

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re:	)	Case No. 08-11494
	)	
ALICIA M. DEGIDIO,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
RICHARD A. BAUMGART, TRUSTEE	)	Adversary Proceeding No. 08-1203
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ALICIA M. DEGIDIO,	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	
Defendant.	)	

The plaintiff chapter 7 trustee Richard Baumgart filed a complaint to deny a discharge to the defendant-debtor Alicia Degidio because she refused to comply with a court order to turn over funds to the trustee. The trustee requests summary judgment against the debtor.<sup>1</sup> For the reasons stated below, the trustee’s motion for summary judgment is granted.<sup>2</sup>

**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).

<sup>1</sup> Docket 11.

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

## **DISCUSSION**

### **I.**

#### **Facts**

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

The debtor Alicia Degidio filed her chapter 7 petition on March 5, 2008. On June 23, 2008, the court entered an order which required the debtor to turn over \$1,973.00 in non-exempt income tax refunds (the turnover order).<sup>3</sup> The trustee's complaint in this adversary proceeding alleges that the debtor should be denied a discharge of her debts because she failed to comply with the turnover order.<sup>4</sup> The debtor filed an answer in which she admitted that she failed and refused to comply with the turnover order, but denied that she spent the money knowing that the funds constituted property of the bankruptcy estate.<sup>5</sup> The trustee filed a motion for summary judgment, which the debtor has not opposed.<sup>6</sup>

### **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)

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<sup>3</sup> Case No. 08-11494, docket 23.

<sup>4</sup> Docket 1.

<sup>5</sup> Docket 7.

<sup>6</sup> The case management scheduling order provides that the deadline for filing dispositive motions was October 27, 2008 and that briefs in opposition were due on or before November 6, 2008. (Docket 9). The deadline for filing opposition to the trustee's motion has, therefore, passed.

(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.

#### Denial of Discharge

Bankruptcy code § 727(a)(6)(A) 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). 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, three elements must be shown 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 debtor's failure to comply with the turnover order satisfies the three-prong standard for civil contempt. First, the court record shows that the debtor and her counsel were served with the order.<sup>7</sup> Second, the trustee affirms that the debtor has failed to comply with the order.<sup>8</sup> As willfulness is not an element of civil contempt, *TWM Mfg. Co., Inc. v. Dura Corp.*, 722 F.2d 1261, 1273 (6th Cir. 1983), the trustee need not show that the debtor willfully disobeyed the order, only that she knew of the order and failed to follow it. And third, the order stated with specificity that the debtor was to turn over \$1,973.00 to the trustee. Therefore, by failing to comply with the turnover order, the debtor has refused to comply with a lawful order of this court. *See Hunter v. Watson*, 247 B.R. at 436; *see also Sicherman v. Skiljan (In re Skiljan)*, 355 B.R. 642, 643–44 (Bankr. N.D. Ohio 2006). This refusal satisfies the requirements of § 727(a)(6)(A). Viewing all the evidence before the court in a light most favorable to the debtor, no trier of fact could reasonably find in the debtor's favor. Accordingly, the trustee is entitled to summary judgment that the debtor's discharge is denied. *See Hunter v. Watson*, 247 B.R. at 436; *see In re Skiljan*, 355 B.R. at 644.

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<sup>7</sup> Case No. 08-11494, docket 24.

<sup>8</sup> *See* trustee's affidavit, docket 11.

**CONCLUSION**

A separate judgment will be entered granting the trustee's motion for summary judgment and denying a discharge to the debtor.



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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

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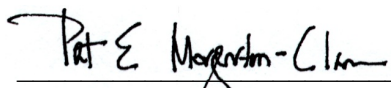
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ALICIA M. DEGIDIO,	)	<b><u>ORDER</u></b>
	)	
Defendant.	)	

For the reasons stated in the memorandum of opinion filed this same date, the motion of chapter 7 trustee Richard Baumgart for summary judgment is granted and the debtor Alicia Degidio is denied a discharge.

IT IS SO ORDERED.

  
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 Pat E. Morgenstern-Clarren  
 United States Bankruptcy Judge