UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 11-00827-JW
	Chapter 13
Marjorie Coleman Gariepy,	
Debtor(s).	**ORDER DENYING MOTION TO CONTINUE ADMINISTRATION OF CHAPTER 13 CASE**

This matter comes before the Court for consideration of the Notice of Death of Debtor, Motion to Continue Administration of Chapter 13 Case and Motion to Waive Financial Management Course filed by the attorney for the deceased debtor, Marjorie Coleman Gariepy (the "Debtor").[1] This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157(a) and 1334(b). Pursuant to Fed. R. Civ. P. 52, which is made applicable to contested matters by Fed. R. Bankr. P. 7052 and 9014(c), the Court makes the following findings of fact and conclusions of law:[2]

FINDINGS OF FACT

1. The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on February 10, 2011 (the "Petition Date"). The Debtor filed her Chapter 13 plan (the "Plan") on the same date.

2. The Schedules filed by the Debtor with the petition indicated that, as of the Petition Date, she had regular income from her employment. Schedule I indicates that, in addition to her wages, the Debtor also received assistance from a daughter, who contributed approximately $650 per month towards the Debtor's combined average monthly income of

[1] For purposes of this Order, the Court will only consider the Debtor's request to continue the administration of the Chapter 13 case. By separate order entered on November 7, 2013, the Court granted the request to waive the financial management course pursuant to 11 U.S.C. § 109(h)(4).

[2] To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such, and to the extent any conclusions of law constitute findings of fact, they are so adopted.

$1,983.89 to meet her living expenses and plan payments.

3. As of the Petition Date, the Debtor owned a mobile home, titled in her name, and subject to a lien held by Green Tree Servicing, LLC ("Green Tree"). The mobile home was located on real property also owned by the Debtor.

4. In the Plan, the Debtor stripped down the secured claim of Green Tree to approximately $28,000, with a remaining unsecured claim of approximately $46,000. According to the claims register, total unsecured claims filed were $52,000, making Green Tree's unsecured claim approximately 88% of all unsecured claims. It appears that the primary benefit of the case to the Debtor was to retain the mobile home as her residence while vastly reducing the secured claim of the lien creditor.

5. The Plan was confirmed on April 5, 2011 and provided for 57 monthly payments of $730.00.

6. The Debtor passed away on April 13, 2011.

7. On October 8, 2013, almost two and a half years after the Debtor's death, counsel for the Debtor filed a Notice of Death of Debtor, Motion to Continue Administration of Chapter 13 Case, and Motion to Waive Financial Management Course (the "Motion") on behalf of Wanda McClain, the personal representative of the Debtor appointed by the probate court. The Motion was served on all creditors and the Trustee, and no objections were filed.

8. According to the Motion, the Debtor's heirs, Katrina Beck and Danielle Bolton (collectively, the "Heirs"), have made the plan payments since the Debtor's death and live in the Debtor's mobile home. No explanation was provided by the Movant or the Heirs as to why they did not report the Debtor's death to the Court or the Trustee. The Motion indicates that the Heirs seek to continue to fund and complete the Debtor's Plan. According to the Motion, one reason

for the relief requested was the wish of the Heirs "for the property to continue to be protected in bankruptcy."

9. At the hearing on the Motion, counsel for the Debtor indicated that the Heirs lived in the Debtor's mobile home prior to her death and continue to live there. Counsel for the Debtor also indicated that while there were not sufficient funds in the probate estate to fund the Plan, there was possible litigation related to the Debtor's death belonging to the probate estate. Finally, based on the information provided to the Court from the Chapter 13 Trustee and counsel for the Debtor, the primary benefit the Debtor sought through bankruptcy was the ability to value down the secured claim on her mobile home, which the Heirs sought to preserve by continuing to make the payments due under the Plan. There was no evidence indicating the status of the probate of the decedent's estate or the status of the title/ownership of the mobile home.

CONCLUSIONS OF LAW

I. *Further Administration under Rule 1016*

It is unfortunate, but not uncommon, for a debtor to die during the pendency of his or her bankruptcy case, particularly if the case continues for several years. Upon the death of a debtor, questions regarding how the case should proceed are presented. There is no bankruptcy statute which provides for a procedure upon the death of a debtor. Therefore, as this Court has previously stated In re Quint, C/A No. 11-04296-jw, slip op. at 3 (Bankr. D.S.C. Jun. 22, 2012):

> When a debtor dies during the pendency of his or her bankruptcy case, it is unclear how the case will proceed in the future or what procedure parties should follow upon such death. Pursuant to Fed. R. Bankr. P. 1016, when a chapter 13 debtor dies, the "case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

What constitutes "further administration" is not further defined by the Bankruptcy Code or the

Federal Rules of Bankruptcy Procedure. Instead, as the Court noted in In re Brown, "[t]he rule merely provides that further administration must be 'possible' and 'in the best interest of the parties.'" C/A No. 12-07082-jw, slip op. at 5 (Bankr. D.S.C. Mar. 25, 2013).

Prior to the decision in In re Vetter, C/A No. 11-03988-dd (Bankr. D.S.C. May 7, 2012), parties in this District did not typically raise the issue of continued administration of a bankruptcy case following the death of a debtor. Some cases may have been dismissed, but in some, administration may have continued without the Chapter 13 Trustee or the Court being advised. In Vetter, the Court dismissed a Chapter 7 case that was converted from Chapter 13 following the death of the debtor because counsel for the debtor failed to notify the Court, the creditors, the Chapter 13 trustee, and other parties in interest of the debtor's death, and also failed to respond to inquiries from the United States Trustee regarding the continued administration of the case. C/A No. 11-03988-dd, slip op. at 5. As Vetter indicated, continued administration without authorization from the Court is impermissible and the failure to report such a death could result in a dismissal of the bankruptcy case. Vetter, C/A No. 11-03988-dd, slip op. at 4.

It is clear from Vetter and this Court's subsequent decisions in In re Quint, C/A No. 11-04296-jw (Bankr. D.S.C. Jun. 22, 2012) and In re Brown, C/A No. 12-07082-jw (Bankr. D.S.C. Mar. 25, 2013) that any determination of whether further administration of a deceased debtor's Chapter 13 case is possible and in the best interest of the parties under Rule 1016 is fact specific. Such a determination must be made on a case-by-case basis, regardless of whether there is a creditor objection or the Chapter 13 Trustee consents to the relief requested. The burden rests on the party requesting further administration of the Chapter 13 case following the death of the debtor to create a record that supports such an exceptional finding. While Rule 1016 provides

bankruptcy courts with significant discretion in determining whether further administration is possible and in the best interests of the parties, such discretion is also limited by and cannot contradict the Bankruptcy Code.

In addition, federal jurisdiction recognizes deference to the state law probate process, which is often referred to as the "probate exception." As noted by the Supreme Court in Marshall v. Marshall, "the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court." 547 U.S. 293, 311-12 (U.S. 2006). Thus, considering the deference a federal court should give to a state court in probate matters, a movant should also demonstrate why continuing administration in bankruptcy court would be better for creditors than the state probate process.

In this case, counsel for the Debtor, the Debtor's personal representative, and the Heirs failed to provide any argument or evidence to support a finding that further administration of the bankruptcy cases would be better for the Debtor's creditors than dismissal followed by the state law probate process, which segregates the deceased debtor's property and provides a process for filing claims against the probate estate. They also failed to explain how any transfer of the decedent's property under state probate law would affect further administration of the bankruptcy case. The effect of simultaneous proceedings in state probate court and the federal bankruptcy court (or the complete circumvention of state probate proceedings by a pending bankruptcy case) appears duplicative and contradictory. For that reason, other courts have noted that the probate court, not the bankruptcy court, is the appropriate venue to administer the assets and settle the financial affairs of the deceased debtor. See In re Shepherd, 490 B.R. 338, 341 (Bankr. N.D.Ind. 2013) (internal citations omitted) ("A debtor who has died has no need of a

fresh start, and, where paying creditors is concerned, that can be accomplished through state probate proceedings."); In re Langley, No. 05-61279, 2009 WL 5227665, at *1 (Bankr. S.D.Ga. 2009) ("A bankruptcy proceeding is not a substitute for a probate proceeding.")

II. ***Further administration is not possible***

If further administration is not possible, a case cannot continue following the death of a debtor. When the debtor dies in an individual Chapter 13 case, there is no one to perform the obligations under the plan, including making payments, and no person to benefit from a discharge in the case.[3] Although dismissal of an individual Chapter 13 case is not automatic if "further administration" is possible, Advisory Committee Note to Rule 1016 recognizes that dismissal is the likely outcome. See Advisory Committee Notes, Fed. R. Bankr. P. 1016 ("In a chapter 11 reorganization case or chapter 13 individual's debt adjustment case, *the likelihood is that the case will be dismissed.*") (emphasis added).[4]

In prior decisions, this Court has allowed further administration in individual Chapter 13 cases where a hardship discharge was sought due to the death of the debtor, so long as the requirements for a hardship discharges under 11 U.S.C. § 1328(b) have been satisfied. See Quint, C/A No. 11-04296-jw, slip op. at 5 n.6 (citing examples where this Court has granted a hardship discharge to a deceased debtor pursuant to § 1328(b)). This Court has also approved further administration of a deceased debtor's bankruptcy case in order to allow a waiver of the personal financial management course required under 11 U.S.C. § 1328(g), a requirement of no benefit to a deceased debtor.

However, in this case, further administration is not possible for several reasons. First,

[3] There is a significant question whether the automatic stay continues to offer any protection in the case. There is no protection needed for the deceased debtor personally and property of the estate has likely been transferred by operation of probate law and is no longer property of the bankruptcy estate.

[4] In Brown, the Court recognized that continued administration is possible where the debtor's case can be completed or paid off from the debtor's property remaining at the time of death, to the extent practical. C/A No. 12-07082-jw, slip op. at 6-7.

there is no convincing evidence that the Debtor has sufficient remaining assets, property, or income to fully fund the Plan to completion. A case under Chapter 13 requires an "individual with regular income," which is defined as an "individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker." 11 U.S.C. § 101(30); see 11 U.S.C. § 109(e) ("Only an individual with regular income…or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker…may be a debtor under chapter 13 of this title.") Furthermore, as the Court noted in Brown, "the funding of the plan must not be 'speculative, conjectural or unrealistic." C/A No. 12-07082-jw, slip op. at 7 (quoting In re Costello, No. 10-03385, 2011 WL 2712970, at *2 (Bankr. N.D. Iowa Jul. 12, 2011)). Although counsel for the Debtor referenced a possible lawsuit related to the Debtor's death, considering the amount of time that has passed since the Debtor's death and the lack of evidence provided, the Court finds that it is not a dependable or likely source for funding the Plan to completion.

The Court further finds that the Heirs' proposal to serve as the sole source of funding for the Plan is insufficient to demonstrate that further administration is possible. As the Court noted in Brown, "[w]hile the Court has allowed individual debtors to include regular and reliable contributions from third parties for purposes of meeting feasibility requirements at confirmation, such contributions have only been allowed to supplement the debtor's income and have not been allowed to provide all of the income for the bankruptcy case." C/A No. 12-07082-jw, slip op. at 6 (citing In re Williams, C/A No. 97-08824-W, slip op. at 4 (Bankr. D.S.C. Jan. 13, 1998) (denying confirmation where debtor's entire income was derived from gratuitous contributions from third parties, because debtor failed to demonstrate that she had stable and regular income to

satisfy the feasibility requirement of § 1325(a)(6)). An attempt to have a third party serve as the sole source of funding of a Chapter 13 case, which is what the Heirs seek to do in this case, fails to meet the express language of 11 U.S.C. §§ 109(e) and 1325(a)(6) and cannot be approved.

The Court also finds that further administration is not possible because such third party funding would require modification of the confirmed plan. In Brown, the Court held that a deceased debtor's personal representative could not amend the Chapter 13 plan of a deceased debtor prior to confirmation. C/A No. 12-07082-jw, slip op. at 7-8. Similarly, the Bankruptcy Code provides only certain parties with standing to seek modification of a Chapter 13 plan after confirmation. Pursuant to 11 U.S.C. § 1329, "[a]t any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of *the debtor, the trustee, or the holder of an allowed unsecured claim*…" (emphasis added). Therefore, further administration is not possible in the case of the Debtor because neither the personal representative nor the Heirs qualify as one of the limited parties with the standing to modify a plan post-confirmation under 11 U.S.C. § 1329.

III. ***Further administration is not in the best interests of parties***

Under Rule 1016, in order to allow further administration of a deceased debtor's bankruptcy case to occur, administration must not only be possible, but it must also be in the best interests of the parties. The Court understands that the term "parties" for purposes of Rule 1016 includes the debtor, creditors, and the Chapter 13 Trustee, not relatives or children of the debtor, or other entities that do not have a pecuniary interest in the case. See In re Langley, C/A No. 05-61279, 2009 WL 5227665, at *1 (Bankr. S.D. Ga. Sept. 28, 2009) ("While allowing the case to proceed may be in the best interest of the Debtors' daughter, she is not a party in this case."). While continued administration may provide an ancillary benefit to third parties or a deceased

debtor's heirs, it cannot be the primary purpose for allowing the continued administration of a bankruptcy case. Instead, the critical issue is whether continued administration provides a benefit to the deceased debtor or her creditors.

In the case of the Debtor, there is no convincing evidence to support a finding that further administration is in the best interests of the parties. There was no evidence indicating why bankruptcy creditors would be better off in the bankruptcy case as opposed to filing claims in probate. There was also no evidence regarding the status of post petition, but pre-death creditors, or the effect of the Debtor's death and probate on the ownership of property owned by the Debtor. The Plan was confirmed on April 5, 2011 and the Debtor passed away just eight days after confirmation, so the benefits received by the Debtor personally were very limited. While the Court is sympathetic to requests such as the one made by the Heirs, such requests cannot override the personal nature of relief in a Chapter 13 bankruptcy case. If the Court were to allow the Heirs to continue the administration of the Debtor's case solely through their own funding, it would create a mechanism through which third parties could purchase or succeed to the personal benefits of a Chapter 13 case, including the ability to cure arrearages, the ability to value down secured claims, and the ability to discharge debts, without being bound to the burdens or responsibilities associated with being a Chapter 13 debtor. This is not the intended purpose of Chapter 13.

Finally, the Court cannot ignore that it took almost two and a half years for the Court to be informed of the Debtor's death and the request for continued administration to be made. As the Court noted in prior decisions, parties and debtors' counsel should promptly notify the Court of the death of a debtor. When there is a failure to report the death of a debtor in a timely fashion, the Court agrees with the holding in Vetter that, absent justifying circumstances, the

consequences of such failure may include the dismissal of the bankruptcy case and finds that such failure may also result in the denial of other benefits from the bankruptcy case.

CONCLUSION

Based on the record before the Court, it is therefore,

ORDERED that the Motion is DENIED on the basis that further administration of the Debtor's Chapter 13 case is neither possible nor in the best interests of the parties. The Trustee shall move for dismissal of the case within ten (10) days of the entry of this Order.

AND IT IS SO ORDERED.

FILED BY THE COURT
01/03/2014

US Bankruptcy Judge
District of South Carolina

Entered: 01/03/2014