

**NOT INTENDED FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
JARIKA JALISHA SMITH ) CASE NO. 15-10762  
BRANDY SHA SMITH )  
 )  
Debtors )

**DECISION AND ORDER DENYING MOTION TO RECONSIDER**

On May 11, 2015.

The debtors, in this chapter 7 case, have asked to the court to reconsider the order of April 3, 2015, which denied their request to waive the filing fee otherwise required. The motion not only lacks merit, it is also untimely.

In a chapter 7 case, the court may waive the filing fee (currently \$335) 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 debtors 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 debtors state that their family size

consists of three and that their combined monthly income is \$3,288.00. For 2015, 150% of the Health and Human Services Poverty Guideline applicable for a family size of three in Indiana is \$2,511.25. <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/PovertyGuidelines.aspx>, last visited May 7, 2015. Since the debtors' monthly income exceeds 150 % of the official poverty line, they do not satisfy the first prong.<sup>1</sup>

Even if they had satisfied the first requirement, the court would also need to find that they are unable to pay the filing fee in installments 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, Lephew, 380 B.R. at 176-77; 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.

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<sup>1</sup>The debtors have provided three inconsistent numbers for their monthly income between the application to waive the filing fee, Schedule I and their motion to reconsider. Their monthly expenses also vary depending on whether one is reviewing Schedule J or their motion to reconsider.

According to the motion to reconsider the debtors have \$336 in combined monthly expenses for phone and internet (\$152) and cell phones (\$184). Why do the debtors need both a land line and a cell phone? They may be convenient, but they are not necessary. Reducing those expenses would give the debtors the ability to pay the filing fee in installments.

Finally, the motion is untimely. The court denied the application to waive the filing fee over one month ago on April 3, 2015. Since that time, the debtors asked for an extension of time to make their first installment payment, which was granted. It was not until the deadline for making that payment arrived that the court was asked to reconsider the earlier denial of the application.

The debtors' motion to reconsider the order denying the application to waive the filing fee associated with this case is DENIED. This case will be dismissed, without further notice, unless the debtors make the payment due on May 8, 2015 within seven (7) days of this date and make all subsequent payments as previously ordered.

SO ORDERED.

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