

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Western Division

In re:)
) Bankr. Case No. 92-50273
JACKALYN R. ANDERSON,)
Social Security No. [REDACTED]-8220) Chapter 7
)
Debtor.) MEMORANDUM OF DECISION RE:
) DEBTOR'S MOTION TO DISMISS

The matter before the Court is the Motion to Dismiss filed by Debtor Jackalyn R. Anderson and the objection thereto filed by the United States Trustee. This is a core proceeding under 28 U.S.C. § 157(b)(2). This ruling shall constitute findings and conclusions as required by F.R.Bankr.P. 7052.

I.

Jackalyn R. Anderson filed a Chapter 7 petition on October 15, 1992. The § 341 meeting of creditors was originally scheduled for December 3, 1992. Pursuant to F.R.Bankr.P. 4004(c), a discharge of debts was entered February 4, 1993.

On February 12, 1993, Debtor filed amendments to her schedules B, C, and D. On February 18, 1993, Debtor filed a second amendment to her schedules B and C. On February 19, 1993, Debtor entered into a reaffirmation agreement with her sole secured creditor, Norwest Bank South Dakota, N.A., wherein Debtor agreed to make monthly car payments of \$195.55.

On February 25, 1993, Debtor filed a Motion to Dismiss on the grounds that she had incurred additional medical debts of \$9,300.00 in November and December 1992 and she wanted to dismiss this case and refile another Chapter 7 so that these new debts would be discharged. The Motion was supported by an affidavit of Debtor.

The Motion was served on all creditors and parties in interest listed on the Bankruptcy Clerk's mailing matrix. The motion did not clearly identify the new creditors so the Court is unable to

determine whether the creditors holding the new debts were previous creditors included on the matrix.

The United States Trustee filed an objection to Debtor's Motion to Dismiss on March 4, 1993. The United States Trustee argued the Motion should not be granted because Debtor had already received a discharge of debts and that discharge would not be revoked by a dismissal of the case.

A hearing on the Motion and Objection was held April 6, 1993. Appearances included Charles L. Mickel for Debtor, Assistant U.S. Trustee Charles L. Nail, Jr., and Chapter 7 Trustee Dennis C. Whetzal. The Court heard the arguments of counsel and took the matter under advisement.

II.

A Chapter 7 case can be dismissed only for cause. 11 U.S.C. § 707(a). A dismissal does not revoke a previously entered discharge. 11 U.S.C. § 349. A Chapter 7 discharge may be revoked only for fraud, if the debtor withheld estate property, the debtor refused to testify after immunity was given, or the debtor failed to obey an order. 11 U.S.C. § 727(d). If a Chapter 7 case is dismissed after discharge has been entered, the debtor is still barred from getting another discharge until six years from the first petition date had passed. 11 U.S.C. 727(a)(8).

Whether to grant a Chapter 7 dismissal is within the discretion of the Court. *In re Leach*, 130 B.R. 855, 856 (9th Cir. BAP 1991) (cites therein); *In re Komyathy*, 142 BR. 755, 757 (Bankr. E.D. Va. 1992) (cites therein). The principal question for a court to consider is whether a dismissal will cause some plain legal prejudice to the creditors. *Komyathy*, 142 B.R. at 757. Other factors to be weighed include the good faith of the debtor, whether the debtor is guilty of laches, and the absence or presence of creditor consent. *Id.* Equitable considerations are relevant only in the absence of dispositive legal arguments. *Leach*, 130 B.R. at 857. Legal considerations must take precedence. *Id.* at

III.

Upon review of the applicable law and facts presented, the Court concludes that creditors would be prejudiced if Debtor's case is dismissed. Present unsecured creditors would receive a smaller distribution under the refiled case and receipt of their dividend would be delayed. The new creditors would likely have a portion of their debt discharged and would be denied the protection of the six-year limitation on Chapter 7 discharges provided by 11 U.S.C. § 727(a) (8).

The Court has great sympathy for the Debtor's situation but can find no legal basis for revoking the discharge. Congress has clearly provided limited grounds for revoking a Chapter 7 discharge. This Court cannot use its equitable powers to alter those strictures. **Northwest Bank of Worthington v. Ahlers**, 485 U.S. 197, ___, 108 S.Ct. 963, 968-69 (1988).

Debtor should strongly consider filing a Chapter 13 petition to address the new debts. Some debt repayment may be possible, especially with the cooperation of the creditor holding the reaffirmed debt secured by Debtor's car. Within the Chapter 13 confirmation process, the Court then may better consider Debtor's good faith and the amount of debt she can repay. 11 U.S.C. §§ 1322 (a) (1), 1325(a) (3), and 1328.

An order denying Debtor's Motion to Dismiss will be entered.

Dated this 23rd day of April, 1993.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
PATRICIA MERRITT, Clerk

By: _____
Deputy Clerk

(SEAL)