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. 01-21631
)	
TRACY DICKERSON,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
WALDEMAR J. WOJCIK, TRUSTEE,)	Adversary Proceeding No. 03-1528
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
TRACY DICKERSON,)	
)	
Defendant.)	

The chapter 7 trustee filed a complaint to revoke the discharge of the debtor-defendant Tracy Dickerson under 11 U.S.C. § 727(d) (among other grounds) because the debtor failed to comply with a court order to turnover \$2,287.60 to the trustee. The trustee filed a motion for summary judgment supported by an affidavit and the debtor filed a brief in opposition. (Docket 9, 13, 14).

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered 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).

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FACTS AND DISCUSSION

I.

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

The debtor filed her chapter 7 case on November 27, 2001 and received a discharge on March 26, 2002. (Case No. 01-21631, Docket 1, 5). On June 28, 2002, this court entered an order granting the trustee's request for turnover of funds, which required the debtor to turn over \$2,287.60 from her 2001 federal tax return that was property of the bankruptcy estate. (Case No. 01-21631, Docket 8). The debtor has not complied with the order. *See* trustee's affidavit. (Docket 13). In the debtor's unsworn opposition, she states that she spent the money and counted on her attorney to address the situation, which he failed to do. She asks for additional time, until July 30, 2004, to pay the money. (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

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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 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 \$2,287.60 to the trustee and that she has not done so. The trustee argues that he is entitled to summary judgment revoking the

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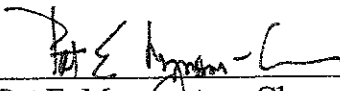
debtor's discharge because the debtor refused to obey the court's order. The debtor's opposition (which the court will consider even though it is not a sworn statement) asks for more time, but does not identify any anticipated event that will allow her to make the payment later.

Additionally, the debtor has been on notice for eighteen months that the money was due and it is not appropriate to extend that time any further under these circumstances. 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: 21 April 2014



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center on:

Waldemar Wojcik, Esq.
Ms. Tracy Dickerson

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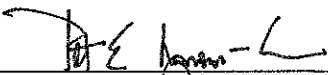
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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 01-21631
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TRACY DICKERSON,) Chapter 7
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Debtor.) Judge Pat E. Morgenstern-Clarren
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_____)
WALDEMAR J. WOJCIK, TRUSTEE,) Adversary Proceeding No. 03-1528
)
Plaintiff,)
)
v.) **JUDGMENT**
)
TRACY DICKERSON,)
)
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 9). 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: 01 April 2011



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center on:

Waldemar Wojcik, Esq.
Ms. Tracy Dickerson