

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 09-11221
SAMETTA A. FOSTER,)
) Chapter 13
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER FINDING DEBTOR**
) **SAMETTA FOSTER AND QUINN**
) **ALGOOD IN CONTEMPT**

On February 20, 2009, Quinn Algood filed this case and submitted a document purporting to be a limited power of attorney on behalf of Sametta Foster. Sametta Foster and Quinn Algood were ordered to appear to explain why Mr. Algood filed the petition for Ms. Foster; they did not appear. Ms. Foster and Mr. Algood were then ordered to appear to show cause why they should not be held in civil contempt for their failure to appear in response to the first order and once again failed to appear. For the reasons stated below, Ms. Foster and Mr. Algood are found to be in civil contempt.¹

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

The court entered an order requiring Ms. Foster and Mr. Algood to appear on March 17, 2009 to explain why Mr. Algood filed this case on Ms. Foster's behalf, and whether any

¹ In the court's view, the value of this opinion is to decide the dispute between the parties, rather than to add anything to the general bankruptcy jurisprudence. For that reason, the opinion is not intended for commercial publication.

individual or company assisted in the preparation of the petition (the order to appear). (Docket 5). They did not appear on March 17, 2009. The court then entered an order requiring them to appear on April 14, 2009 to show cause why they should not be held in contempt for failing to appear in response to the order to appear. (Docket 12). Again, they failed to appear.

The court must, therefore, consider whether Ms. Foster and Mr. Algood are in contempt of this court's order to appear.

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 facts, Sametta Foster and Quinn Algood are in contempt of this court's order to appear. Each was served with and had knowledge of the order. The terms of the order were specific and required them to appear before the court to explain why Mr. Algood filed the bankruptcy petition for Ms. Foster. They did not appear on March 17, 2009 in response to the order to appear and they failed to appear on April 14, 2009 to explain why.

These facts clearly and convincingly establish that Ms. Foster and Mr. Algood had knowledge of the court's order to appear and failed to comply with it. They were given adequate notice and an opportunity to be heard on the contempt issue, yet they failed to appear and have not provided any explanation for their failure to comply with the court's order. The court finds, therefore, that Ms. Foster and Mr. Algood are in contempt based on their failure to comply with the order to appear.

CONCLUSION

For the reasons stated, Sametta Foster and Quinn Algood are found to be in civil contempt based on their failure to comply with the order to appear. The remaining issue at this point is what sanction is appropriate to encourage Ms. Foster and Mr. Quinn to comply with the court's orders. A hearing will, therefore, be held on **May 12, 2009** at 8:30 a.m. in Courtroom #2A, U.S. Bankruptcy Court, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, Ohio to address that issue and to determine the appropriate sanction for Ms. Foster's and Mr. Algood's contempt.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

To be served by the clerk's office by regular U.S. mail on:

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