

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

In Re:) CASE NO. 06-05030-jw
Thelmon L. Harris) CHAPTER 13
Debtor.)
_____)

FILED
O'clock &min.M
DEC 28 2006
United States Bankruptcy Court
Columbia, South Carolina (6)

JUDGMENT

Based on the Findings of Fact and Conclusions of Law as recited in the attached Order, the South Carolina Department of Social Services' Motion to Dismiss with Prejudice is granted and Thelmon L. Harris is hereby prohibited from filing for bankruptcy protection under any chapter of the United States Bankruptcy Code for a period of one year from the date of the Order.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
December 28, 2006

ENTERED
DEC 28 2006
J.G.S.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

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ORDER GRANTING SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES'

MOTION TO DISMISS WITH PREJUDICE

This matter comes before the Court upon South Carolina Department of Social Services', ("DSS") Motion to Dismiss with Prejudice (the "Motion"). Thelmon L. Harris ("Debtor") did not file an Objection to the Motion. Upon a review of the matters presented to the Court, the arguments of counsel and the Chapter 13 Trustee (the "Trustee"), and other matters, this Court finds as follows. This is a core proceeding; this Court has jurisdiction pursuant to 28 U.S.C. § 157 and Local Civil Rule 83.IX.01, DSC.

FINDINGS OF FACT¹

1. The present case is Debtor's fourth bankruptcy case in four years, and his third in the last 18 months.
2. All of his prior cases were dismissed for his failure to pay plan payments. His most recent case (C/A No. 05-11806) was dismissed with prejudice for 180 days by this Court on March 14, 2006.
3. The current case was filed on November 5, 2006, which was two days after Debtor was arrested on an outstanding family court bench warrant for failure to pay child support.

¹ To the extent that any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent that any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

4. DSS has had claims against Debtor and the estate for two different child support cases. On the Pamela Isaac case, Debtor owes in excess of \$40,000.00 in past due child support. On the Dana Douglas case he owes in excess of \$17,000.00 for past due child support. These claims being in the nature of child support are entitled to priority status. 11 U.S.C. § 507(a)(1).

5. Additionally, Debtor now has a third support case, for Shanelle Green, Case No. 2006-1110-00. While the Green case is relatively new, Debtor is already in arrears, having made only one payment on July 13, 2006. As of November 22, 2006, Debtor owes \$951.90.

6. Under the requirements of this Court, Debtor is required to sign and submit to the Trustee a statement that he is current on post-petition child support payments and he is required to *stay* current on post petition child support payments during the life of the case. See S.C. L.B.R. 3015-1(g).

7. In the Douglas and Green cases, payments are due weekly. A pay history as of December 15, 2006 indicates that Debtor has not made any payments on either case since his latest filing on November 5, 2006. In fact, Debtor has not paid on any of his three cases since July 13, 2006.

8. In 2005, Debtor made no payments on the Douglas case and only one payment on the Isaac case in the amount of \$609.52 on November 9, 2005.

9. In December 2005, Debtor signed a Certification verifying to the Chapter 13 Trustee that he was current for his post-petition payments since the filing of Case No. 05-11806 on October 5, 2005. Based on the payment history submitted by DSS, Debtor was not truthful in his Certification signed in December 2005. Debtor admitted that he knew he had only made one payment on one case in 2005 when he signed the Certification.

10. On December 6, 2006, Debtor's employer wrote three checks to the order of Child Support Enforcement for payment on Debtor's three current cases. The checks were in the

amount of \$140.00 on the Green case, \$420.00 on the Isaac case, and \$260.00 on the Douglas case.

11. As of the December 19, 2006 hearing, it did not appear that these payments have been credited to Debtor's DSS records. The payments were not sufficient to bring Debtor current post-petition.

12. Debtor asserts that his change to a W-2 employee had stabilized his income and was a significant change from his previous filings.

13. A review of Debtor's Schedules and Statements in the current case and his most previous case indicates that the total of his expenses has remained the same, and that his projected excess income has increased by less than \$400.00

CONCLUSIONS OF LAW

Section 1307(c) enables the Court to either dismiss or convert a Debtor's case for cause, whichever is in the best interest of creditors. 11 U.S.C. § 1307(c); see H.R. Rep. No. 595, 95th Cong., 1st Sess. 428 (1977). Several examples of 'cause' are enumerated in § 1307(c), however, this list is not exhaustive.² This Court has found that lack of good faith can be cause for dismissal of a chapter 13 case. See In re Trexler, 2002 Bankr. Lexis 1818 (Bkrcty. D.S.C. 2002); In re Cynthia Hartley, 187 B.R. 506 (Bkrcty. D.S.C. 1995). Debtor's failure to pay "any domestic support obligation that first becomes payable after the date of filing the petition" is an additional ground for conversion or dismissal of Debtor's case. 11 U.S.C. § 1307(c)(11).

Under 11 USC §362(c)(3)(C) there is a presumption of bad faith filing in a serial filer such as Debtor. Because the present case should be viewed as a serial filing, "the burden shifts to the Debtor to show a substantial change of circumstances since the prior dismissal and that the

² Statute specifies grounds "including;" see 11 U.S.C. § 102(3).

current case is filed in good faith." In re Cynthia Hartley, 187 B.R. 506, (Bankr. D.S.C. 1995) (citing In re Pryor, 54 B.R. 679 (Bankr. D.S.C. 1985)).

The evidence is clear that Debtor did not file the current case in good faith, and that Debtor has engaged in serial filing to delay his support creditors. Debtor did not sufficiently demonstrate a substantial change in circumstances between March 14, 2006 and his current filing on November 5, 2006. Debtor's current petition was filed in a repeated attempt to avoid his outstanding child support obligations and the resulting bench warrant issued by the Family Court. Debtor's history of delinquency on his child support obligations and his repeated failure to pay, coupled with his repeated bankruptcy filings, indicate bad faith on the part of Debtor. Another indication of bad faith is the evidence before this Court that Debtor's past Certification to the Trustee in December 2005 in Case No. 05-11806 was false. The payment history introduced by DSS, without objection by Debtor, clearly indicates that Debtor was not current on his post-petition obligations in December 2005, as he certified.

The evidence presented to the Court also indicates that Debtor's current Chapter 13 case would not succeed due to the feasibility issues raised by the Trustee, particularly in light of the large child support claims against Debtor.

As the Court noted in Hartley, the "facts of the instant case clearly support a finding that Debtor's petition was filed in bad faith." Hartley at 4. This Court finds ample cause to dismiss the present case with prejudice for a period of one year, to put a halt to the serial abuse perpetrated by Debtor on both the bankruptcy and child support systems.

NOW THEREFORE, IT IS ORDERED that DSS' Motion to Dismiss with Prejudice is GRANTED; and it is further

ORDERED that THELTON L. HARRIS is hereby prohibited from filing for bankruptcy protection under any chapter of the United States Bankruptcy Code for a period of ONE YEAR from the date of this Order;

AND IT IS SO ORDERED.

Columbia, South Carolina,
December 28, 2006


UNITED STATES BANKRUPTCY JUDGE