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UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

FILED
at _____ O'clock & _____ min. _____ M.
_____ 2003
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (13)

IN RE:

Leomont D. Evans and
Felicia Evans,

Debtors.

CASE NO. 03-08343-JW

Chapter 13

ORDER OF DISMISSAL

This matter comes before the Court pursuant to the October 30, 2003 Order to appear and show cause why this case should not be dismissed with prejudice and why sanctions should not be imposed for allegedly filing a false certification to this Court. This is a core proceeding; this Court has jurisdiction to determine this matter pursuant to 28 U.S.C. Section 157(b)(2) and Local Civil Rule 83.IX.01, DSC.

The Debtors filed a Chapter 13 Petition on July 7, 2003. On July 9, 2003, the Debtors filed Schedules and Statements. The Schedules and Statements failed to refer to any child support obligation owed by the Debtor, Leomont Evans, although all the parties acknowledged that such a current child support obligation existed.

On the 30th of September, 2003, the Debtor filed an Amended Schedule E acknowledging a pre-petition debt to the South Carolina Department of Social Services, as advocate for the child support due and owing by the Debtor, Leomont Evans.

On October 1, 2003, the South Carolina Department of Social Services ("SCDSS") filed an Objection to the Plan arguing that the Debtor had failed to properly schedule SCDSS or the child support obligation, that the Plan was not filed in good faith, and that the Debtor was not current in post-petition child support payments as required by local procedure

and by the Plan.

At the October 30, 2003 Confirmation Hearing, the Trustee pointed out to the Court that, contrary to a certification presented by the Debtor that he was current on post-petition child support payments, the Debtor was not making post-petition child support payments and this Order to Appear and Show Cause was then issued.

On November 4, 2003, a hearing was held on the Order to Appear and Show Cause. In attendance were the Debtors, their attorney, counsel for the SCDSS, and a witness for SCDSS. The parties acknowledged that as of October 31, 2003, the Debtor was past due on child support in the amount of \$6,600; that he had not made a child support payment since December 2002; that he had made no post-petition child support payments, in spite of any representations made to the Chapter 13 Trustee. The Debtor argued that it was his intention to pay child support, but that due to delays in the implementation of any disability pay to which he may be entitled, he was without sufficient funds to pay child support.

The obligation to pay child support is considered a priority unsecured debt under 11 U.S.C. Section 507(a)(7) and is not dischargeable pursuant to 11 U.S.C. Section 523(a)(5). This district's Operating Order 02-02 dated February 8, 2002, requires each Debtor to certify to the Chapter 13 Trustee that if there is a post-petition obligation to pay alimony or child support, that such payments had been paid post-petition. The Debtor, Leomont Evans, submitted such a certification and it was false at the time of the submission. The integrity of this Court depends upon the Court's ability to rely on the accuracy of Schedules, Statements, Certifications and documents filed by the parties and submitted to the Court. Without such ability to rely on those representations, no Court can function.

The Court is inclined to sanction the Debtor, Leomont Evans, by dismissing this case with prejudice and levying additional sanctions. However, SCDSS suggested, and the parties, after consultation, have agreed, that a more appropriate sanction would be dismissal of the present case without prejudice, including a provision that if the Debtor, Leomont Evans refiles under any chapter, that he must cure any pre-petition child support arrearage that exists at the time of the filing within thirty (30) days of the filing of the new petition, or the new petition, under any chapter, will be dismissed with prejudice for one (1) year.

The parties have represented to the Court that SCDSS is the only priority creditor and the only party, along with the custodial parent and the child of Leomont Evans, who is damaged by his false statement submitted to the Court.

It appears that this sanction is more fitting to the fact situation before the Court. It is, therefore,

ORDERED, that this Chapter 13 is hereby dismissed, without prejudice. It is, further,

ORDERED, that in the event that Leomont Evans seeks to file another petition in bankruptcy, that he must cure any pre-petition child support obligation in existence at that time within thirty (30) days after the filing date of the petition, or the new petition will be dismissed, with prejudice, without further ado or hearing, upon the filing of an affidavit attesting to such failure by any party entitled to child support at that time, and the Debtor will be prohibited from

filing another petition under any chapter for the period of one year from the date of the order of dismissal.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 10, 2003

I REPRESENT THAT THIS ORDER WAS CIRCULATED BETWEEN DEBTORS' COUNSEL AND THE CHAPTER 13 TRUSTEE AND THEY HAVE REVIEWED IT FOR CONTENT.

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