

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501

IRVIN N HOYT
CHIEF BANKRUPTCY JUDGE

TELEPHONE
(605) 224-0560

July 3, 1996

Rick A. Yarnall, Esq.
Chapter 7 Trustee
P.O. Box J
Sioux Falls, South Dakota 57101

James A. Craig, Esq.
Counsel for Debtor
714 W. 41st Street
Sioux Falls, South Dakota 57105-0116

Subject: *In re Claudette L. Joseph*,
Chapter 7; Bankr. No. 96-40011

Dear Trustee and Counsel:

The matter before the Court is Trustee Yarnall's request for the costs he incurred before this case was dismissed on Debtor's motion. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that the facts of this case do not warrant an award of costs to the case trustee.

Summary of case. Debtor filed a Chapter 7 petition on January 5, 1996. Trustee Yarnall conducted the § 341 meeting of creditors on February 5, 1996. On February 9, 1996, Trustee Yarnall filed an objection to Debtor's claimed exemptions on the grounds that Debtor had exceeded the \$2,000.00 exempt personal property allowance provided by state law. A hearing on the Trustee's objection to exemptions was held March 20, 1996. Trustee Yarnall appeared and reported that he had found assets in the case but that Debtor wanted to dismiss her case. The matter was continued to the next term to be heard at the same time as Debtor's dismissal motion.

On March 18, 1996, Debtor filed a motion to dismiss her case to allow her to resolve her debts outside bankruptcy. Trustee Yarnall objected to Debtor's motion on March 22, 1996. He argued that he had located unsecured assets of \$5,000.00 to \$7,000.00. In the alternative, if the motion were granted, he wanted reasonable attorney fees, costs, and taxes. The United States Trustee's objection to Debtor's motion was resolved by Debtor's motion to extend the time for entry of a discharge.

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At the dismissal hearing on April 23, 1996, Debtor's counsel advised the Court that it would pay reasonable costs, if that were necessary to get the case dismissed. Trustee Yarnall estimated his costs did not exceed \$800.00 but he said he was willing to accept \$600.00.

The Court dismissed the case and instructed Trustee Yarnall to submit a statement of costs to which Debtor could object.

Following the hearing, Trustee Yarnall filed a statement of costs requesting \$795.00 from Debtor. Debtor filed a response on May 28, 1996. She did not object in principle to an award of costs but argued several services were general trustee work that should not be compensated at an attorney's hourly rate. She also argued that if Trustee Yarnall had not been retained as the estate's attorney, compensation from the estate was questionable.

The trustee is not holding any estate funds. He was not employed as the estate's attorney.

Applicable law. There is no Bankruptcy Code provision that specifically allows a Chapter 7 trustee to receive reasonable costs he has incurred in administering the case when the case is dismissed upon the debtor's motion. It may be argued that the phrase "Unless the court, for cause, orders otherwise" found in §§ 349(a) and 349(b), gives a court discretion to fashion a dismissal order. Otherwise, it appears that a trustee is limited to the standard \$60.00 he gets in any Chapter 7 case in which he concludes the § 341 meeting but does not distribute any assets. See 11 U.S.C. § 330(b).

Case law is limited and not decisive. Some courts have conditioned a dismissal order on the payment of the trustee's or United States Trustee's costs. See *In re Gallman*, 6 B.R. 1 (Bankr. N.D. Ga. 1980); *In re Rose*, 86 B.R. 439 (Bankr. E.D. Pa. 1988). Another court did not impose such a condition because there were no funds in the estate from which to pay them. *In re Richards*, 4 B.R. 85 (Bankr. M.D. Fla. 1980). Another court concluded it could not use its equitable powers under 11 U.S.C. § 105 to fashion a compensation scheme for a trustee when other Code statutes governed trustee compensation. *In re Cross*, 195 B.R. 440 (Bankr. D. Neb. 1996).

Discussion. Assuming that this Court can condition a dismissal order on the payment of costs to the case trustee, the circumstances of this case nonetheless do not warrant such an award. Debtor's filing was in good faith as was her motion to dismiss. She did not seek dismissal to avoid the Trustee's recovery of assets. The costs incurred by the Trustee were not

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unusually large nor apparently caused by any egregious errors or omissions in Debtor's schedules. The Trustee will receive his standard compensation. This is one case among many that the Trustee handles. Some are "winners" for him, others, like this one, are not.

Debtor's willingness to pay some costs is laudable. However, awarding non statutory costs to the case trustee in a dismissed case is a practice that will be reserved for cases with truly unique circumstances.

An Order will be entered denying Trustee Yarnall's request for costs.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: case file (docket original; serve copies)
United States Trustee

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUL 03 1996

Clerk
U.S. Bankruptcy Court, District of S.D.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to those creditors and other parties in interest identified on the attached service list.

U.S. Bankruptcy Clerk
District of South Dakota

By: M. Kay Reese
Date: 07-03-96

Case: 96-40011 Form id: 122 Ntc Date: 07/03/96 Off: 4 Page : 1
Total notices mailed: 3

Trustee Yarnall, Rick A. PO Box J, Sioux Falls, SD 57101

Aty Craig, James A. Craig Law Office, 714 W. 41st St., Sioux Falls, SD 57105-0116

Intereste U.S. Trustee, Shrivvers Square, Suite 502, 230 S. Phillips Avenue, Sioux Falls, SD 57104-6321