

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
IOWA

IN RE:)

) Chapter 7

CHRISTY L. ACHEY,)

) Bankruptcy No. 02-00058

Debtor.)

ORDER RE MOTION TO DISMISS CHAPTER 7 CASE

This matter came on for trial on March 26, 2002. Debtor Christy L. Achey appeared personally with her attorney Janice McCool. Attorney John Schmillen represented the U.S. Trustee. After presentation of evidence, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A).

FACTS

Debtor Christy L. Achey filed a Chapter 7 petition on January 7, 2002. On January 30, 2002, Debtor's paternal grandmother died. Debtor subsequently received notice she would receive a 1/6th share of proceeds of the sale of farmland owned by the decedent. Debtor estimates the property is between 70 and 75 acres in size, with a value of \$1500 to \$1800 per acre. After receiving notice of this inheritance, Debtor filed a motion to dismiss her Chapter 7 case on February 26, 2002.

Debtor asserts that if she is granted a dismissal she will resolve her debts with creditors, and use the remaining funds to establish an educational trust for her two children. In her Statement of Intention, Debtor proposes to surrender possession of her 1999 Redmond Mobile Home to her only secured creditor.

The U.S. Trustee objects to this motion. Mr. Schmillen argues that Debtor has not given the Court sufficient cause for dismissal pursuant to § 305(a) or § 707(a) of the Code.

Specifically, he states that Debtor has not shown that the dismissal will not cause prejudice to creditors of the estate. Further, in the Trustee's Resistance to Motion to Dismiss, he asserts that Debtor has not filed any amendment reflecting the asset under § 541(a) (5) of the Bankruptcy Code. He concludes that Debtor should not be allowed to dismiss when assets are available to pay creditors through the administration of the case.

CONCLUSIONS

A bankruptcy court's ability to dismiss a voluntary Chapter 7 case is governed by § 707 of the Bankruptcy Code. 11 U.S.C. § 707. Section 707(a) states that "the court may dismiss a case under this chapter only after notice and hearing and only for cause." 11 U.S.C. § 707(a).

A debtor in a voluntary Chapter 7 has the right to ask a bankruptcy court for dismissal under § 707(a). In re Turpen, 244 B.R. 431, 434 (B.A.P. 8th Cir. 2000), aff'g, No. 97-02407-M

(Bankr. N.D. Iowa September 1, 1999). However, a debtor must not only establish cause for the dismissal, but must also demonstrate why it is justified. Id. A Debtor's claim that the estate is solvent and is able to pay creditors outside of bankruptcy does not constitute adequate cause for dismissal.

Turpen, 244 B.R. at 434. "It is well established and supported by Legislative History that the fact that a debtor is willing and able to pay debts outside of bankruptcy does not constitute adequate cause for dismissal under 707(a)." Id. at 435. Even if a debtor can establish cause, a court should deny the motion if there is any showing of prejudice to creditors. Id.; In re Eichelberger, 225 B.R. 437, 439 (Bankr. E.D.Mo. 1998).

A debtor may also seek dismissal pursuant to § 305(a) of the Code. 11 U.S.C.

§ 305(a). Under § 305(a) a debtor must show that "the interests of creditors and the debtor would be better served by such dismissal. . ." In re Eastman, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Thus, under either Code section, the debtor must show that granting of the dismissal will not prejudice creditors. In re Turpen, No. 97-02407M, slip op. at 5 (Bankr. N.D. Iowa September 1, 1999).

This Court concludes that Debtor has neither established cause for dismissal nor that creditors will not be prejudiced if dismissal is granted. Debtor's sole rationale for asking the Court for dismissal is that she is now able and willing to pay her debts with her inheritance. The ability to pay creditors outside a bankruptcy case cannot constitute the sole ground as cause to grant a dismissal. Debtor scheduled one secured creditor, with a claim of \$38,000, and nineteen unsecured creditors, with claims totaling \$25,520.27. The collateral securing the single secured creditor's claim will be surrendered and no portion of this claim is unsecured. However, the Court must also consider the nineteen unsecured creditor's claims.

The evidence establishes that Debtor's interest in the inheritance may generate approximately \$22,500. This amount will not pay off the unsecured creditors in full.

Further, Debtor only sought dismissal after receiving the inheritance, and has failed to formally disclose this additional asset to Trustee. The inheritance is property of the estate pursuant to § 541(a)(5)(A) because Debtor became entitled to acquire the inheritance within 180 days after filing her petition. Bankruptcy Rule 1009(a) allows a debtor to amend their petition and schedules as follows: A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. Fed.R.Bankr.Proc. 1009(a). The failure of Debtor to disclose this asset prior to her motion for dismissal creates some doubt whether, outside of bankruptcy, creditors will not be prejudiced. Therefore, this Court declines to grant Debtor's motion to dismiss when she has not shown that allowing her to pay creditors outside of bankruptcy would provide better treatment to them than allowing administration of the inheritance by Trustee.

WHEREFORE, for the reasons set out herein, this Court concludes that Debtor has failed to establish grounds to dismiss this case.

FURTHER, for the reasons set out herein, the Motion to Dismiss is DENIED.

SO ORDERED this 8th day of April, 2002.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE