

# Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
JENEE L. SMITH ) CASE NO. 11-11957  
)  
)  
Debtor )

## DECISION ON DEBTOR'S MOTION TO RECONSIDER

At Fort Wayne, Indiana, on July 27, 2011.

This matter is before the court, following a hearing, on the debtor's motion to reconsider the order denying her application to waive the filing fee for this Chapter 7 proceeding.

The court may waive the filing fee (currently \$299) in a Chapter 7 case for an individual if their income is less than 150 percent of the official poverty line and they are unable to pay the fee in installments. Those installments, which cannot exceed four, may be paid over as many as six months. Fed. R. Bankr. P. Rule 1006(b)(2). The debtor bears the burden of proving both of these requirements. In re Burr, 344 B.R. 234, 236 (Bankr. W.D. N.Y. 2006). The first – income less than 150% of the official poverty level – is relatively straight forward. The second – the ability to pay in installments – is more difficult because it requires the court to assess not just the debtor's present circumstances but their future abilities as well. It is an issue that should be approached with a degree of caution. See, In re Bradshaw, 349 B.R. 512, 516 (Bankr. E.D. Tenn. 2006); In re Robinson, 2006 WL 3498296 \*2 (Bankr. S.D. Ga. 2006). Whether or not the court waives the fee is a matter committed to its discretion, see, In re Ortiz, 2006 WL 1594152, \*1 (Bankr. M.D. Fla. 2006) (“the statute . . . grants discretion to a bankruptcy court to waive the Chapter 7 filing fee”); In re Burr, 344 B.R. 234, 236 (Bankr. W.D. N.Y. 2006) (“the statute establishes no entitlement to a waiver of the

filing fee.”), based upon the totality of the circumstances, see, In re Frye, 440 B.R. 685, (Bankr. W.D. Va. 2010); In re Lephew, 380 B.R. 171, 176-77 (Bankr. W.D. Va. 2007); In re Davis, 372 B.R. 282, 285 (Bankr. W.D. Va. 2007); In re Nuttall, 334 B.R. 921, 923 (Bankr. W.D. Mo. 2005).

The debtor satisfies the first requirement of §1930(f): her income, as of the date of the petition, Lephew, 380 B.R. at 177-79, was less than 150 percent of the applicable poverty line.<sup>1</sup> The question for the court is whether she is unable to pay the fee in installments over the next six months? In answering this question it may consider “facts beyond those elicited on the official form.” Robinson, 2006 WL 3498296 \*2. Courts have considered a variety of factors including: the accuracy of the information given; discrepancies between the application, statement of affairs and schedules; any collateral resources, such as friends or family, the debtor may be able to call upon; debtor’s expenses and whether any of them could be redirected to pay the filing fee; whether the debtor has agreed to pay an attorney; and, whether the debtor has any exempt property that could somehow be used to raise the money to pay the fee. See e.g., In re Stickney, 370 B.R. 31, 40-42 (Bankr. N.H. 2007); In re Spisak, 361 B.R. 408, 413-14 (Bankr. D. Ver. 2007); Robinson, 2006 WL 3498296 \*3-6. These considerations lead the court to believe that, although the debtor may not have been able to pay the filing fee when this case began, she does have the ability to pay it in installments, over the six months permitted by Rule 1006(b)(2).

When she filed this case on May 18, 2011, the debtor provided the court with very little information. She filed little more than the minimum documentation needed to commence a case.

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<sup>1</sup>For a family of four, 150% of the applicable poverty line is \$33,525 per year or \$2,793.75 per month. 2011 HHS Poverty Guidelines found at <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources.aspx>.

See N.D. Ind. L.B.R. B-1002-1(a) (listing minimum requirements). The court received the petition, Exhibit D and the associated certificate of counseling, a partially completed schedule D (listing secured claims but without identifying any collateral), instructions for completing Schedule E (unsecured priority claims), creditor matrix and list of creditors, as well as an incomplete application to waive the filing fee.

The application to waive indicates that the debtor has no income and no assets (other than household furnishings and clothing) and that she does not expect this to change during the next six months.<sup>2</sup> No information was given concerning any expenses. On June 1st, the debtor filed her schedules. Schedule I discloses that the debtor is a bus driver for Fort Wayne Community Schools with an average monthly income of \$1,288.94. Schedule J discloses monthly expenses totaling \$1,485.00. At the hearing on the motion the debtor indicated that she will return to work this coming August, at \$10.64 an hour, and will be paid every two weeks.

The court cannot help but note discrepancies in the information it has been given by the debtor. Since she is a school bus driver, the court can understand that she may not have any income during the summer months. But in her application to waive the filing fee she not only told the court that she had no income but also that she did not expect that situation to change during the next six months. Whatever her income situation upon filing,<sup>3</sup> what she told the court about her expectations was not accurate; she did expect her income to change in the near future.

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<sup>2</sup>For an individual in these circumstances, bankruptcy very likely does more harm than good. See, Matter of Fortman, Case No. 11-12020, Decision dated July \_\_\_, 2011, pgs. 9-10.

<sup>3</sup>The court takes judicial notice that the last day of classes for Fort Wayne Community Schools was June 13, 2011, approximately three weeks after the debtor filed. See, Fort Wayne Community Schools Calendar found at [http://www.edline.net/pages/Fort\\_Wayne\\_Community\\_Schools/Calendar](http://www.edline.net/pages/Fort_Wayne_Community_Schools/Calendar).

There are also discrepancies in the information debtor has given concerning her expenses. Based on schedule J, they total \$1,485 a month and include \$100 a month for a phone, \$357 a month for installment payments on account of an automobile, and \$108 a month for auto insurance. Yet, at the hearing, the debtor indicated she does not have a phone. She uses what she called “a message phone,” which, as best the court can tell, is really someone else’s phone which people call and leave messages for her. Although her monthly expenses include \$465 for an auto and auto insurance, neither schedule B (personal property), schedule G (executory contracts and unexpired leases), nor schedule C (exemptions) include an automobile; none of her secured creditors (schedule D) are described as holding a lien upon an automobile; and there is no statement of intent where the debtor would disclose her intention (exempt, surrender, redeem, or reaffirm) regarding secured debts. Not only does it appear that the debtor’s expenses are less than stated on schedule J, those expenses include \$100 for recreation, entertainment, and reading material.

Once the debtor returns to work, her take home pay should be the \$1,288.94 disclosed on Schedule I & J. Taking out what appear to be the non-existent expenses for phone (\$100), auto insurance (\$108) and auto installment payments (\$357), as well the \$100 a month recreation expense, reduces her total disclosed expenses from \$1,485 to only \$820 a month. Admittedly, this is not much but, when matched against debtor’s future income, it leaves \$468 a month from which the filing fee could be paid, if the debtor is given time to do so.

Although the debtor was not able to pay the filing fee when she initiated this case or even during the first few weeks after filing, she has failed to prove that she lacks the ability to pay that fee over the six months following the petition and the court believes that she is able to do so, if given the opportunity. All that should be needed is to adjust the installment schedule to better

accommodate her return to work and anticipated income. Since Fort Wayne Community Schools resumes classes August 22,<sup>4</sup> debtor's income should resume soon thereafter. She should be able to make four installment payments between then and the six-month deadline of November 18. The court will therefore modify the order for installment payments and the debtor shall pay the filing fee according to the following terms:

\$74.00 on or before September 16, 2011;

\$75.00 on or before September 30, 2011;

\$75.00 on or before October 14, 2011; and

\$75.00 on or before November 4, 2011.

In all other respects the motion to reconsider is DENIED. An appropriate order will be entered.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court

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<sup>4</sup>Fort Wayne Community Schools Calendar, supra note 3.