

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)

JENA KESHANA PAIGE)

CASE NO. 16-10154)

Debtor)

NOT FOR PUBLICATION

DECISION AND ORDER

On March 7, 2016.

The debtor in this chapter 7 case is proceeding pro se and has filed a twenty-five page document titled: “Notice to Stay Proceeding Without Non Payment and Disagreement to Non-Compliance.” The first six pages are dedicated to quoting various sections of the Indiana Constitution, the United States Constitution and federal statutes. The next three are comprised of full definitions for various terms. The remainder of the document is largely a history of the various wrongs the debtor believes have been done to her. Such a prolix and unfocused approach to pleading makes it difficult for the court to determine what it is being asked to do and why. See, U.S. ex rel. Garst v. Lockheed Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003) (judges are not required to “try to fish a gold coin from a bucket of mud”); Davis v. Ruby Foods, Inc., 269 F.3d 818, 820 (7th Cir. 2001) (court may dismiss a complaint which is clearly unintelligible). Nonetheless, given the liberality with which pro se pleadings are to be construed, Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197 (2007); see also, McCormick v. City of Chicago, 230 F.3d 319, 325 (7th Cir. 2000); Kincaid v. Vail, 969 F.2d 594, 598 (7th Cir. 1992), as best the court can tell the debtor is asking it to reconsider the order of February 10, 2016, which denied her application to waive the filing fee associated with this case and considers it as such. This conclusion is based on a statement appearing on page 9 where the debtor states that she “should be allowed to proceed without payment of fees”

and her conclusion “that the court should stay her case without payment of fees due to the circumstances of her case.”

The court may waive the filing fee (currently \$335) in a Chapter 7 case for an individual if their income is less than 150 percent of the official poverty line (as defined by the Office of Management and Budget) and they are unable to pay the fee in installments. 28 U.S.C. § 1930(f). Whether or not it does so, 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. The debtor fails to satisfy either prong.

The debtor’s income does not fall below 150 percent of the official poverty line. For 2016, 150 percent of the official poverty guidelines is \$2,002.50, for a family of two. Poverty Guidelines, found at www.uscourts.gov/file/document/150-percent-hhs-poverty-guidelines (last visited March 3, 2016). The income for comparison to the poverty guidelines is the ‘Total Combined Monthly Income’ as reported (or as will be reported) on Schedule I. See, Guide to Judiciary Policy, Vol. 4, Ch. 8 § 820.20(a)(2), found at www.uscourts.gov/file/document/bankruptcy-case-policies (last visited March 3, 2016).

According to Schedule I, the debtor has \$1,228 in “net monthly take-home pay” from wages;¹

¹There are some arithmetic errors in debtor’s calculation of her income. Taking the debtor’s gross income of \$1,400 less the deductions she has listed is \$1,118.

she also has \$1,104 in Social Security income per month and \$300 in Veteran's Disability income, giving her a combined monthly income in excess of \$2,600. Although the debtor does not include her Social Security and Veteran's Disability income in the application to waive, it is cash income which is to be included and considered in determining her total income. Based upon the information on Schedule I, the debtor's income is above 150 percent of the poverty line and she does not satisfy the first prong.

Even if the debtor's income were below 150 percent of the poverty line, the court finds that she has the ability to pay the filing fee in installments. 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 \$335 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. In re Fortman, 436 B.R. 370, 375 (Bankr. N.D. Ind. 2011). 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;² 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

²There are a number of discrepancies between the application and the debtor's schedules. The amount listed for income and expenses differs between the two, as do a number of assets, including a patent worth over \$7 million which was not disclosed on the application to waive the fee.

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.

According to the application debtor's assets include \$2,050 in two bank accounts; her schedules include \$1,860 in four bank accounts. Regardless of which of those representations (both of which were made under oath and filed on the same day), that asset alone gives the debtor the ability to pay the fee.

In addition to the money in the debtor's bank accounts, the debtor's income also appears to be sufficient to allow her to pay the fee in installments. According to Schedule J, her monthly expenses are \$645 (the application to waive places them at 0 - \$400) leaving \$471 to \$1,987 per month to pay the filing fee, depending on whether the court uses the income figures from the application to waive or Schedule I. Furthermore, according to Schedule I, other payroll deductions include a garnishment of \$168. The garnishment should cease upon filing, see, 11 U.S.C. § 362(a), increasing her net monthly income and, by itself, that amount is sufficient to allow the debtor to pay the filing fee in two months ($\$335 \div \$168 = 1.99$).

The Notice to Stay Proceeding Without Non Payment and Disagreement to Non-Compliance, which the court has construed as a motion to reconsider the order denying the application to waive the filing fee is DENIED.

SO ORDERED.

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