

Dated: July 30, 2010
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re KEWAN TOMEL PERSON,
Debtor

Case No. 09-34328-L
Chapter 7

In re TAMMY YVETTE LUCAS
Debtor.

Case No. 09-31870-L
Chapter 13

MEMORANDUM OPINION

THESE OTHERWISE UNRELATED cases came before the court on July 29, 2010, on “Motions to Reinstate.” Both cases were dismissed as the result of the failure of the debtor to timely pay the case filing and related administrative fees. Both debtors paid the fees to the Clerk of the Bankruptcy Court after their cases were dismissed and more than 180 days after the cases were filed. The debtors now seek to “reinstate” their cases [vacate the orders of dismissal] and proceed to discharge. No one has objected to the motions. After hearing arguments of counsel, the court took these cases under submission in order to provide written guidance to the bar on this recurring issue.

The court invited the attorneys for the debtors to submit written briefs in support of their motions. The attorney for Mr. Person did so on July 30, 2010, but the attorney for Ms. Lucas elected not to file a brief. After reviewing the applicable files and law, the court makes the following findings of fact and conclusions of law. The essential facts in these cases are not in dispute and for the most part, are a matter of public record. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

Kewan Tomel Person. Person filed his Chapter 7 petition on December 27, 2009. He did not pay the required fees at the time of filing, but instead filed an “Application to Pay Filing Fee in Installments.” Doc. No. 3. Pursuant to Local Bankruptcy Rule 1006(b)-(1)(b), the Clerk gave his approval of the application, indicating that the fees should be paid in no more than four equal installments and that the fees should be paid in full no later than April 26, 2010. Doc. No. 7. The notice of approval indicated that the debtor could seek an extension of time to pay the required fees if needed, but that the deadline to pay the fees could not be extended beyond 180 days after the date the petition was filed. On April 23, 2010, the debtor, through counsel, filed a motion to extend the time to pay the filing fee. Doc. No. 25. The motion was granted and the court entered its order directing that the filing fees be paid on or before June 25, 2010, or the case would be dismissed without further notice. Doc. No. 28. June 25, 2010, was the day 180 days after the petition was filed. When the fees were not paid, the case was dismissed by order entered June 30, 2010. Doc. No. 30. The debtor paid the filing and related administrative fees on July 2, 2010, and filed his “Motion to Reinstate” on July 7, 2010.

Tammy Yvette Lucas. Lucas filed her Chapter 13 petition on October 26, 2009. She also did not pay the required fees at the time of filing, but filed an “Application to Pay Filing Fee in Installments.” Doc. No. 3. Her application was approved by the Clerk on the same day, and she was

given until February 23, 2010, to pay the fees. Doc. No. 8. Ms. Lucas's plan was confirmed on February 4, 2010, calling for payments of \$28.00 monthly. Doc. No. 28. On March 12, 2010, the court issued its Sua Sponte Order and Notice of Hearing to Consider Dismissal of the Case for Failure to Pay the Filing and/or Administrative Fees. Doc. No. 31. A hearing was set for April 1, 2010. The debtor did not appear and/or did not pay the required fees, and the case was eventually dismissed by order entered May 17, 2010. May 17 was 203 days after the filing of the bankruptcy petition. The Chapter 13 Trustee paid \$149.60 toward the filing and administrative fees on July 1, 2010, presumably from funds on hand when the case was dismissed. This is the only amount paid toward the fee, leaving a balance owed of \$124.40. Ms. Lucas, through her attorney, filed an "Expedited Motion to Reinstate Case" on July 8, 2010. She asks that the order of dismissal be vacated in her case, asserting that she is now able to pay the filing fee.

Both attorneys essentially argue that the motions to set aside the orders dismissing the debtors' cases should be granted because the debtors "substantially complied" with the requirements of the United States Code and Bankruptcy Rules. In the case of Mr. Person, counsel argues that on the same day that the order of dismissal was generated by one of the deputy clerks, another deputy clerk accepted the debtor's payment. The attorneys argue further that no one opposes the motions to set aside the orders of dismissal.

The requirement for paying filing and administrative fees upon the filing of a petition in bankruptcy is set out at 28 U.S.C. § 1930(a), which provides in pertinent part:

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following fees:

(1) For a case commenced under--

(A) chapter 7 of title 11, §245; and

(B) chapter 13 of title 11, §235.

Additional, administrative fees are also required to be collected upon the filing of a bankruptcy case. *See* 28 U.S.C. § 1930(a)(b), which provides: “The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(c) of this title.”

I previously wrote an extensive opinion concerning the question of whether a bankruptcy judge may, in an appropriate case, extend the period for paying the filing fee beyond the 180th day after filing. *See, In re Peterson*, No. 08-25065-L (Bankr. W.D. Tenn. June 22, 2009). I concluded in that opinion that a bankruptcy judge may not “override the clear mandates of Rules 1006(b)(2) and 9006(b)(3),” which together provide that the time for paying any installment of the filing fee may not be extended beyond 180 days. *Id.*, slip op. at 7. *See, also, Goldrich v. Gart Property Management, Inc. (In re Goldrich)*, 1992 WL 404725, at *5 (E.D.N.Y. 1992)(Bankruptcy court properly refused to vacate order of dismissal even though, as the result of clerical error, the debtor was denied an opportunity to request additional time to pay the last installment of his filing fee because the bankruptcy case was not actually dismissed until more than 180 days after the petition was filed.).

I am instructed by the decision of the district court in *Clippard v. Bass*, 635 B. R. 131 (W.D. Tenn. 2007)(Mays, J.), in which one of my decisions was reversed. I held in that case that the debtor’s case should not be dismissed even though she failed to file a certificate of pre-petition credit counseling until forty-seven days after the date of filing, which was two days beyond the outside time limit established by the Bankruptcy Code. I was persuaded by the debtor’s story that she had

done the best that she could under the circumstances and that she had “substantially complied” with the requirements of the Code. See *In re Bass*, 2006 WL 1593978, slip op. at *3 (Bankr. W.D. Tenn. June 9, 2006). Judge Mays disagreed, reversed and directed that the case be dismissed as the result of the debtor’s failure to fulfill the necessary pre-filing requirement. Although *Bass* is binding only upon the parties in that case, I am persuaded that Judge Mays reached the right decision. As I quoted in the *Peterson* decision, “Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality.” *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644, 112 S.Ct. 1644 (1992). Just as in the case of *Peterson*, even if I had the authority to further extend the deadline to pay the filing fees in these cases, I would decline to do so because the attorneys offered no explanation for the debtors’ failure to timely pay the required fees. In the *Lucas* case, the failure to pay is easier to understand than in the *Person* case. Ms. Lucas proposed to pay only \$38 per month into her plan. At that rate, even if all the funds paid in were devoted to payment of the filing fee, it would have taken her more than 180 days to accumulate enough funds to pay the filing fee. Her attorney should have told her before she filed her petition that she would have to supplement her plan payments in order to timely pay the required fees. In the alternative, she might have filed a Chapter 7 case and sought a waiver of the filing fee pursuant to 28 U.S.C. § 1930(f). I cannot tell from the record why Ms. Lucas did not file her petition under Chapter 7, nor can I tell why Ms. Lucas did not seek a waiver of the filing fee in his case.

Counsel for Mr. Person argues that the decision of the Supreme Court in *Hamilton v. Lanning*, 130 S.Ct. 2464 (2010), was decided incorrectly and represents an instance of “judicial legislation.” That decision had to do with how to determine a debtor’s “projected disposable income” for purposes of confirming a Chapter 13 plan. It has no apparent application here, unless,

perhaps, counsel means to suggest that this court should engage in judicial legislation. If that is the intent of the argument, I respectfully decline the invitation. It is up to Congress to make changes to deadlines established by the United States Code if it finds that necessary. I only point out that whatever deadline is chosen, inevitably there will be someone who fails to comply.

The attorney for Mr. Person suggests that in some cases, the deputy clerks for this Bankruptcy Court may have accepted filing fees paid after the 180-day deadline, but before the case was dismissed. Those were not the facts in either of the cases now before me. In both cases, the filing fees were tendered (and accepted) after the cases had been dismissed. I am of the opinion, based upon the decision of Judge Mays in *Bass*, that a bankruptcy case must be dismissed if the filing fee is not timely paid, even if it is eventually paid before dismissal. The filing fee is owed upon the filing of the bankruptcy petition whether or not the debtor ultimately receives a discharge, so it is not improper for the Clerk to accept late fees. Given most bankruptcy debtors' very limited means, however, I would prefer that the Clerk warn such debtors that late payment of the fees will not result in avoiding the dismissal of their cases, and I direct the Clerk to bring any such cases assigned to me to my attention for dismissal. I am aware that in many judicial districts, a person is not permitted to file a second or subsequent bankruptcy petition until all fees in prior cases are paid. This has never been the policy in this judicial district to my knowledge. Counsel might be well-advised to realize that this represents a significant advantage to persons in financial trouble.

Finally, counsel for Person argues that "Judges have not been in Debtor's shoes, seen what he has seen, experienced what he has experienced, or had the same education and training." While it is true that I have never personally filed a bankruptcy petition, this fact does not disqualify me or any other bankruptcy judge from making informed decisions in compliance with the letter and spirit

of the Bankruptcy Code. My qualifications for this office, meager as they may be, were determined at the time of my appointment.

For the foregoing reasons, the motions to vacate the orders of dismissal in these cases will be denied. The court will enter separate orders in conformity with this opinion.