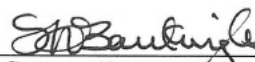




**SO ORDERED.**  
**SIGNED this 30th day of March, 2017**

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

  
Suzanne H. Bauknicht  
UNITED STATES BANKRUPTCY JUDGE

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

In re

RICHARD LEE IDOL  
EVELYN GAIL IDOL

Case No. 3:16-bk-33159-SHB  
Chapter 13

Debtors

**MEMORANDUM AND ORDER ON MOTION FOR RECONSIDERATION  
OF ORDER DISMISSING CASE AS TO DEBTOR RICHARD IDOL**

A hearing was held March 22, 2017, on the Motion for Reconsideration of Order Dismissing Case as to Debtor Richard Idol (“Motion to Reconsider”) [Doc. 71] filed by Debtor Evelyn Idol (“Mrs. Idol”) on March 13, 2017, asking the Court, in essence, to vacate the Order Dismissing Chapter 13 Case as to One Debtor Only (“Dismissal Order”) [Doc. 63] entered on March 10, 2017, which dismissed the Chapter 13 case as to Debtor Richard Idol (“Mr. Idol”), in order to allow the case, which was converted as to Mrs. Idol on March 9, 2017, to likewise be converted to Chapter 7 for Mr. Idol as well. On March 17, 2017, Gwendolyn M. Kerney, Chapter 13 Trustee, filed her Response in Opposition to the Motion to Reconsider [Doc. 80], after which Debtor’s counsel filed a brief [Doc. 81], arguing that Federal Rule of Bankruptcy

Procedure 1016 authorized the requested postmortem conversion. For reasons stated on the record at the hearing and further memorialized in this Memorandum and Order, the Court denies the Motion to Reconsider.

Debtors filed the Voluntary Petition commencing this Chapter 13 bankruptcy case on October 26, 2016. Subsequent thereto, Mr. Idol passed away, and on February 9, 2017, the Chapter 13 Trustee filed the Trustee's Motion to Dismiss solely as to Mr. Idol because he is deceased. The hearing on the Trustee's Motion to Dismiss was held March 8, 2017. Debtors' counsel did not appear or otherwise contact the Chapter 13 Trustee, and the Trustee's Motion to Dismiss was granted by the Dismissal Order entered on March 10, 2017. In the meantime, Mrs. Idol filed a Notice of Voluntary Conversion of Case to Chapter 7 on March 9, 2017, through which the case was converted as to her on that date before confirmation of a Chapter 13 plan. Through the Motion to Reconsider, Mrs. Idol seeks to vacate the Dismissal Order so that she may convert the case to Chapter 7 for both herself and Mr. Idol. In her brief in support of the Motion to Reconsider, she relies on Rule 1016, which states, in material part:

Death . . . of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death . . . had not occurred. If a reorganization . . . or individual's debt adjustment case is pending under . . . chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death . . . had not occurred.

Fed. R. Bankr. P. 1016.

As explained to counsel at the March 22 hearing, the Court does not agree that a deceased Chapter 13 debtor can convert a case to Chapter 7, nor could the Court find any cases that authorized conversion of a Chapter 13 case to a Chapter 7 case after a debtor's death.

Conversion of a Chapter 13 case to Chapter 7 is governed by 11 U.S.C. § 1307(a), which allows

a Chapter 13 debtor to convert to Chapter 7 “at any time.” Notwithstanding this broad authorization, and contrary to counsel’s assertion in the unauthorized post-hearing brief<sup>1</sup> filed on March 29, 2017, § 1307(g) expressly prohibits conversion if a debtor is ineligible to be a debtor under the chapter being converted to: “Notwithstanding any other provision in this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.”

The authorization of Rule 1016 for the continued administration of a case that has already been commenced under Chapter 7 when a debtor dies results from the structure of a Chapter 7 case, in which the trustee is charged with administration of the estate and “the debtor generally plays no active role.” *In re Waring*, 555 B.R. 754, 761 (Bankr. D. Colo. 2016) (stating that “unless the Chapter 7 estate is solvent, a debtor typically does not even have standing to participate in matters concerning administration of the bankruptcy estate[, s]o it only stands to reason that the death of a Chapter 7 debtor during the pendency of a bankruptcy case will not usually impede the liquidation process” (citations omitted)). Deceased persons, however, are not eligible to commence a Chapter 7 bankruptcy case, and courts have consistently held that probate estates are not “persons” under the Bankruptcy Code. *See Estate of Gray v. McDermott (In re Estate of Gray ex rel. Gray)*, Nos. 10-14412, 10-14802, 2011 WL 3946729, at \*4 (E.D. Mich. Sept. 6, 2011) (examining the definitions provided within the Bankruptcy Code and explaining that the underlying policy of the bankruptcy system to offer debtors “a fresh start” cannot apply to a probate estate). It therefore follows that a deceased person could not convert a case to

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<sup>1</sup> Debtor’s post-hearing brief also raises for the first time an argument that the eligibility of Mr. Idol is to be determined on the petition date. Debtor cites to no authority on point – that is, concerning the date of a debtor’s eligibility for conversion from Chapter 13 to Chapter 7. Further, because Mr. Idol died before he could submit to the meeting of creditors, he also could not have proceeded under Rule 1016 if the case had been filed initially under Chapter 7. *Cf. In re Waring*, 555 B.R. at 759. Finally, § 1307(g) does not say that “a case may not be converted to a case under another chapter of this title unless the debtor [*could have been*] a debtor under such chapter”; rather, the statute clearly states that the requirement is whether a debtor *may be* a debtor under such chapter.

Chapter 7 from Chapter 13 when the deceased person could not initiate a case under Chapter 7.

Likewise, deceased persons cannot satisfy the requirements to file a Chapter 13 case because they are not persons with regular income, they cannot be put under oath to testify at a creditors' meeting, and they cannot file a Chapter 13 plan. *In re Waring*, 555 B.R. at 759. As evidenced by the Advisory Committee Note to Rule 1016, “[i]n a . . . Chapter 13 individual’s debt adjustment case, the likelihood is that the case will be dismissed.” *In re Erickson*, 183 B.R. 189, 195 (Bankr. D. Minn. 1995) (quoting Advisory Committee Note to Fed. R. Bankr. P. 1016). This notion is supported by case law, especially when the death occurs before confirmation of a plan. *See, e.g., In re Waring*, 555 B.R. at 763-64 (citing to and agreeing with cases in which courts allowed discharge when the deaths occurred post-confirmation but not when the debtor died pre-confirmation); *In re Spiser*, 232 B.R. 669, 673 (Bankr. N.D. Tex. 1999) (stating that the term “further administration” in Rule 1016 “implies that the case would be carried to its normal conclusion with payments to the creditors as provided in the confirmed plan, rather than conversion of the case to Chapter 7”).

Here, Mr. Idol passed away after the case was filed but before the meeting of creditors and before a plan was confirmed. Accordingly, there is no “further administration” to be done with respect to Mr. Idol’s case. Because he cannot be a debtor under Chapter 13 or under Chapter 7, the Court properly dismissed this case as to Mr. Idol on March 10, 2017.<sup>2</sup>

For the foregoing reasons, the Court directs the following:

1. The Motion for Reconsideration of Order Dismissing Case as to Debtor Richard Idol filed by Debtor on March 13, 2017, is DENIED.

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<sup>2</sup> The Court notes that the dismissal order incorrectly recited that the case had not previously been converted under 11 U.S.C. §§ 706, 1112, or 1208.

2. This case is DISMISSED as to Debtor Richard Idol, but will continue as a Chapter 7 case as to Debtor Evelyn Gail Idol.

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