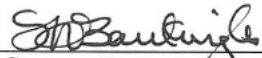




SO ORDERED.
SIGNED this 20th day of September, 2019

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


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

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

In re

MATTHEW THOMAS BROCK
dba ZEUS UROLOGICAL SERVICES
dba ZEUS HOLDINGS/PARAMOUNT MATRIX HEALTHCARE
ALANCIA ANN MASON-BROCK
aka ALANCIA ANN MASON
aka ALANCIA ANN BROCK

Case No. 3:19-bk-32755-SHB
Chapter 7

Debtors

MEMORANDUM AND ORDER

On September 19, 2019, the Court held a hearing on (A) its Order entered August 29, 2019 [Doc. 8], directing Debtors to appear and show cause (1) why this case should not be dismissed because venue is improper in the Eastern District of Tennessee and because Debtors have not filed in good faith in light of the twelve month bar against filing imposed by Judge Schaaf and (2) why the Court should not impose a 365-day bar against the filing of a bankruptcy case by Debtors under any chapter, as authorized by 11 U.S.C. § 349(a), incorporating therein 11 U.S.C. § 109(g), for their repeated and willful failure to abide by orders of this Court or otherwise comply with the provisions of the Bankruptcy Code (the “August 29 Order”) and (B) the U.S. Trustee’s Motion to

Dismiss filed on August 28, 2019 [Doc. 5]. Debtors did not file a response or appear at the September 19, 2019 hearing.¹

I. FINDINGS OF FACT

The record reflects the following undisputed facts. On July 18, 2019, an Order Dismissing Case and Imposing Bar Against Re-Filing (“July 18 Order”) was entered by United States Bankruptcy Judge Gregory R. Schaaf in the United States Bankruptcy Court for the Eastern District of Kentucky (London Division), directing that “Debtors are barred from re-filing any bankruptcy case for twelve (12) months from the date of entry of this Order.” [*In re Brock*, No. 19-60820, Doc. 19, attached as Exhibit A to the U.S. Trustee’s Motion to Dismiss [Doc. 5-2.] As reflected in the July 18 Order, this bar was imposed after Debtors filed the following cases in the Eastern District of Kentucky (London Division):

A. Case No. 19-60324. The Debtors filed a skeletal chapter 13 petition on March 15, 2019. [ECF No. 1.] The case was dismissed April 2, 2019, because they failed to file the certificates of credit counseling and a chapter 13 plan. [ECF No. 21.] The Debtors never paid the required filing fee. [ECF No. 23.]

B. Case No. 19-60456. The Debtors filed a skeletal chapter 13 petition on April 9, 2019. [ECF No. 1.] The case was dismissed April 29, 2019, because the Debtors failed to file schedules and other necessary documentation. [ECF No. 16.] The Debtors never paid the required filing fee. [ECF No. 18.]

C. Case No. 19-60820. The Debtors filed a skeletal chapter 7 petition on June 19, 2019. [ECF No. 1.] The Debtors were ordered to file Schedules A-J, the Summary of Assets and Liabilities and Certain Statistical Information, the Statement of Financial Affairs for Individuals Filing for Bankruptcy, the Chapter 7 Statement of Current Monthly Income, and certificates of credit counseling by July 3, 2019. [ECF No. 6.] The Debtors did not comply, and because they “have repeatedly stalled collection efforts by re-filing

¹ The Court notes that the docket reflects that mail to Debtors was returned; however, the mail was directed to the address provided by Debtors in the petition. [*See Docs. 1, 13, 16.*]

bankruptcy cases [and t]he record in each case demonstrates that the Debtors never intended to perform their obligations and were engaged in actions that caused unreasonable delay[, which] . . . are not fair to creditors and misuse the bankruptcy process and this Court[,] . . . [t]hese facts justify a one-year bar to filing a subsequent case to prevent future harm to creditors and to preserve the integrity of the bankruptcy process.” [*In re Brock*, No. 19-60820, Doc. 19.]

Additionally, Debtors have filed the following cases in this district this calendar year:

A. Case No. 3:19-bk-30206-SHB was filed *pro se* on January 24, 2019, and dismissed on March 14, 2019 [Doc. 38], for failure to file the Certificates of Credit Counseling, Statement Regarding Payment Advices, Schedules C through J, Declaration About Schedules, Summary of Assets and Liabilities and Certain Statistical Information, Statement of Financial Affairs, Chapter 7 Statement of Current Monthly Income and Means-Test Calculation (Form 122A-1), Statement of Intention, and a signed amended list of creditors and failure to appear for a meeting of creditors on March 8, 2019; and

B. Debtors, acting *pro se*, filed this bankruptcy case on August 27, 2019, and did not file the Certificate of Credit Counseling, Statement Regarding Payment Advices, Schedules A/B through J, Summary of Assets and Liabilities and Certain Statistical Information, Declaration About Schedules, Statement of Financial Affairs, Chapter 7 Statement of Current Monthly Income and Means-Test Calculation (Form 122A-1), and Debtor Electronic Noticing Elections (DeBN). Additionally, Debtors did not pay the filing fee by September 17, 2019, as directed by an Order entered August 29, 2019 [Doc. 9].

II. CONCLUSIONS OF LAW

Because “[g]ood faith and candor are necessary prerequisites to obtaining a fresh start,” it is implicit that Chapter 7 cases must be filed in good faith. *See In re Eddy*, 288 B.R. 500, 504 (Bankr. E.D. Tenn. 2002) (quoting *Industrial Ins. Servs. v. Zick (In re Zick)*, 931 F.2d 1124, 1129 (6th Cir. 1991)). Courts routinely examine the following factors to determine whether a Chapter 7 case should be dismissed for lack of good faith:

1. The debtor reduced his creditors to a single creditor in the months prior to filing the petition.
2. The debtor failed to make lifestyle adjustments or continued living an expansive or lavish lifestyle.
3. The debtor filed the case in response to a judgment[,] pending litigation, or collection action; there is an intent to avoid a large single debt.
4. The debtor made no effort to repay his debts.
5. The unfairness of the use of Chapter 7.
6. The debtor has sufficient resources to pay his debts.
7. The debtor is paying debts to insiders.
8. The schedules inflate expenses to disguise financial well-being.
9. The debtor transferred assets.
10. The debtor is over-utilizing the protection of the [Bankruptcy] Code to the unconscionable detriment of creditors.
11. The debtor employed a deliberate and persistent pattern of evading a single major creditor.
12. The debtor failed to make candid and full disclosure.
13. The debts are modest in relation to assets and income.
14. There are multiple bankruptcy filings or other procedural “gymnastics.”

Id. at 504-05 (quoting *In re Spagnolia*, 199 B.R. 362, 365 (Bankr. W.D. Ky. 1995)).

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*, 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). 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 although “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 here have a history of multiple filings and dismissals based on their failure to comply with the requirements of the Bankruptcy Code and orders of this Court. In fact, Judge Schaaf imposed a one-year bar against their filing any further cases in the Eastern District of Kentucky (London Division).² This is Debtors’ fifth case since January of this year, and in each case, they failed to file certificates of credit counseling or documents required to avoid automatic dismissal under § 521(i)(1) and did not pay the filing fee. Additionally, Debtors did not appear and show cause as ordered by this Court in the August 29 Order, even though the order expressly referenced imposition of a 365-day bar on refiling.

For the foregoing reasons, which constitute the Court’s findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure, made applicable to contested

² The Court chooses to read the July 18 Order to apply only to the filing of cases in the Eastern District of Kentucky even though it does not expressly limit the bar to that district.

matters by virtue of Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs the following:

1. Because Debtors did not obtain the required credit counseling briefing within the 180 days preceding the August 27, 2019 petition date, as required by 11 U.S.C. § 109(h)(1), Debtors are not eligible to be debtors under title 11, and this Chapter 13 bankruptcy case is DISMISSED.

2. Because he has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Matthew Thomas Brock is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 365 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

3. Because she has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Alancia Ann Mason-Brock is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 365 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

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