

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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IN RE:

GAYLON HARRIS,  
Debtor.

BK #89-12061-WHB  
Chapter 7

GEORGIA CASUALTY INSURANCE COMPANY,  
Plaintiff,

v.

Adversary Proceeding  
No. 90-0012

GAYLON HARRIS,  
Defendant.

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MEMORANDUM OPINION AND ORDER  
ON COMPLAINT OBJECTING TO DISCHARGE

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This adversary proceeding arose from a complaint filed by Georgia Casualty Insurance Company against the debtor seeking a denial of the debtor's general discharge pursuant to 11 U.S.C. §727(a)(3), to which the debtor has answered, denying the allegations and praying that she be granted her discharge. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(J), and the following constitutes findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

As stated, the adversary proceeding seeks the general denial of the debtor's discharge under §727, and while the complaint specifically refers to §727(a)(3), the Court has reviewed the entire provisions of §727 to determine if, under the proof, there is a basis to deny the debtor's discharge. The Court concludes that the debtor is entitled to her general discharge and the relief sought in the complaint should be denied.

In an unusual and interesting factual setting, the debtor was the wife of Danny Stack who was killed in December, 1983, while in the course of employment. At the time of his death, he and the debtor were separated and a divorce was pending. In a worker's compensation suit in the Chancery Court of Hardeman County, Tennessee, the debtor, the deceased's mother and two adopted children of the deceased each sought worker's compensation benefits, and the Chancellor found that none of the plaintiffs were dependents of the deceased and denied each worker's compensation benefits. An appeal was taken to the Tennessee Supreme Court which reversed the Chancellor's order as to this debtor. The debtor testified that she was not aware that her attorney, Mr. Jim Sanderson of Bolivar, Tennessee, had appealed the Chancery Court decision; although the debtor, on cross-examination, admitted that she had discussed an appeal with Mr. Sanderson. During the pendency of the appeal process, the debtor remarried a Mr. Harris, and under the applicable Tennessee Worker's Compensation law, she was no longer eligible as a dependent of the deceased for benefits. The testimony established that the debtor did not tell her attorney, Mr. Sanderson, that she had remarried, although there was some proof to indicate that he may have had a means to know that she was remarried.

Nevertheless, the debtor did remarry on October 8, 1986. Subsequently, she received a telephone call from Mr. Sanderson's office that the Supreme Court had reversed the Chancery Court and that a settlement had been reached with the insurance carrier. The debtor went to Mr. Sanderson's office, signed certain documents, and received a portion of a settlement. The Chancellor entered an order dated September 15, 1987, made Exhibit A to the complaint, under which it appears that a total cash settlement of \$17,500.00, plus some interest, would be paid for benefits through

August 21, 1987, and that the debtor would be entitled to receive \$93.33 per week for an additional two hundred and seven weeks "or until plaintiff remarries or dies."

The debtor testified that out of the \$17,500.00 settlement, she received only \$9,000.00, with Mr. Sanderson receiving the balance. The debtor testified that she endorsed the check Gaylon Stack, her prior married name, and that she continued to receive checks from the insurance company in the name of Stack. She further testified that she did not use the name Stack for any other purpose and had no checking accounts in that name. However, the debtor testified that she did not think anything at all about the checks being in the name of Stack.

The debtor apparently continued to receive weekly benefits until November 30, 1988 at which time the insurance carrier learned that she was remarried. Therefore, it appears and it is the position of the insurance carrier, that the debtor has been overpaid for a portion of the settlement and for the bi-weekly payments received until November 30, 1988. The insurance carrier seeks a judgment against the debtor in the amount of \$10,359.63 for the amount of the overpayment. In essence, the insurance carrier, while praying for a general denial of discharge, seeks the exception from discharge of this \$10,359.63. Therefore, the Court has also analyzed §523 of the Bankruptcy Code to determine whether there are applicable sections that would permit the exception from discharge of this debt.

### **CONCLUSIONS**

Of course, the general law is that the creditor has the burden of proof on an objection to discharge. See, Bankruptcy Rule 4005. Objections to discharge and exceptions from dischargeability are construed narrowly in favor of the debtor. See, e.g., Gleason v. Thaw, 236 U.S. 558 (1915).

The specific code section cited in the complaint is §727(a)(3), and the complaint alleges that the debtor failed to keep, maintain or preserve books and records from which an accounting could be ascertained pursuant to that Code section. There was no proof presented at the trial as to the debtor's records; however, the Court notes that this is a consumer debtor who would not be expected to maintain books and records that would meet generally accepted accounting principles. See, e.g., In re Dias, 95 B.R. 419 (Bankr. N.D. Tex. 1988) One Court has observed that the adequacy of record keeping must be determined in the light of the debtor's education, experience and sophistication. See, In re Escobar, 53 B.R. 382 (Bankr. S.D. Fla. 1985). Obviously, the adequacy of record keeping must be determined on a case by case basis. In re Reasoner, 64 B.R. 229 (Bankr. W.D. La. 1986). As stated, there was no proof presented as to the debtor's records and the Court cannot find that the debtor failed to keep records in the absence of proof. The debtor testified of course that she had received the money from the insurance company and had spent it, but that she was acting under the belief that she had a legal right to spend the money. The debtor testified that she was unaware that she was ineligible to receive continued worker's compensation benefits due to her remarriage. Failure to account for the funds does not appear to be the real issue in this proceeding.

In its analysis, the Court finds that the debtor is an individual and is thus entitled to a discharge unless other grounds for objection are stated. 11 U.S.C. §727(a)(1). The Court finds that §727(a)(2) does not apply because there is an absence of proof that the debtor transferred property with the requisite "intent to hinder, delay or defraud a creditor." The proof here simply shows an unsophisticated debtor acting in ignorance of the law and in ignorance of her obligation to the insurance company. That does not rise to the level of an intent to hinder, delay or defraud that creditor.

There was no proof whatsoever that would support a finding under §727(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9) or (a)(10).

Moving to Section 523, although not pled, the Court has analyzed those exceptions to discharge to determine whether or not the debt for overpayment to the insurance company should be excepted from discharge. The closest section may be §523(a)(2)(A) which provides an exception for discharge:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by -

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

Under the Sixth Circuit's standards, the creditor must prove: (1) that there was a material misrepresentation, which the debtor either knew was false or made with gross recklessness as to the truthfulness; (2) that there was an intent to deceive the creditor; and (3) that there was reasonable reliance by the creditor on the misrepresentation, which was the proximate cause of the creditor's loss. See, In re Ward, 857 F. 2d 1082 (6th Cir. 1982). Based upon the proof presented, the Court cannot find that this debtor, who was uneducated in the law, was aware that she was making false representations to the insurance carrier. There is no proof that the debtor was aware that she was ineligible after her remarriage for continued worker's compensation benefits. Certainly her attorney should have been aware and should have advised her, if in fact he knew of her remarriage, and if any misrepresentations were made to the insurance company, they would have been made by someone other than this debtor.

The only other §523 exception which might apply would be §523(a)(6) providing for an exception "for wilful and malicious injury by the debtor to another entity or to the property of another entity." However, the proof does not establish that there was an intentional act of the debtor, with knowledge that she was receiving insurance proceeds to which she was not entitled.

Therefore, after review of the statutory provisions and the testimony received in this trial, the Court concludes that the plaintiff has failed to establish either a basis to deny the general discharge of the debtor or to except its claim for \$10,359.63 from the general discharge.

Therefore, it is **ORDERED** that the request sought in the complaint is denied and the debtor is granted her general discharge as well as a discharge of the specific debt to Georgia Casualty Insurance Company.

**SO ORDERED THIS** 18<sup>th</sup> day of June, 1990.

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WILLIAM HOUSTON BROWN  
UNITED STATES BANKRUPTCY JUDGE

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