

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re:	)	Case No. 05-25359
	)	
BILLY E. KOONCE and	)	Chapter 7
LEVORA KOONCE,	)	
	)	Judge Pat E. Morgenstern-Clarren
Debtors.	)	
_____	)	
	)	Adversary Proceeding No. 06-01703
VIRGIL E. BROWN, JR., TRUSTEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	
BILLY E. KOONCE and	)	
LEVORA KOONCE,	)	
	)	
Defendants.	)	

The chapter 7 trustee filed a complaint to revoke the discharge of defendant-debtors Billy E. and Levora Koonce.<sup>1</sup> The trustee asserts that the debtors' discharge should be revoked because they failed to comply with a court order to turn over the sum of \$2,233.00 to the trustee. For the reasons stated below, the trustee's motion for summary judgment is granted.<sup>2</sup>

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<sup>1</sup> This case was filed before October 17, 2005, the effective date of most of the provisions of the Bankruptcy Abuse Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. All citations are, therefore, to the bankruptcy code as it existed before that date.

<sup>2</sup> This written opinion is entered only to decide the issues presented in this case and is not intended for commercial publication in an official reporter, whether print or electronic.

## 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).

## FACTS AND DISCUSSION

### I.

These are the undisputed material facts based on the chapter 7 file and the evidence offered in connection with the summary judgment motion:

The debtors filed their chapter 7 petition on September 22, 2005 and received their discharge on December 28, 2005.<sup>3</sup> On June 1, 2006, this court entered an order granting the trustee's motion for turnover of funds, which required the debtors to turn over the non-exempt portion of their 2005 tax refund consisting of \$2,233.00.<sup>4</sup> In this adversary proceeding, the trustee's complaint alleged that the debtors failed to comply with this order, but the debtors' answer denied the trustee's allegations.<sup>5</sup> The trustee then filed a motion for summary judgment, to which the debtors did not reply.<sup>6</sup>

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<sup>3</sup> Case No. 05-25359, Docket 1, 6.

<sup>4</sup> Case No. 05-25359, Docket 11, 13.

<sup>5</sup> Case No. 06-01703, Docket 1, 6, 10.

<sup>6</sup> The case management scheduling order provides that the deadline for filing dispositive motions was November 27, 2006 and that briefs in opposition were due on or before December 7, 2006. (Case No. 06-01703, Docket 8). The deadline for filing opposition to the trustee's motion has, therefore, passed.

## 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.*, 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.* at 324. The nonmoving party “may not rest upon the mere allegations or denials of the [nonmoving] party’s pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). 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.

### Revocation of Discharge

The court may revoke the discharge of a chapter 7 debtor if the debtor refuses to obey a lawful order of the court. 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). In turn, subsection (a)(6) of § 727 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." 11 U.S.C. § 727(a)(6)(A).

In the case of a revocation of discharge, a court may construe the failure to comply with a lawful order of the court as refusal to comply with that order. A debtor will be deemed to have "refused" to obey a court's order when the debtor's actions or inactions would give rise to liability on a charge of civil contempt. *Hunter v. Watson (In re Watson)*, 247 B.R. 434, 436 (Bankr. N.D. Ohio 2000) (citing *Hunter v. Magack (In re Magack)*, 247 B.R. 406 (Bankr. N.D. Ohio 1999)). To establish civil contempt, a complaint must establish three elements by clear and convincing evidence: (1) the alleged contemnor had knowledge of the order which he is said to have violated, (2) the alleged contemnor did in fact violate the order, and (3) the order violated must have been specific and definite. *See id.* at 436 (citing *Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998)).

#### IV.

#### The Summary Judgment Motion

In this case, the debtors' failure to comply with the June 1, 2006 order satisfies the three-prong standard for civil contempt. First, the debtors' answer admits knowledge of the June 1, 2006 order.<sup>7</sup> Second, the trustee affirms that the debtors failed to comply with the June 1, 2006 order.<sup>8</sup> And third, the June 1, 2006 order stated with specificity that the debtors were to turn over \$2,233.00 to the trustee within 15 days of the order.<sup>9</sup> Therefore, by failing to comply with the

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<sup>7</sup> Case No. 06-01703, Docket 6.

<sup>8</sup> Case No. 06-01703, Docket 10.


<sup>9</sup> Case No. 05-25359, Docket 13.

June 1, 2006 order, debtors have refused to comply with a lawful order of this court. *See Hunter v. Watson*, 247 B.R. at 436; *see also Davis v. Freeman (In re Freeman)*, No. 06-01471, 2006 WL 3290920, at \*2 (Bankr. N.D. Ohio Nov. 7, 2006). Such refusal satisfies 11 U.S.C. § 727(d)(3), and accordingly revocation of debtors' discharge is appropriate.

With respect to the trustee's summary judgment motion, the debtors failed to respond or to produce any evidence admissible under federal rule of civil procedure 56(e) (made applicable by federal rule of bankruptcy procedure 7056). As a result, the debtors have not identified any material fact which must be tried. Even viewing all the evidence before the court in a light most favorable to the debtors, without any evidence showing the existence of a material fact, no trier of fact could reasonably find for the debtors. Accordingly, the trustee is entitled to judgment as a matter of law. *See Hunter v. Watson*, 247 B.R. at 436; *see also Davis*, 2006 WL 3290920, at \*2; *Sicherman v. Skiljan (In re Skiljan)*, No. 06-01510, 2006 WL 3290925, at \*2 (Bankr. N.D. Ohio Nov. 7, 2006).

### **CONCLUSION**

A separate order will be entered granting the trustee's motion for summary judgment and revoking the debtors' discharge.



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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

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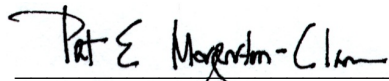
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VIRGIL E. BROWN, JR., TRUSTEE,	)	Adversary Proceeding No. 06-01703
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Plaintiff,	)	
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v.	)	<b><u>ORDER</u></b>
	)	
BILLY E. KOONCE and	)	
LEVORA KOONCE,	)	
	)	
Defendants.	)	

For the reasons stated in the memorandum of opinion filed this same date, 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-debtors' discharge is revoked.

IT IS SO ORDERED.

  
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 Pat E. Morgenstern-Clarren  
 United States Bankruptcy Judge