

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
MONICA YVONNE THOMAS) CASE NO. 12-12636
)
)
Debtor)

DECISION ON APPLICATION TO WAIVE FILING FEE

At Fort Wayne, Indiana, on August 15, 2012.

The debtor, in this chapter 7 case, has asked to the court waive the filing fee (currently \$306) which is otherwise required. In a chapter 7 case, the court may waive that fee for an individual debtor if their income is less than 150 percent of the official poverty line and they are unable to pay the fee in installments. 28 U.S.C. § 1930(f). Those installments, which cannot exceed four, may be paid over as many as six months. Fed. R. Bankr. P. Rule 1006(b)(2). 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”), and the debtor bears the burden of persuading the court that it should do so. In re Burr, 344 B.R. 234, 236 (Bankr. W.D. N.Y. 2006). See also, In re Fortman, 436 B.R. 370, 375 (Bankr. N.D. Ind. 2011).

For the filing fee to be waived, the debtor must satisfy both prongs of the statute – their income must be less than 150 percent of the poverty line; if so, they must also demonstrate that they are not able to pay the fee in installments. In this instance, the debtor may or may not have satisfied the first prong,¹ but she does not satisfy the second.

¹Whether the debtor’s income is less than 150 percent of the official poverty line depends upon whether the court uses her gross or her net monthly income. See, In re Lee, 394 B.R. 402, 403

To find that a debtor is unable to pay the filing fee in installments requires the court to conclude that they would not be able to come up with \$306 over the course of six months, the maximum span of time over which installments may be made. The inquiry is based upon the totality of the circumstances. Fortman, 436 B.R. at 375. See also, 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). In answering the question the court may consider “facts beyond those elicited on the official form.” In re Robinson, 2006 WL 3498296 *2 (Bankr. S.D. Ga. 2006) and courts have looked at 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 conclude that the debtor has the ability to pay the required fee in installments.

According to the application and the debtor’s schedules, her assets include \$350 in a bank account, an unencumbered motor vehicle valued at \$2,300, and a 401(k) through her employer worth \$10,000. Those assets alone may very well give the debtor the ability to raise the money needed to

(Bankr. E.D. Va. 2008) (using the debtor’s monthly gross income); In re Luvender, 2008 W.L. 4716951 *1, n.3 (Bankr. S.D. Fla, 2008) (“The court is unable to discern whether the guideline represents net or gross income.”). For 2012, 150 percent of the official poverty guidelines is \$2,881.25, for a family of four. Poverty Guidelines, found at <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/PovertyGuidelines.aspx> (last visited Aug. 10, 2012). Debtor’s gross monthly income of \$3,123 exceeds that number, while her net take home pay, \$2,524, is below it.

pay the fee. More importantly, the debtor's income appears to be sufficient to allow her to pay the fee in installments. Her monthly take home pay is \$2,524 and her monthly expenses are placed at \$2,863. Yet, according to Schedule J, those expenses include a garnishment of \$710 and 401(k) loan repayments of \$90. Even if she continues the 401(k) loan repayments, the garnishment should cease upon filing, see, 11 U.S.C. § 362(a), reducing her monthly expenses, by \$710, to \$2,153. Given her monthly net income of \$2,524, she should have more than \$371 available each month, after the payment of her expenses, from which to pay the filing fee. That is more than sufficient to give her the ability to pay the fee in installments, without any changes to her regular budget.

The debtor's application to waive the filing fee associated with this case will be DENIED and she will be required to pay that fee in installments over the next four months. An order doing so will be entered.

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