



**SO ORDERED.**  
SIGNED this 9th day of January, 2020

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.  
PLEASE SEE DOCKET FOR ENTRY DATE.

  
Suzanne H. Bauknight  
UNITED STATES BANKRUPTCY JUDGE

---

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

MATTHEW ALLEN DOSDALL  
aka MATT DOSDALL  
BRANDI LORRAINE DOSDALL

Case No. 3:19-bk-33267-SHB  
Chapter 13

Debtors

**MEMORANDUM AND ORDER**

On December 11, 2019, the Court held a hearing on the Motion by Chapter 13 Trustee to Dismiss Case with Prejudice (“Motion to Dismiss”) filed by Gwendolyn M. Kerney, Chapter 13 Trustee, on November 18, 2019 [Doc. 21], and subsequently entered an Order granting dismissal, scheduling an evidentiary hearing on prejudice for January 8, 2020, and retaining jurisdiction pending resolution of the matter [Doc. 27]. Debtors’ counsel appeared at the January 8 hearing; however, Debtors did not appear or otherwise contest the Trustee’s request for a 180-day bar against their filing a bankruptcy case under any chapter for their repeated and willful failure to abide by orders of this Court in four prior cases filed since January 5, 2017, and their abuse of the bankruptcy system.

## I. FINDINGS OF FACT

The record reflects the following undisputed facts. This is Debtors' fifth Chapter 13 bankruptcy case since January 2017.<sup>1</sup> The histories of the prior cases are summarized as follows:

A. Case No. 3:17-bk-30029-SHB was filed January 5, 2017, and dismissed February 9, 2017, on the Trustee's certification that no plan payment was made within thirty days from the petition date as required by 11 U.S.C. § 1326 and the Order entered January 6, 2017.

B. Case No. 3:17-bk-30351-SHB was filed February 10, 2017, and dismissed March 9, 2018, on the Trustee's motion to dismiss for plan arrearages and feasibility post-confirmation following entry of the Confirmation Order entered May 10, 2017.

C. Case No. 3:18-bk-31658-SHB was filed May 31, 2018, and dismissed July 12, 2018, on the Trustee's certification that no plan payment was made within thirty days from the petition date as required by 11 U.S.C. § 1326 and the Order entered June 4, 2018

D. Case No. 3:18-bk-32696-SHB was filed August 31, 2018, and dismissed October 5, 2018, on the Trustee's certification that no plan payment was made within thirty days from the petition date as required by 11 U.S.C. § 1326 and the Order entered September 5, 2018

## II. CONCLUSIONS OF LAW

Under § 1325(a)(3) and (7), debtors are required to file and proceed in their cases in good faith, and likewise, to propose their plans in good faith, with an almost identical standard as cases concerning good faith and dismissal under § 1307(c). *In re Hall*, 346 B.R. 420, 426 (Bankr. W.D. Ky. 2006). Whether a debtor has filed in bad faith requires examination of the totality of the

---

<sup>1</sup> Debtors also filed the following which were not referenced by the Trustee in the Motion to Dismiss: (1) Case No. 3:06-bk-31004-rs filed May 16, 2006, and dismissed May 21, 2007 (Chapter 13); (2) Case No. 3:07-bk-32206-rs filed July 11, 2007, and dismissed December 21, 2007 (Chapter 13); and Case No. 3:08-bk-31554-rs filed April 10, 2008, resulting in discharge on July 21, 2008 (Chapter 7).

circumstances and is based on past and present circumstances. *Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Surety Co. (In re Laguna Assocs. Ltd. P'ship)*, 30 F.3d 734, 738 (6th Cir. 1994); *In re Glenn*, 288 B.R. 516, 519-20 (Bankr. E.D. Tenn. 2002).

In making the good faith determination, courts generally focus on the following factors:

(1) the debtor's income; (2) the debtor's living expenses[;] (3) the debtor's attorney fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances the debtor may be subject to, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

*Soc'y Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 592 (6th Cir. 1992). Other relevant factors include “the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt[,] and whether any inaccuracies are an attempt to mislead the court[.]” *Hardin v. Caldwell (In re Caldwell)*, 851 F.2d 852, 859 (6th Cir. 1988) (citation omitted).

Courts also look to the following:

the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor's motive in filing the petition; how the debtor's actions affected creditors; the debtor's treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.

*Alt v. United States (In re Alt)*, 305 F.3d 413, 419 (6th Cir. 2002) (citation omitted). Weighing these factors — “which ‘may circumstantially reflect the debtor's motivation, and ultimately his ‘good faith,’” in seeking relief under chapter 13” — assists courts in determining whether “the debtor's purpose in filing for chapter 13 relief is consistent with the underlying purpose and spirit of chapter 13 – i.e., financial ‘rehabilitation through repayment of debt’ – [and if] the filing is

likely in good faith.” *Condon v. Brady (In re Condon)*, 358 B.R. 317, 326 (B.A.P. 6th Cir. 2007) (internal citations omitted).

Although courts must find that imposition of a sanction “be commensurate with the egregiousness of the conduct,” the purpose of adding § 109(g) was to address abuse of the system including “the filing of meritless petitions in rapid succession to improperly obtain the benefit of the Bankruptcy Code’s automatic stay provisions as a means of avoiding foreclosure under a mortgage or other security interest.” *In re Cline*, 474 B.R. 789 (Table), No. 11-8075, 2012 WL 1957935, at \*7 (B.A.P. 6th Cir. June 1, 2012) (citations omitted). “While multiple filings are not, in and of themselves, improper or indicative of bad faith, a history of multiple filings and dismissals may be construed as bad faith.” *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 735 (B.A.P. 6th Cir. 2010) (citing *In re Glenn*, 288 B.R. at 520). Further, if there is sufficient cause, courts have the authority under §§ 105(a) and 349(a) to sanction abusive debtors with a prohibition against filing for more than the 180 days set forth in § 109(g)(1). *Id.* at 737; *see also In re Henderson*, No. 12-50376, 2012 WL 4498887, at \*1–2 (Bankr. S.D. Ohio May 4, 2012) (stating that while “only egregious behavior that demonstrates bad faith and prejudices creditors will warrant a permanent bar from refiling,” a debtor who had filed four prior Chapter 13 cases that had been dismissed and had received discharges in two Chapter 7 cases was a serial filer whose bankruptcy cases “had the effect of staying creditor’s [sic] attempts to collect what they [were] owed repeatedly for almost two decades,” resulting in her being permanently enjoined from filing another case or receiving a discharge of the debts scheduled in that case).

Debtors have a history of multiple filings and dismissals for failure to comply with the requirements of 11 U.S.C. § 1326 and orders of this Court concerning plan payments. Most recently, Debtors did not appear for the hearing on the Motion to Dismiss held December 11 or for

the evidentiary hearing on January 8, 2020, even though the Trustee's motion and the Court's December 11 Order granting it expressly referenced imposition of a 180-day bar on refiling. For the foregoing reasons, constituting the Court's findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure, applicable to contested matters by virtue of Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs the following:

1. Because he has repeatedly and willfully failed to abide by orders of the Court, to comply with the provisions of the Bankruptcy Code, or appear before the Court as directed, Debtor Matthew Allen Dossall is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 180 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

2. Because she has repeatedly and willfully failed to abide by orders of the Court, to comply with the provisions of the Bankruptcy Code, or appear before the Court as directed, Debtor Brandi Lorraine Dossall is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 180 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).###