

ENTERED

JUN 16 2006

K.R.W.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FILED
0'clock & min
JUN 16 2006
United States Bankruptcy Court
Columbia, South Carolina (2)

IN RE:

Verdie Mae Johnson,

Debtor(s).

C/A No. 06-01923-JW

Chapter 13

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law made in the attached Order of the Court, the Court denies the request to reinstate Debtor's case. Furthermore, the Court sanctions Debtor's counsel, Craig Poff ("Poff"), \$1,000.00, which shall be payable to the South Carolina Pro Bono Program within 10 days from entry of the attached Order. Furthermore, Poff must also notify the Court of the payment by filing an affidavit with the Clerk of Court prior the expiration of the 10 day period prescribed herein. If Poff does not pay the \$1,000.00 sanction pursuant to the terms of the attached Order and does not provide timely notice of such payment, then Poff shall be prohibited from filing any new bankruptcy cases in this Court for sixty days beginning on July 1, 2006. The sanctions imposed in the attached Order shall survive the dismissal of this case.

Columbia, South Carolina,
June 16, 2006


UNITED STATES BANKRUPTCY JUDGE

ENTERED

JUN 16 2006

K.R.W.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

FILED
of Clerk
JUN 16 2006
United States Bankruptcy Court
District of South Carolina (S)

IN RE:

Verdie Mae Johnson,

Debtor(s).

C/A No. 06-01923-JW

Chapter 13

ORDER

This matter comes before the Court upon an Order Dismissing Case and Rule to Show Cause issued by the Court (“Order Dismissing Case and Rule”) and a Return to Rule to Show Cause and Request to Restore Case filed by Verdie Mae Johnson (“Debtor”) and her counsel, Craig Poff (“Poff”). The Chapter 13 Trustee also filed a response supporting the Order Dismissing Case and Rule. In his response, the Chapter 13 Trustee requested the Court to dismiss Debtor’s case with prejudice for an additionally two year period.

Debtor’s current Chapter 13 filing is Debtor’s third bankruptcy since February, 2005. Debtor initiated her first Chapter 13 case (“Case no. 05-01335-wb”) on February 5, 2005. On October 19, 2005, the Court dismissed Debtor’s first case for failure to make timely plan payments. Approximately one month after the dismissal of Debtor’s first bankruptcy case, Debtor initiated a second Chapter 13 case (“Case no. 05-45164-jw”). The Chapter 13 Trustee sought dismissal of Debtor’s second case because the automatic stay had terminated pursuant to § 362(c)(3)(A) of the Bankruptcy Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Without objection to the Chapter 13 Trustee’s petition to dismiss, the Court dismissed Debtor’s second Chapter 13 filing with prejudice for a period of one year on February 7, 2006. Apparently, during the course of the second case, the Supreme Court of South Carolina

suspended Poff from the practice of law on December 12, 2005. After the dismissal of the second case, Debtor initiated a third bankruptcy case on May 6, 2006. In response to Debtor's third filing, the Court issued the Order Dismissing Case and Rule because Debtor filed the case during the prejudice period established by the dismissal order issued in the second case.

Debtor and Poff contend that the Court should vacate the Order Dismissing Case and Rule because the dismissal of the second case with prejudice was caused by circumstances beyond Debtor's control. Primarily, Debtor and Poff contend that Poff's suspension resulted in a failure to extend the automatic stay and a failure to oppose the petition to dismiss. According to Debtor and Poff, Poff's inability to represent Debtor following the suspension justifies Debtor's third bankruptcy filing during the prejudice period. The Court disagrees.¹

First, the Court notes Poff should have filed a Motion to Extend Stay prior to his suspension. S.C. Local Bankruptcy Rule 4001-1(b) requires Motions to Extend Stay to be filed with the petition. In this case, Debtor filed her second bankruptcy petition on November 29, 2005; thus, Poff should have filed Debtor's Motion to Extend Stay along with Debtor's bankruptcy petition. Had Poff filed Debtor's Motion to Extend Stay according to the Court's local rules, Poff could have filed the Motion to Extend Stay prior

¹ The Court rejects counsel argument that his intervening suspension prohibited him from fulfilling his duty to represent the Debtor. Admission to practice in this Court is determined by this Court. See Local Rule 83.IX.02 DSC (conditioning admission to practice in this Court only on admission to practice before the District Court). As this Court recognized in Grimsley, counsel continues to have a duty to provide competent representation to his clients notwithstanding an intervening suspension by the state court until counsel is relieved as counsel or suspended from practice by this Court or the South Carolina District Court. See In re Grimsley, C/A No. 04-2072-W, slip op. at 10 (Bankr. D.S.C. May 26, 2006) (setting forth the federal practice exception and rejecting an attorney's argument that an intervening suspension relieves him of a duty to represent his clients before this Court). The Court notes that after the relevant time period in this case, the District Court has recently amended its local rules to provide for immediate suspension or disbarment of an attorney admitted to practice before the District Court if the South Carolina Supreme Court suspends or disbars that attorney. Local Rule 83.I.08 DSC-RDE Rule II (G).

to his suspension. Therefore, the failure to file the Motion to Extend Stay is largely the product of Poff's failure to follow the local rules rather than his suspension from the practice of law.

Second, the record of Debtor's second case indicates that she did not make an appearance at the hearing on the Chapter 13 Trustee's petition to dismiss to assert an objection. The Chapter 13 Trustee served Debtor with the petition to dismiss; therefore, she should have appeared at the hearing to diligently protect her interests or obtain new counsel to act on her behalf. Accordingly, Debtor's lack of diligence significantly contributed to the dismissal of her case with prejudice despite Poff's suspension by the S.C. Supreme Court and his failure to represent Debtor following the suspension.

Finally, Poff should not have filed Debtor's third case. Poff contends that he was unaware of the prejudice period because he never received the order dismissing Debtor's second case with prejudice after his suspension. In this District, however, debtors' attorneys have an affirmative duty to determine whether a debtor is eligible to file bankruptcy. In re Brown, C/A No. 02-00089-jw, slip op. at 2 (Bankr. D.S.C. Jan. 31, 2002). The duty includes checking Court records and discovering whether a debtor's previous case was dismissed with prejudice to bar a re-filing for period of time. See id. (noting that debtor's counsel has a duty to become aware of and follow dismissal orders established by this Court in a prior bankruptcy case). Given the affirmative duty imposed on Poff to become aware of the Court's order dismissing Debtor's case with prejudice, the Court rejects Poff's lack of knowledge excuse for filing Debtor's third case during the prejudice period.

In light of the record developed in Debtor's second case, the Court finds no reason to reinstate Debtor's third case, and since the dismissal of Debtor's second case was partially attributable to Poff's ineffective counsel, the Court declines to assess any further sanctions against Debtor.

The Court, however, concludes that Poff's filing of this third case during an existing prejudice period is a violation of this Court's local rules and a sanctionable act of contempt. S.C. Local Bankruptcy Rules 9010-3(a) & (d) provide as follows:

(a) A debtor and attorney for the debtor shall have the duty to ascertain that no previous court order, statute or rule makes the debtor ineligible to file or bars the applicable filing of a petition in bankruptcy before this Court. The signing and filing of a petition by a debtor and/or attorney for the debtor is deemed a certification to the Court that the debtor is eligible to file another petition and is not in violation of previous order of dismissal with prejudice, statute, or rule.

* * * *

(d) Violation of subsection (a) of this rule may subject parties to sanctions.

Furthermore, to protect the integrity of orders dismissing a case with prejudice, this Court has consistently sanctioned debtors' counsel when they improperly file a case during and existing prejudice period. See In re Hook, C/A No. 05-06225-W, slip op. (Bankr. D.S.C. June 20, 2005) (requiring disgorgement of fees and payment of \$400.00 for improperly re-filing a bankruptcy case during an existing prejudice period); In re Megget, C/A No. 03-09345-W, slip op. (Bankr. D.S.C. Aug. 20, 2003) (sanctioning debtor's counsel \$1,000.00 for improperly re-filing a bankruptcy case during an existing prejudice period); In re Craigo, C/A No. 03-02444-W, slip op. (Bankr. D.S.C. Apr. 7, 2003) (sanctioning debtor's counsel \$1,000.00 for improperly re-filing a bankruptcy case during an existing prejudice period); In re Garner, C/A No. 02-02058, slip op. (Bankr. D.S.C. Mar. 11,

2002) (sanctioning debtor's counsel \$985.00 for improperly re-filing a bankruptcy case during an existing prejudice period).

Therefore, pursuant to this Court's local rules and existing precedent, the Court sanctions Poff \$1,000.00, which shall be payable to the South Carolina Pro Bono Program within 10 days from entry of this order. Furthermore, Poff must also notify the Court of the payment by filing an affidavit with the Clerk of Court prior the expiration of the 10 day period prescribed herein. If Poff does not pay the \$1,000.00 sanction pursuant to the terms of this order and does not provide timely notice of such payment, then Poff shall be prohibited from filing any new bankruptcy cases in this Court for sixty days beginning on July 1, 2006. The sanctions imposed herein shall survive the dismissal of this case.

AND IT IS SO ORDERED.

Columbia, South Carolina,
June 16, 2006


UNITED STATES BANKRUPTCY JUDGE