



SO ORDERED.

SIGNED this 4th day of March, 2021

**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

GRACE IDELLA FREDERICKSON
aka GRACE IDELLA FREDERICKSON

Case No. 3:21-bk-30190-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER

On March 3, 2021, the Court held a hearing pursuant to (1) the Order entered February 10, 2021 ("February 10 Order") [Doc. 8], directing Debtor (a) to appear at a hearing for the Court to determine whether exigent circumstances, in fact, merit a temporary waiver of the credit counseling briefing requirement or whether Debtor's bankruptcy case must be dismissed due to her ineligibility to be a debtor under Title 11; (b) for Debtor to appear and show cause why this case should not be dismissed and, as authorized by 11 U.S.C. § 349(a), incorporating 11 U.S.C. § 109(g), why the Court should not impose a two-year bar against the filing of a bankruptcy case by Debtor under any chapter of Title 11 for her repeated and willful failure to abide by orders of this Court; and (c) to pay the filing fee prior to the show-cause hearing; and (2) the Order entered

February 22, 2021, as amended (“February 22 Order”) [Doc. 14], directing Debtor to appear and show cause (a) why this case should not be dismissed because she did not comply with 11 U.S.C. §§ 521(a)(1) and 1321; Rules 1007(b) and 3015(b) of the Federal Rules of Bankruptcy Procedure; E.D. Tenn. LBR 9036-1(b)(1); and the Notice of Additional Documents to Be Filed dated February 9, 2021, by filing the Certificate of Credit Counseling; Statement Regarding Payment Advices; Schedules A/B through J; Declaration About Schedules; Summary of Assets and Liabilities and Certain Statistical Information; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 122C-1); Chapter 13 Plan; and Debtor Electronic Noticing Election (DeBN); and (b) why the Court should not impose a two-year bar against Debtor filing a bankruptcy case under any chapter (as previously stated in the February 10, 2021 Order) for her repeated and willful failure to abide by orders of this Court in her prior cases.

Debtor did not file a response to either the February 10 Order or the February 22 Order, nor did she appear at the March 3, 2021 hearing.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed three Chapter 13 bankruptcy cases since January 2019. She did not pay a filing fee in any of the cases, all of which have also been skeleton petitions, and she did not obtain the required pre-petition credit counseling briefing in any of the cases. The histories of the cases are summarized as follows:

(A) in Case No. 3:19-bk-30019-SHB, filed *pro se* on January 4, 2019, Debtor (i) failed to obtain the required pre-petition credit counseling briefing; (ii) failed to file the documents required by 11 U.S.C. §§ 521(a)(1), 521(b)(1), and 1321, and Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); (iii) failed to pay the filing fee as directed by

an Order entered January 7, 2019 [Doc. 8]; and (iv) failed to appear at the hearing held January 30, 2019, on the Court's show cause orders entered January 4, 2019 [Doc. 5], and January 22, 2019 [Doc. 14], respectively, resulting in dismissal on January 30, 2019 [Doc. 18].

(B) in Case No. 3:20-bk-30696-SHB, filed *pro se* on March 5, 2020, Debtor (i) failed to obtain the required pre-petition credit counseling briefing; (ii) failed to file the documents required by 11 U.S.C. §§ 521(a)(1), 521(b)(1), and 1321, and Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); (iii) failed to pay the filing fee as directed by an Order entered March 10, 2020 [Doc. 10]; and (iv) failed to appear at the hearing held March 25, 2020, on the Court's show cause order entered March 10, 2020 [Doc. 10], resulting in dismissal on March 26, 2020 [Doc. 16]; and

(C) in this case, filed *pro se* on February 5, 2021, Debtor (i) failed to obtain the required pre-petition credit counseling briefing without any explanation concerning her assertion of exigent circumstances; (ii) failed to file the documents required by 11 U.S.C. §§ 521(a)(1), 521(b)(1), and 1321, and Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); and (iii) failed to pay the filing fee prior to the March 3, 2021 show cause hearing as directed in the February 10 Order [Doc. 8].

In each of the foregoing cases, Debtor listed only her mortgage creditor on the list of creditors accompanying the Voluntary Petitions. Additionally, the record reflects that the following cases were filed *pro se* by Debtor's spouse and co-debtor, James Frederickson, who likewise only listed a mortgage creditor on the list of creditors accompanying his Voluntary Petitions, did not pay the filing fees, and did not submit the required pre-petition credit counseling briefing, statements, and schedules, resulting in dismissal: (1) Case No. 19-32488 filed on August

6, 2019, and dismissed September 18, 2019; and (2) Case No. 20-31836 filed on August 3, 2020, and dismissed September 16, 2020.¹

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 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:

¹ In addition to the foregoing cases, Debtor filed Case No. 3:07-bk-33049-rs through counsel jointly with James Donald Frederickson on September 18, 2007, resulting in a discharge entered on May 10, 2010 [Doc. 45].

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).

Debtor has a history of multiple filings – all of which were skeleton petitions and without payment of the filing fee – and dismissals based on her failure to comply with the requirements of the Bankruptcy Code and orders of this Court. This is Debtor’s third case since January 2019, and she has not filed the documents required by § 521(i)(1) in any of her cases; nor has Debtor filed a certification that she took the credit counseling briefing required by § 109(h) or appeared at any of the Court’s show-cause orders in the prior cases or in this case, notwithstanding that both the February 10 Order and the February 22 Order expressly reference imposition of a 2-year bar on refiling. Further, when examined in connection with the cases filed by Debtor’s spouse and co-debtor, James Frederickson, one or the other has filed a case approximately every six months since January 2019, which evidences that Debtor filed this case not in good faith and with the intent to hinder her mortgage creditor, who is the only creditor listed on the list of creditors submitted with her Voluntary Petition.

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 Debtor did not obtain the required credit counseling briefing within the 180 days preceding the February 5, 2021 petition date, as required by 11 U.S.C. § 109(h)(1), Debtor is not eligible to be a debtor under title 11, and this Chapter 13 bankruptcy case is DISMISSED.

2. Because she has repeatedly and willfully failed to abide by orders of the Court as outlined herein and has failed to appear before the Court as directed, Debtor Grace Idella Frederickson is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of two years from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

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