

Dated: August 28, 2024
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re:

Jayme Nicole Nevels,
Debtor.

Case No.: 23-26280
Chapter 13

**ORDER DENYING
MARGARET M. CHESNEY'S
MOTION TO DISMISS CHAPTER 13 CASE**

This case came before the Court on Margaret M. Chesney's ("Ms. Chesney's") *Motion to Dismiss Chapter 13 Case* ("Motion to Dismiss") and Jayme Nicole Nevels' ("Ms. Nevels'") *Debtor's Response to Motion to Dismiss* ("Response").¹ The Court conducted an evidentiary hearing on May 16, 2024, at 1:00 p.m., on the Motion to Dismiss and Response. Upon review of the record and arguments from the parties, the Motion to Dismiss is denied for the reasons outlined below.

¹ ECF Nos. 42 and 64.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural History

On December 29, 2023, Ms. Nevels filed a voluntary petition commencing a chapter 13 case under the Bankruptcy Code.² On January 14, 2024, Ms. Nevels filed schedules, a chapter 13 plan, Official Form 122C-1 and Official Form 122C-2.³

On March 7, 2024, Ms. Chesney filed her Motion to Dismiss, which was scheduled for a preliminary hearing on April 9, 2024, at 10:00 a.m.⁴ On April 15, 2024, the Court entered an *Order Scheduling Evidentiary Hearing and Shortening Discovery Deadlines*.⁵ With this scheduling order, the pre-trial conference was scheduled for May 14, 2024, at 9:30 a.m. and the final evidentiary hearing on May 16, 2024, at 1:00 p.m., and Ms. Nevels was directed to file a response to the motion to dismiss within seven days from the entry of the scheduling order. On April 24, 2024, Ms. Nevels filed her Response.⁶ On May 16, 2024, the Court conducted an evidentiary hearing on the Motion to Dismiss and Response. After the conclusion of the trial, on May 30, 2024, the parties submitted their respective post-trial memoranda in lieu of oral arguments.⁷

² ECF No. 1.

³ ECF Nos. 12, 13, and 14.

⁴ ECF Nos. 42 and 43.

⁵ ECF No. 62.

⁶ ECF No. 64.

⁷ ECF Nos. 68 and 69.

B. Factual History

Prior to the filing of the chapter 13 case, Ms. Chesney represented Ms. Nevels in a divorce proceeding.⁸ Ms. Chesney was awarded an attorney's lien in the amount of \$35,421.25 against all proceeds and assets that Ms. Nevels was awarded in the divorce proceeding, until the outstanding amount owed was satisfied. Ms. Nevels' former spouse was ordered to pay her \$10,000.00 per month in domestic support obligations, from which Ms. Chesney was to receive \$2,000.00 each month. Ms. Chesney filed a proof of claim (Claim No. 8-4) in the amount of \$25,421.25.⁹

On January 10, 2024, Ms. Nevels filed a Motion for Sanctions for Violation of the Automatic Stay ("Motion for Sanctions") against Ms. Chesney, in which she argued that Ms. Chesney violated the automatic stay when she continued accepting the \$2,000.00 per month payment from Ms. Nevels' former spouse.¹⁰ On February 27, 2024, at the conclusion of a hearing on Ms. Nevels' Motion for Sanctions, the Court granted Ms. Nevels' motion, in part. On February 29, 2024, the Court entered an *Order Partially Granting Ms. Nevels' Motion for Sanctions*, which instructed Ms. Chesney to return \$4,000.00 to Ms. Nevels and cease accepting the \$2,000.00 per month payment.¹¹ No form of sanctions was imposed against Ms. Chesney.

Prior to the entry of the order granting, in part, the motion for sanctions, on or about February 28, 2024, Ms. Nevels sent a message through Venmo to Ms. Chesney requesting the

⁸ Ms. Chesney's Closing Argument in Support of Motion to Dismiss Chapter 13 Case ("Chesney's Closing Argument"), at 2.

⁹ On January 31, 2024, Ms. Chesney filed an unsecured proof of claim (amended as Claim No. 8-4) in the amount of \$25,421.25.

¹⁰ ECF No. 9, at 2.

¹¹ The Court's oral ruling from the bench provided that the funds were to be returned within seven (7) days upon entry of the order, but the order did not include that language.

\$2,000.00.¹² The message stated: “If I receive these funds today by noon, I will not enter another claim against you with the Board of Professionals. You fully understood and received direction from Judge Barnett yesterday.”¹³ Because of this message, Ms. Chesney contended that Ms. Nevels’ chapter 13 case should be dismissed pursuant 11 U.S.C. § 1307 for cause because Ms. Nevels threatened to file a complaint with the Tennessee Board of Professional Responsibility (the “Board”) if Ms. Chesney did not turn over funds retained pursuant the Court’s oral ruling on the Motion for Sanctions. Ms. Chesney interpreted Ms. Nevels’ Venmo message as a threat to report Ms. Chesney to the Board as a form of extortion. Ms. Chesney’s interpretation of the Venmo message as a threat stemmed from her experience with Ms. Nevels’ prior action of filing a complaint with the Board against Ms. Chesney for allegedly colluding with opposing counsel to assist her husband in hiding assets, among other assertions.¹⁴ Although not fully developed at the evidentiary hearing, Ms. Chesney testified that Ms. Nevels’ Venmo message led Ms. Chesney to feel threatened for her safety.¹⁵ Ms. Chesney admitted Ms. Nevels never physically threatened her, but her fear of physical harm was simply from working with Ms. Nevels.¹⁶ Ms. Chesney confirmed that she complied with the Court’s order and turned over the funds to Ms. Nevels’ attorney within seven days as instructed by the Court.¹⁷ Ms. Chesney believed this Venmo message showed Ms. Nevels’ lack of good faith in filing her chapter 13 case.

¹² Ms. Chesney’s Ex. 1.

¹³ *Id.*

¹⁴ Hearing on Motion to Dismiss (“Hearing on May 16, 2024”), May 16, 2024, at 1:56 p.m.

¹⁵ *Id.* at 2:14 p.m.

¹⁶ *Id.* at 2:27 p.m.

¹⁷ *Id.* at 2:15 p.m.

Ms. Nevels acknowledged she should not have communicated with Ms. Chesney but argued that the message was harmless, and it did not constitute extortion.¹⁸ Ms. Nevels further contended that the Venmo message was not sufficient cause to dismiss her chapter 13 case. Ms. Nevels thought Ms. Chesney was not going to send the money, which was why she sent the Venmo request with the attached message requesting the money.¹⁹ Ms. Nevels admitted she did not speak with her attorney before sending the message and did not discuss with her attorney about adding the noon deadline that was inconsistent with the Court's oral ruling and order.²⁰

II. LEGAL DISCUSSION²¹

The issue before the Court is whether Ms. Nevels' Venmo message to her former attorney, Ms. Chesney, constitutes sufficient cause for this Court to dismiss her chapter 13 case pursuant to 11 U.S.C. § 1307(c).²² Subsection 1307(c) allows a party in interest or the United States Trustee to seek dismissal or conversion of a chapter 13 case for "cause."²³ Subsection

¹⁸ *Id.* at 2:38 p.m. and 2:52 p.m.

¹⁹ *Id.* at 2:40 p.m.; Ms. Chesney's Ex. 1.

²⁰ *Id.* at 2:55 p.m.

²¹ The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. § 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following shall constitute the court's findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

²² The Motion to Dismiss simply cited to section 1307 of the Code, not a specific subsection. Section 1307 of the Bankruptcy Code allows for conversion or dismissal of a case. Subsections 1307(a) and (b) reads:

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to convert under this subsection is unenforceable.

Subsections 1307(a) and (b) give Ms. Nevels the right to convert or dismiss her case and are inapplicable here as Ms. Nevels is neither seeking to convert nor dismiss her case.

²³ 11 U.S.C. § 1307(c) reads:

(a) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case

1307(c) provides eleven examples of what constitutes “cause” for dismissal. This list is not exhaustive and there may be other examples of sufficient “cause” to dismiss or convert the debtor’s case. The party seeking dismissal has the burden of proof under subsection 1307(c).²⁴ Ms. Chesney does not cite to any of the enumerated reasons outlined in subsection 1307(c) of the Code as “cause” for dismissal, and the facts of this case do not support a finding for dismissal under the enumerated reasons.

Ms. Chesney asserted the lack of good faith as a basis for dismissal of Ms. Nevels’ chapter 13 case.²⁵ “Cause” for dismissing or converting a case may exist “if a debtor lacks good faith when filing the bankruptcy case.”²⁶ The Sixth Circuit has outlined the factors that bankruptcy courts should consider when determining “lack of good faith,” which are: (1) the debtor's income; (2) the debtor's living expenses; (3) the debtor's attorney's fees; (4) the expected

under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
- (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
- (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

²⁴ *In re Cumming*, 523 B.R. 93, 109 (Bankr. W.D. Mich. 2014) (explaining the burden of proof under Section 1307(c) of the Code).

²⁵ Chesney’s Closing Argument, at 5.

²⁶ *In re Curtis*, 596 B.R. 624, 628 (Bankr. W.D. Mich. 2019) (explaining “cause” under Section 1307).

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 earnings; (7) any special circumstances, 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 the debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which the administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.²⁷ In *In re Alt*, the Sixth Circuit explained that the key inquiry into whether a debtor's case was filed in bad-faith was determining whether the debtor was seeking to abuse the bankruptcy process.²⁸ Good faith is fact-specific and should be determined after consideration of the totality of circumstances.²⁹ "Under the totality of the circumstances test, [courts] analyze both the prior conduct of the bankruptcy petitioner and the petitioner's present circumstances."³⁰ Subsection 1307(c) further states that converting or dismissing a debtor's case must be "in the best interest of the creditors and the estate."³¹

Ms. Chesney pointed to Ms. Nevels' Venmo message as the single act that demonstrated Ms. Nevels' lack of good faith. Ms. Chesney contended that the act of sending the Venmo

²⁷ *In re Alt*, 305 F.3d 413, 419 (6th Cir. 2002) (providing factors that bankruptcy courts should consider in determining a lack of good faith) (citing *Metro Employees Credit Union v. Okoreeh-Baah (In re Okoreeh-Baah)*, 836 F.2d 1030, 1032–33 (6th Cir.1988)); See also *In re Mehlhose*, 469 B.R. 694, 707 (Bankr. E.D. Mich. 2012) (outlining factors considered in a "good faith" analysis).

²⁸ *In re Alt*, 305 F.3d at 419 (explaining how to determine if a case was filed in bad faith).

²⁹ *Copper v. Copper (In re Copper)*, 426 F.3d 810, 815 (6th Cir. 2005) (further explaining the analysis for good faith).

³⁰ *Society Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 590 (6th Cir. 1992) (explaining the totality of circumstances analysis for determining the debtor's good faith).

³¹ 11 U.S.C. § 1307(c) (2010).

message constituted extortion under Tennessee law, and that “extortion” provided this Court with sufficient “cause” to dismiss the chapter 13 case for lack of good faith pursuant to subsection 1307(c) of the Code.³² Ms. Chesney cited Tenn. Code Ann. § 39-14-112, a criminal code describing “extortion” as a “Class D felony.”³³ When prosecuting the criminal act of “extortion” under Tenn. Code Ann. § 39-14-112, the trier of facts must find the existence of “the essential elements of the crime beyond a reasonable doubt.”³⁴ Ms. Chesney contended that: “[t]he Debtor threatened [Ms.] Chesney to receive money,” when she sent the Venmo message about filing a complaint with the Board in an effort to get the funds that the Court orally ruled that should have been turned over to Ms. Nevels.³⁵ Ms. Chesney further argued that Ms. Nevels did not provide an affirmative defense and “could not explain how her actions were anything,

³² ECF No. 69, at 9.

³³ Tenn Code Ann. § 39-14-112 reads:

- (a) A person commits extortion who uses coercion upon another person with the intent to:
 - (1) Obtain property, services, any advantage or immunity;
 - (2) Restrict unlawfully another’s freedom of action; or
 - (3) (A) Impair any entity, from the free exercise of enjoyment of any right or privilege by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for any entity
 - (B) For purposes, of this section, “something of value” includes, but is not limited to, a neutrality agreement, card check agreement, recognition, or other objective of a corporate campaign;
 - (C) For purposes of this section, “corporate campaign” means any organized effort to unlawfully bring pressure on an entity, other than through collective bargaining, or any other activity protected by federal law.
- (b) It is an affirmative defense to prosecution for extortion that the person reasonably claimed:
 - (1) Appropriate restitution or appropriate indemnification for harm done; or
 - (2) Appropriate compensation for property or lawful services.

Ms. Chesney also cites to Tenn Code Ann. § 39-11-106(a)(4) that defines the word “coercion” as a “threat, however communicated, to: (A) Commit any offense; (B) Wrongfully accuse any person of any offense; (C) Expose any person to hatred, contempt, or ridicule; (D) Harm the credit or business repute of any person; or (E) Take or withhold action as a public servant or cause a public servant to take or withhold action[.]”

There is nothing in the record that shows Ms. Chesney made any reports of “extortion” to any law enforcement authorities.

³⁴ *State v. Parris*, 236 S.W. 3d 173, 183 (Tenn. Crim. App. 2007) (discussing “attempted extortion” *inter alia* and standard of proof for criminal prosecution).

³⁵ Hearing on May 16, 2024, at 2:40 p.m.

but a threat.” To give credence to Ms. Chesney’s argument, this Court is required to determine whether Ms. Nevels’ conduct satisfies the requirements of Tenn Code Ann. §§ 39-14-112 and 39-11-106(a)(4). Without getting into an exhaustive discussion regarding the jurisdiction of the bankruptcy court, this Court will simply not address the issue of whether Ms. Nevels committed the Class D felony of “extortion” beyond a reasonable doubt under laws of the State of Tennessee.³⁶

So, the Court is left with the issue of whether Ms. Nevels’ action of sending the Venmo message to Ms. Chesney shows a lack of good faith sufficient to constitute cause for dismissal of her chapter 13 case. In reviewing all the factors in evaluating “lack of good faith,” the weight of the evidence does not support dismissal of this chapter 13 case. Ms. Nevels is employed and will be receiving monthly payments from her former spouse. Ms. Nevels’ Schedule I shows gross income of \$6,250.00 and spousal support of \$10,000.00, with a calculated monthly income of \$15,422.72 (after deductions from wages).³⁷ Schedule J shows Ms. Nevels has three dependents, and monthly expenses of \$11,281.00, leaving \$4,141.72 of monthly net income.³⁸ Ms. Nevels’ attorney is anticipated to receive a “no look” fee in the amount of \$4,750.00 through Ms. Nevels’ chapter 13 plan.³⁹ Ms. Nevels is an “above-median” debtor (with a stated monthly disposable income of \$690.03) and has proposed a 60-month chapter 13 plan with plan payments of \$880.00 monthly.⁴⁰ Ms. Nevels’ schedules list a variety of creditors, including Ms. Chesney’s claim for

³⁶ *Stern v. Marshall*, 564 U.S. 462, 486, 502 (2011) (discussing bankruptcy courts’ jurisdiction regarding state court issues that were not “core” issues in the bankruptcy case).

³⁷ ECF No. 13, at Schedules I and J.

³⁸ ECF No. 13, at Schedules I and J.

³⁹ ECF No. 77, Amended Chapter 13 Plan.

⁴⁰ ECF Nos. 76 and 77, Amended Means Test Form and Amended Chapter 13 Plan.

attorney's fees. Ms. Nevels' schedules show one creditor holding a secured claim in the amount of \$32,000.00, the Internal Revenue Service holding a priority claim in the amount of \$98,000.00, and nonpriority (general) unsecured claim in the amount of \$350,822.37.⁴¹ Ms. Nevels' reason for this chapter 13 case include debts owed to several other creditors, other than Ms. Chesney. Ms. Chesney's claim (for attorney's fees) is only a fraction of the overall amounts owed to all unsecured creditors. Ms. Chesney's unsecured claim will be paid through the plan along with the other unsecured creditors. Ms. Nevels has no prior bankruptcy filings. At this time, there are pending objections to Ms. Nevels' proposed chapter 13 plan, including an objection that Ms. Chesney filed, allowing the chapter 13 trustee and Ms. Chesney to closely examine Ms. Nevels' chapter 13 plan and ensure that her payments satisfy the disposable income test and liquidation analysis (if applicable). Ms. Nevels' chapter 13 case will be administered as other chapter 13 cases—there is no unique burden to the chapter 13 trustee. Following the statutorily-mandated policy to construe the bankruptcy provisions in favor of the debtor, Ms. Nevels' schedules, statements, and proposed chapter 13 plan show she is filing this chapter 13 case in good faith. Dismissal of this chapter 13 case would not be in the best interest of all creditors. Ms. Nevels' pre-petition and post-petition actions do not warrant dismissal, and the Motion to Dismiss should be denied pursuant to subsection 1307(c) of the Code.

⁴¹ ECF No. 12, at Schedules D and E/F.

III. CONCLUSION

For the reasons stated above, the Court finds and concludes that Ms. Chesney did not establish sufficient “cause” to dismiss Ms. Nevels’ chapter 13 case under 11 U.S.C. § 1307(c).

Accordingly, it is **ORDERED**:

Ms. Chesney’s *Motion to Dismiss Chapter 13 Case* is **DENIED**.