



SO ORDERED.

SIGNED this 29th day of May, 2025

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



Suzanne H. Bauknight
CHIEF UNITED STATES BANKRUPTCY JUDGE

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

In re

WALTER LEE KIRBY

Case No. 3:25-bk-30750-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER

A hearing was held May 28, 2025 (“May 28 Hearing”), on (1) the Order entered May 6, 2025 (“May 6 Order”), directing Debtor, *pro se*, 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 180-day bar against the filing of a bankruptcy case by Debtor under any chapter of Title 11 “for his repeated and willful failure to abide by orders of this Court and otherwise comply with the provisions of the Bankruptcy Code” in this and three prior cases [Doc. 12 at ¶ 2]; and (2) the Trustee’s Motion to Dismiss filed by Debra L. Miller, Chapter 13 Trustee (“Trustee”), on April 23, 2025 [Doc. 8]. Although he filed a Certificate of Counseling on May 12, 2025 [Doc. 16], Debtor did not file a response to either the May 6 Order or the Trustee’s Motion to Dismiss, did not file the remaining delinquent documents, and did not appear at the hearing on May 28, 2025.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. This is Debtor's fourth bankruptcy case filed within the last thirteen months, although the first three cases were filed with the benefit of counsel, and it appears clear that the purpose for filing is to waylay the mortgage creditor, 21st Mortgage Corporation.¹ The histories of the cases are summarized as follows:

(A) Case No. 3:24-bk-30707-SHB was filed jointly with Joy Leann Kirby on April 26, 2024, and dismissed July 12, 2024, by the Order Dismissing Chapter 13 Case Preconfirmation, sustaining the Trustee's objection to confirmation² for noncompliance with 11 U.S.C. § 1325(a) and (b) based on disposable income, best interests of creditors, the failure to file all federal tax returns, and delinquent plan payments. As reflected in the Chapter 13 Standing Trustee's Final Report and Accounting filed on September 19, 2024, a total of \$655.00 was paid into the case, and no creditors received any distribution.

(B) Case No. 3:24-bk-31362-SHB was filed by Debtor on August 2, 2024, and dismissed November 7, 2024, by the Order Dismissing Chapter 13 Case Preconfirmation, sustaining the Trustee's objection to confirmation³ for noncompliance with 11 U.S.C. § 1325(a) and (b) based on disposable income and delinquent plan payments. As reflected in the Chapter 13 Standing Trustee's Final Report and Accounting filed on May 1, 2025, a total of \$650.00 was paid into the case, and no creditors received any distribution.

¹ The mortgage arrearage grew from \$5,142.25 in Debtor's first case to \$19,884.24 in Debtor's third case (no claim having yet been filed in this case). *See infra* footnotes 2, 3, 5.

² The Amended Chapter 13 Plan filed on June 5, 2024, reflected a mortgage arrearage owed to 21st Mortgage Corp. in the amount of \$4,680.00. [Case No. 3:24-bk-30707-SHB, ECF No. 28 at 2 ¶ 3.1.] The proof of claim filed by 21st Mortgage Corp. reflected an arrearage of \$5,142.25. [Case No. 3:24-bk-30707-SHB, Claim 1-1.]

³ The Chapter 13 Plan filed on August 2, 2024, reflected a mortgage arrearage owed to 21st Mortgage Corp. in the amount of \$11,335.41. [Case No. 3:24-bk-31362-SHB, ECF No. 2 at 2 ¶ 3.1.] The proof of claim filed by 21st Mortgage Corp. reflected an arrearage of \$12,127.96. [Case No. 3:24-bk-31362-SHB, Claim 12-1.]

(C) Case No. 3:25-bk-30107 was filed jointly with Joy Leann Kirby on January 22, 2025,⁴ and dismissed March 10, 2025, pursuant to 11 U.S.C. § 1307(c)(4), by the Order Dismissing Chapter 13 Case Preconfirmation Upon Certification of Failure to Commence Plan Payments for noncompliance with 11 U.S.C. § 1326 and the Order entered January 23, 2025, directing payment of the first proposed plan payment of \$630.00 weekly to the Trustee within thirty days [Case No. 3:25-bk-30107-SHB, ECF No. 14].⁵ As reflected in the Chapter 13 Standing Trustee's Final Report and Accounting filed on March 11, 2025, no money was paid into the case, and no creditors received any distribution.

(D) On April 18, 2025, Debtor, *pro se*, commenced this case by the filing of the Voluntary Petition⁶, Verification of Creditor Matrix⁷ (with an attached creditor list that references only 21st Century Mortgage Corp.), Statement About Social Security Numbers, and Debtor Electronic Noticing Election (DeBN). Debtor filed the Certificate of Credit Counseling, reflecting his eligibility to be a debtor under 11 U.S.C. § 109(h), on May 12, 2025, but as of May 28, 2025, has failed to file the 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, and Chapter 13 Plan

⁴ Different counsel from the first two cases was employed in the third case.

⁵ The Chapter 13 Plan filed on January 22, 2025, reflected a mortgage arrearage owed to 21st Mortgage \$5,142.00. [Case No. 3:25-bk-30107-SHB, ECF No. 2 at 2 ¶ 3.1.] The proof of claim filed by 21st Mortgage Corp. reflected an arrearage of \$19,884.24. [Case No. 3:25-bk-30107-SHB, Claim 10-1.]

⁶ The Voluntary Petition filed by Debtor, which was signed under penalty of perjury, does not reflect the prior cases. Instead, Debtor marked "No" in response to Question 9 entitled "Have you filed for bankruptcy within the last 8 years?" [Doc. 1 at 3.] The Voluntary Petitions filed in Case No. 3:24-bk-31362-SHB and Case No. 3:25-bk-30107-SHB (which were filed by counsel), however, properly identify the prior cases.

⁷ Although the creditor matrix in Case No. 3:25-bk-30107-SHB included the names and addresses for twenty-eight creditors and parties in interest, the handwritten creditor list attached to the Verification of Matrix here included only 21st Century Mortgage Corp. [Doc. 1 at 14.]

required by 11 U.S.C. §§ 521(a)(1), and 1321, Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b), and the Notice of Additional Documents to Be Filed dated April 21, 2025 [Doc. 6]. Additionally, Debtor did not appear at the May 28 Hearing and as stated by the Trustee at the hearing, did not appear for his meeting of creditors on May 22, 2025.

After entry of the May 6 Order, which was served on Debtor via United States Mail and email as reflected in his Debtor Electronic Noticing Election (DeBN) [Doc. 4], Debtor filed a Certificate of Counseling reflecting that he took the required prepetition credit counseling briefing on January 18, 2025 [Doc. 16]. Debtor also spoke with the Trustee on May 9, 2025, and was advised by her to attend the May 28 Hearing and to make his first plan payment within thirty days. Finally, at approximately 11:30 a.m. on May 28, two hours after the May 28 Hearing had concluded, Debtor hand delivered a handwritten letter to the Clerk's office alleging that he was advised by an attorney "not to contact the Court or anything"; that he would "do whatever needs to be done"; and he "was misled." [Doc. 19.]

II. CONCLUSIONS OF LAW

Under 11 U.S.C. § 1325(a)(7), debtors are required to file and proceed in their Chapter 13 cases in good faith with an almost identical standard as cases concerning good faith and dismissal under 11 U.S.C. § 1307(c). *In re Hall*, 346 B.R. 420, 426 (Bankr. W.D. Ky. 2006); *see also In re Gomery*, 523 B.R. 773, 785 (Bankr. W.D. Mich. 2015) ("The factors that are relevant to the good faith determination under either § 1325 or § 1307(c) obviously overlap to some extent[.]" (citing *Alt v. United States (In re Alt)*, 305 F.3d 413, 419 (6th Cir. 2002))). Whether a debtor has filed a case in bad faith requires examination of the totality of the circumstances and is based on past and present circumstances. *Soc'y Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 591 (6th Cir. 1992).

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.

Id. at 592 (citations omitted). Other 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 may also consider

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.

In re Alt, 305 F.3d at 419 (citation omitted). By weighing the factors, “which ‘may circumstantially reflect the debtor’s motivation, and ultimately his “good faith”’ in seeking relief under chapter 13,” courts may determine 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. 516, 520 (Bankr. E.D. Tenn. 2002)).

As stated previously, Debtor has filed four⁸ Chapter 13 bankruptcy cases since April 2024: two jointly with Joy Leann Kirby and two individually. Although the first three cases were filed with the benefit of counsel, the first two cases only progressed beyond the initial stages, Debtor was unable to propose a confirmable plan, and only the filing fee and a fraction of the attorney’s fees were paid in each case. In the third case, because no payments were made, it was dismissed for failure to make the first plan payment within thirty days. Further, in this case, filed *pro se*, Debtor failed to disclose the prior three cases on the Voluntary Petition, which was signed under penalty of perjury; listed only the mortgage creditor, 21st Century Mortgage Corp.; and did not file any of the statements and schedules required by 11 U.S.C. § 521. Most critically, Debtor did not appear at the May 28 Hearing, notwithstanding that (1) on May 9, 2025, Debtor spoke with the Chapter 13 Trustee, who advised him to appear at the show-cause hearing and to make his first plan payment, (2) the May 6 Order expressly warned Debtor that the Court intended to impose a 180-day bar against refiling another case; and (3) Debtor personally delivered a letter to the Clerk’s intake counter approximately two hours after the May 28 Hearing. A totality of the circumstances evidences that Debtor has repeatedly and willfully failed to comply with orders of this Court and the Bankruptcy Code and did not file this case in good faith.

⁸ Because this is Debtor’s fourth case filed within the previous year and the three prior cases were dismissed, no automatic stay went into effect in this case pursuant to 11 U.S.C. § 362(c)(4), and there is a presumption under subsection (c)(4)(D) that any such case was filed not in good faith.

For the foregoing reasons, constituting the Court's findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, 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 file the Statement Regarding Payment Advices; Schedules A/B through J; Declaration About Schedules; Statement of Financial Affairs; Summary of Assets and Liabilities and Certain Statistical Information; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period; and Chapter 13 Plan required by 11 U.S.C. §§ 521(a) and 1321; Federal Rules of Bankruptcy Procedure 1007(b) and 3015(b); and the Notice of Additional Documents to Be Filed dated April 21, 2025; and did not appear at the May 28 Hearing, this Chapter 13 bankruptcy case is DISMISSED.

2. Likewise, the Motion to Dismiss filed by the Trustee on April 23, 2025 [Doc. 8], is GRANTED.

3. As authorized by 11 U.S.C. § 349(a), incorporating therein 11 U.S.C. § 109(g)(1), based on his repeated and "willful failure . . . to abide by orders of the court, . . . to appear before the court in proper prosecution of the case[.]" and to otherwise comply with the provisions of the Bankruptcy Code, Walter Lee Kirby 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.

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