

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

ENTERED

JAN - 3 2006

IN RE:

Gladys Wells,

Debtor.

C/A No. 05-45311-W

JUDGMENT

Chapter 13

D. H. R.
FILED

at ___ O'clock & ___ min. ___ A

JAN - 3 2006

United States Bankruptcy Court
Columbia, South Carolina (37)

Based upon the findings of fact and conclusions of law made in the attached Order, the Motion to Extend Stay filed by Gladys Wells is granted. The automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B). Should this case be dismissed for any reason, the dismissal will be with prejudice to bar a re-filing for a period of one-hundred eighty (180) days as to Chapters 11, 12, and 13 of the Bankruptcy Code.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
January 3, 2006

FILED

at ___ O'clock & ___ min. ___ M

JAN - 3 2006

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (37)

IN RE:

Gladys Wells,

Debtor.

C/A No. 05-45311-W

ORDER

Chapter 13

ENTERED

JAN - 3 2006

D. H. R.

This matter comes before the Court upon a Motion to Extend Stay ("Motion") filed by Gladys Wells ("Debtor") pursuant to 11 U.S.C. § 362(c)(3)(B).¹ A hearing on the Motion, after notice to all creditors, was completed within the thirty (30) day period following the petition date. The Chapter 13 Trustee filed a response to the Motion but did not object to the Court granting the Motion.

Debtor filed this case on December 9, 2005. Debtor was a debtor in a case pending within a one (1) year period preceding the filing of this case.² The automatic stay of § 362(a) will terminate on the 30th day after the filing of this case, absent an order extending the stay. 11 U.S.C. § 362(c)(3)(A).

Debtor's previous case was dismissed because Debtor failed to amend her proposed plan within the timeframe set by an Order entered July 12, 2005. Section 362(c)(3)(C)(i)(II)(aa) may be implicated to create a presumption that this case was not filed in good faith as to all creditors. That section provides:

[A] case is presumptively filed not in good faith ... (i) as to all creditors, if ... a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to- (aa) file or amend the petition or other documents as

¹ Hereinafter internal references to the Bankruptcy Code (11 U.S.C. § 101 et. seq.), as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be made by section number only.

² Debtor's previous case was filed jointly with her husband. Debtor has since separated from her husband and filed this case individually.

required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of debtor's attorney).
11 U.S.C. § 362(c)(3)(C)(i)(II)(aa).

Debtor asserts that the dismissal of her previous case was caused by the failure of her counsel to submit a confirmable plan. Debtor's previous counsel was experiencing severe health problems during the case, which resulted in his death. Because the dismissal of Debtor's previous case is attributable to the negligence and health of her previous counsel, the Court finds that the presumption under § 362(c)(3)(C)(i)(II)(aa) does not arise because Debtor has presented a substantial excuse for not filing the required document.

The Court also finds that the presumption under § 362(c)(3)(C)(i)(III) does not arise. Since Debtor filed the previous case, Debtor has separated from her husband. Debtor's monthly income has increased by four-hundred sixty (\$460.00) dollars per month and her monthly expenses have substantially decreased. The increase in income and the decrease in monthly expenses are associated with Debtor's separation from her husband who is ordered by the state court to pay Debtor child support and pay sixty (60%) percent of the first mortgage. The state court order was entered after the dismissal of the previous case. Debtor's proposed plan appears feasible and it appears Debtor will complete the plan. These facts indicate that Debtor is making a good faith attempt at reorganizing and that Debtor filed this case in good faith.

The Court therefore finds that Debtor has met her burden of proof under § 362(c)(3)(B) and orders that the automatic stay is extended as to all creditors. As a condition to extending the automatic stay, it is further ordered that should this case be dismissed for any reason, that the dismissal will be with prejudice to bar a re-filing for a period of one-hundred

eighty (180) days as to Chapters 11, 12, and 13 of the Bankruptcy Code.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
January 3, 2006