

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 05-97075
)
ANNA L. BROOKS,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**

Ivory Welch failed to appear in response to a court order directing him to appear and show cause regarding his involvement in this chapter 7 case. (Docket 6). For the reasons stated below, Ivory Welch is found to be in contempt of court.

JURISDICTION

The court has jurisdiction 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).

FACTS AND DISCUSSION

On December 8, 2005, Ivory Welch, who is not an attorney, filed this case for the debtor Anna Brooks using a power of attorney. The issue of contempt arises out of an order entered on December 13, 2005 which required Ivory Welch to appear on December 28, 2005 to explain his involvement in this case (the show cause order).

Mr. Welch did not appear on December 28, 2005. Dionne Brooks, the debtor’s daughter, appeared and stated that Mr. Welch was aware of the court’s order and did not intend to appear,

because “she [meaning the court] doesn’t need to see me.”¹ The issue is whether Ivory Welch’s failure to comply with the show cause order constitutes contempt of court.

The court’s contempt powers derive from “Bankruptcy Code § 105(a) and the inherent power of a court to enforce compliance with its lawful orders.” *In re Walker*, 257 B.R. 493, 496 (Bankr. N.D. Ohio 2001) (citations omitted). Contempt must be shown by clear and convincing evidence that the alleged contemnor violated a definite and specific court order which required the performance or the nonperformance of an act with knowledge of that court order. *Id.* at 497. “Willfulness is not an element of civil contempt and intent to disobey the order is irrelevant.” *Id.* The alleged contemnor may defend by showing an inability to comply with the order. *Id.*

Based on the undisputed facts, Ivory Welch is in contempt of this court’s show cause order. He was served with and had knowledge of the order. The terms of the show cause order were specific and required Mr. Welch to appear on December 28, 2005 to explain his involvement in this bankruptcy filing. Mr. Welch failed to appear. These facts clearly and convincingly establish that Ivory Welch had knowledge of the show cause order and failed to comply. The court finds, therefore, that Ivory Welch is in contempt based on his failure to comply with the show cause order.

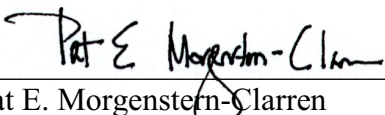
The next issue is the appropriate consequence for Mr. Welch’s contempt. The court must consider the harm caused by Mr. Welch’s non-compliance and the probable effectiveness of the sanction in encouraging his compliance with the show cause order. *Id.* at 498. Under these

¹ The debtor Anna Brooks was also ordered to appear, but did not appear due to illness. Her daughter, Dionne Brooks, appeared in her place.

circumstances, it is appropriate to prohibit Mr. Welch from filing any additional bankruptcy cases using a power of attorney to encourage him to comply with the show cause order.

IT IS, THEREFORE, ORDERED that Ivory Welch is found to be in civil contempt of this court's show cause order. IT IS FURTHER ORDERED that as a sanction for that contempt Ivory Welch is barred from filing any bankruptcy case using a power of attorney from the date on which this order is entered and the clerk's office is directed not to accept any such case presented by Mr. Welch. To resolve the contempt issue, Ivory Welch may file an affidavit explaining his previous non-compliance with the show cause order. At that point, the court will re-evaluate the sanction.

Date: 29 December 2005



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by the clerk's office by regular mail on:
Ivory Welch, 15700 Friend Ave., Maple Heights, OH 44104
Anna Brooks, 9401 Mt. Auburn Ave., Cleveland, OH 44104
and via email and the Bankruptcy Noticing Center on:
Daniel McDermott, Esq., office of the United States trustee, at daniel.m.mcdermott@usdoj.gov