Dated: October 28, 2026
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSSEE
WESTERN DIVISION

In re
DWAN AKOI RILEY,
Debtor.

Case No. 26-24648-L
Chapter 13

MEMORANDUM OPINION AND ORDER DENYING MOTION TO CONVERT FROM CHAPTER 13 TO CHAPTER 11

THE MOTION OF THE DEBTOR, Dwan Akoi Riley, *To Convert Case from Chapter 13 to Chapter 11* filed September 23, 2026 (the "Motion to Convert") [ECF No. 44] came on for hearing on October 15, 2026. The motion was opposed by Paul A. Randolph, Acting United States Trustee for Region 8 ("United States Trustee") [ECF No. 65] and Creditor WBL SPO II, LLC ("WBL") [ECF No. 66]. The Court heard testimony from the Debtor.

The Motion to Convert asks that the Debtor be permitted to convert her case from Chapter 13 to Chapter 11 pursuant to 11 U.S.C. § 1307(a), but that section does not permit conversion to Chapter 11. Instead, the Debtor should rely upon section 1307(d), which permits conversion to

Chapter 11 at any time before confirmation of a plan under section 1325. The Debtor asserts that her case should be converted to Chapter 11 because she is ineligible to be a debtor under chapter 13. The Court notes that the present case was commenced on August 25, 2026, the same day that Bankruptcy Judge Denise E. Barnett issued her *Memorandum Opinion and Order Denying Debtor's Motion for Reconsideration of Order Dismissing Case*, in case number 25-23245-B. This is in fact the Debtor's sixth bankruptcy case. She asks the Court to give her one more chance.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over a contested matter arising in a bankruptcy case lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The Debtor's motion arises in a bankruptcy case and is brought pursuant to section 1307(d) of the Bankruptcy Code. Matters concerning the administration of the estate are core proceedings. *See* 11 U.S.C § 541(a) and 28 U.S.C. § 157(b)(2)(A). The bankruptcy court has authority to enter a final order determining whether to permit a Chapter 13 debtor to convert to a case under Chapter 11 subject only to appellate review. *See* 28 U.S.C. § 157(b)(1). Venue of this contested matter is proper to the Western District of Tennessee because it arises in a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

BACKGROUND FACTS

1. The Debtor commenced her current Chapter 13 case on August 25, 2026. The Debtor was represented by Jimmy McElroy, a prominent and highly experienced consumer debtors'

attorney. The filing was "bare bones," consisting of the petition, statement of Social Security Number, and Application to Pay Filing Fee in Installments, and Certificate of Credit Counseling [ECF Nos. 1-4].

2. The petition was filed to prevent a foreclosure by WBL, which was scheduled for August 26, 2026. WBL has a claim against the Debtor in the amount of $5,315,339.67, secured by real property. This was the seventh attempt by WBL to foreclose its security interest in the Debtor's property. *See* Proof of Claim No. 15; and "Order Granting All Pending Motions and Dismissal of Action," *Riley v. WBL SPE II, LLC*, Case No. CH-21-0298-3 (Chancery Court of the State of Tennessee, Thirtieth Judicial District, Shelby County, at Memphis, Oct. 24, 2023) [Tr. Ex. 1, Oct. 1, 2026].
3. The Debtor filed her Bankruptcy Schedules and Statement of Financial Affairs, Matrix, Declaration Concerning Attorneys' Fees, Plan, and Means Test on September 2, 2026 [ECF Nos. 15-17].
4. On September 2, the Debtor also filed her *Verified Motion to Extend Automatic Stay Under 11 U.S.C. § 362(c)(3) as to All Creditors* [ECF No. 18]. In the verified motion, the Debtor claims that her previously dismissed Chapter 11 case was dismissed due to her attorney's failure to provide information to her, presumably concerning her failure to file monthly operating reports, failure to provide financial documentation, and failure to pay quarterly fees. The Debtor states under penalty of perjury that her average monthly income is $27,000, her average monthly expenses are $4,260, leaving monthly net income of $22,640 to fund her Chapter 13 plan. She proposed a monthly plan payment of $7,438. She stated under penalty of perjury that her prior case was not dismissed as the result of failure to provide adequate protection as ordered by the Court.

5. Strategic Funding Source, Inc. d/b/a Kapitus ("Kapitus") filed an objection to the *Motion to Extend* on September 10 [ECF No. 25], and WBL filed its *Motion to Terminate Automatic Stay, for Abandonment and for an Order Under 11 U.S.C. § 362(b)(20) and (d)(4)* on September 11 [ECF No. 28].

6. Before any of these matters could be heard, on September 14, Mr. McElroy filed an *Expedited Motion to Withdraw as Counsel* [ECF No. 30]. In support of his motion, Mr. McElroy states:

> [T]he Debtor exceeds the applicable debt limit and, therefore, is ineligible for relief under Chapter 13 of the Bankruptcy Code. The Debtor has been advised by counsel that she must convert this Chapter 13 case to a case under Chapter 11. As of the date of this Motion, however, the Debtor has been unwilling or unable to complete the conversion.

7. Also on September 14, Kapitus filed its *Expedited Motion to Prohibit Use of Cash Collateral and Receivables* [ECF No. 32].

8. The Court conducted a hearing on September 17 to consider the *Motion to Extend the Automatic Stay*. At that hearing, the Debtor's prior history of bankruptcy filings was laid before the Court.[1] The Debtor has filed the following cases in this district:

Case Number	Chapter	Date Filed	Date Dismissed	Reason
18-20661-E	13	Jan 25, 2018	May 18, 2018	failure to abide by court orders
18-25334-K	13	Jun 27, 2018	Nov 1, 2018	sufficient grounds
19-26507-K	13	Aug 16, 2019	Jan 1, 2020	sufficient grounds
24-21515-L	originally 13 but converted to 11, Subchapter V	Apr 1, 2024	March 27, 2025	agreed order after objection to confirmation by UST
25-23245-B	11	July 2, 2025	Jan 16, 2026	for cause on motion of UST

[1] The bankruptcy court may take judicial notice of its own records including docket entries, orders, and filings in a debtor's previous cases. See, Barry Russell, *Bankruptcy Evidence Manual*, §201:5 (2023-24 ed.).

9. In the first two cases, the Debtor was represented by Mr. McElroy. In the third case, the Debtor was represented by Mr. Jerome Payne. In none of them was a Chapter plan confirmed.

10. The fourth case was filed originally as a Chapter 13 case but converted to Chapter 11. The Debtor was represented by Keith Edmiston. The Debtor filed five monthly operating reports after the conversion of the case to Chapter 11.

11. The fifth case was filed as a legacy Chapter 11 case. The Debtor was represented by Mr. Edmiston. The Debtor filed five monthly operating reports.

12. The Debtor, through Mr. Edmiston, filed a *Motion for Reconsideration of Order Dismissing Case* on January 27, 2026 [ECF No. 103]. The *Motion for Reconsideration* alleges that the reason for the dismissal was the failure of the Debtor to make adequate protection payments to WBL and another secured creditor [ECF No. 103, ¶ 5]. The Debtor alleged that the dismissal was improper because failure to make adequate protection payments was not one of the grounds for dismissal alleged by the United States Trustee.

13. The *Motion for Reconsideration* was opposed by WBL and the United States Trustee.

14. After conducting a hearing on February 10, 2026, Judge Barnett issued a twenty-seven-page *Memorandum Opinion and Order Denying Debtor's Motion for Reconsideration of Order Dismissing Case* [ECF 123]. Judge Barnett acknowledged that the case was dismissed for failure to make adequate protection payments to WBL and Kapitus rather than for any of the grounds cited by the United States Trustee in his motion to dismiss (failure to timely file monthly operating reports; failure to provide the United States Trustee with certain requested documents; and failure to open a debtor-in-possession account). Judge Barnett denied the *Motion for Reconsideration* finding that the Debtor was not surprised by the dismissal based on a prior *Continuance Order* that notified the Debtor that the case would be dismissed if she

failed to pay outstanding fees owed to the United States Trustee and/or failed to provide proof of the establishment of her DIP account (which was not established on the day of the hearing on the *Motion for Reconsideration*) [ECF No. 123, p. 14]. Judge Barnett also refused to reconsider the order dismissing the Chapter 11 case because she found in her oral ruling that "cause" existed to dismiss or convert the case, and that dismissal was in the best interest of creditors and the estate. At the hearing, Judge Barnett found that the case should have been further along than what was presented to the court (she had not filed a disclosure statement or plan), and that the Debtor failed to provide agreed-upon adequate protection payments which provided further cause for dismissal [ECF No. 123, pp. 15-16, 21-22, 24-25].

15. Judge Barnett's opinion contains a thorough review of the facts concerning each of the Debtor's prior cases and activities, which is incorporated herein by reference [ECF No. 123, pp. 2-9].

16. The Court has described the dismissal and failure to obtain reconsideration in some detail to show that the reasons the Debtor gave for extension of the automatic stay in this case (her attorney's failure to provide information to her concerning her failure to file monthly operating reports, failure to provide financial documentation, and failure to pay quarterly fees) simply are not supported by the record in the prior cases. She has been a debtor in two prior chapter 11 cases and has filed monthly operating reports. She is aware of the requirement to file such monthly operating reports, provide documents, and establish a DIP account.

17. The Court conducted a hearing on the *Motion to Extend Automatic Stay* on September 17, 2026. After considering statements of counsel and the record as a whole, including the *Memorandum Opinion and Order* of Judge Barnett, the Court found that the Debtor failed to rebut by clear and convincing evidence the presumption that the present case was filed not in good faith. The Debtor failed to show a substantial change in her financial or personal

circumstances, and she failed to explain her failure to pay the adequate protection payments she agreed to pay to WBL and Kapitus in her prior case. *See Order Denying Verified Motion to Extent Automatic Stay Under 11 U.S.C. § 362(c)(3) as to All Creditors* entered September 28, 2026 [ECF No. 58].

18. No objection was raised to the *Motion to Withdraw* filed by Mr. McElroy, so it was granted [ECF No. 57].

19. The Debtor filed a *Motion to Substitute Attorney* and the instant *Motion to Convert Case from Chapter 13 to Chapter 11* on September 23, 2026 [ECF Nos. 43 and 44]. The Debtor asked that she be represented by attorneys Ursula Woods and Vanecia Belser Kimbrow. These matters, together with Kapitus's *Motion to Prohibit Use of Cash Collateral* and WBL's *Motion to Terminate Stay* were set for hearing on October 15, 2026.

20. In the meantime, the Chapter 13 case continued. A motion to terminate stay was filed by Midway Leasing [ECF No. 42], objections to the Debtor's proposed plan were filed by AmeriCredit Financial Services, Inc. and Mercedes-Benz Financial Services USA, LLC [ECF Nos. 45 and 46], and a motion to dismiss for failure to file required documents was filed by the Chapter 13 Trustee [ECF No. 64].

21. At the hearing on October 15, the Court heard extensive testimony from the Debtor about various health problems she has suffered since the birth of her son who is now six years old. The Debtor testified that her son is autistic and needs special care. The Debtor also testified about her businesses.

22. The Court found much of the Debtor's testimony puzzling. The Debtor's principal source of income is a daycare center known as Rainbow Kidz. The Debtor testified that the daycare center was established by her mother 35 years ago, and that she and her sister now run the

center, but the Debtor was unable to recall how many families the facility serves, how many children are enrolled, or how many staff members she employs. She testified that she had reduced her salary from $12,000 every two weeks to $6,000 every two weeks, but that her sister is paid only $1,000 every two weeks.

23. The Debtor blamed the failure of her prior case on an alleged illness or suspension of her attorney, Mr. Edmiston, but it is clear that Mr. Edmiston represented her from the filing of the Chapter 11 petition through at least the argument of the *Motion for Reconsideration*. Judge Barnett's opinion raises no concern about the representation provided by Mr. Edmiston. Instead, Judge Barnett notes that the Debtor claimed monthly gross income of $80,000, while failing to make the agreed upon adequate protection payments.

24. The Debtor's most recent tax return from 2024 shows gross income from the childcare business of $841,091 and net income 92,666 (gross monthly income of $70,091 and net monthly income of $7,722) from operation of the business. Tr. Ex. 2, Oct. 15, 2026. The business expenses claimed by the Debtor include no amount for mortgage or interest. Income from this business is the only income reported by the Debtor, meaning that she had only $7,722 per month on average available to pay her living expenses and any debt service. These are the most recent documented income figures for the Debtor. She testified that she had not filed her 2025 tax return at the time of the October 15 hearing.

25. Despite the information provided in her 2024 tax return, in her 2025 case, the Debtor claimed $29,000 as her monthly gross (and net!) income, and expenses of $11,875, leaving $17,125 to fund her plan. *See* Schedules I and J, Case No. 25-23245, ECF No. 25.

26. In the pending case, the Debtor claims monthly income of $27,000 and expenses of $4,260, leaving $22,740 per month to fund a plan. *See* Schedules I and J, Case No. 26-24648, ECF

No. 15. The Court notes that these statements are inconsistent with the Debtor's testimony about the reduction of her draw from the childcare business.

27. The Debtor presented no books of account or bank statements at the October 15 hearing to substantiate any of her statements concerning her income and expenses.

28. Following the October 15 hearing, the Debtor attempted to file a proposed Chapter 11 plan of reorganization [ECF No. 81]. A quick review of the proposed plan shows that the Debtor intends to pay her various creditors $447,541.72 on the effective date of the plan. No information is given concerning the source of this payment. Despite valuing her real property at $801,300, the Debtor proposes to reduce the secured claim of WBL to $500,000 and proposes to repay this claim in five annual installments of $127,482.24 beginning on the effective date of the plan. This amount far exceeds the income the Debtor received from the business according to her 2024 tax return. The proposed plan contains no other source of funding for the proposed plan other than "revenue from business operations" [ECF No. 81, § 7.01].

29. Although the filing of the plan was premature because the case has not yet been converted to Chapter 11, the Court understands that the Debtor's intent was to show the Court that a plan of reorganization is possible. Unfortunately, the Court has little trouble in finding that the proposed plan has no reasonable likelihood of being confirmed because it is not feasible. The Debtor has failed to show that she has adequate income to make the payments proposed in her plan. *See* 11 U.S.C. § 1129(11) ("The court shall confirm a plan only if …[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor ….").

DISCUSSION

Although the Debtor cited section 1307(a) of the Bankruptcy Code in support of her Motion to Convert, that section does not permit conversion from Chapter 13 to Chapter 11. Instead, authority to convert a Chapter 13 case to Chapter 11 is provided at section 1307(d), which provides:

> [A]t any time before confirmation of a plan under section 1325 of this title, 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 under chapter 11.

As this section makes clear, conversion of a Chapter 13 case to Chapter 11 is not a matter of right but lies within the discretion of the bankruptcy court. 11 U.S.C. § 1307(d) ("the court *may* convert a case under this chapter to a case under chapter 11") (emphasis added); *In re McCune*, 635 B.R. 409, 418 (Bankr. D.N.M. 2021) ("A debtor does not have an absolute right to convert a chapter 13 case to one under chapter 11."); *In re Elwell*, 2020 WL 762214, at *2 (Bankr. D. Conn. Feb. 14, 2020) ("Conversion of a Chapter 13 case to Chapter 11 is at the discretion of the Court.").

Factors to be considered when a debtor files a motion to convert a Chapter 13 case to Chapter 11 are:

1. Whether the debtor filed the initial bankruptcy petition and sought the conversion in good faith;
2. Whether the debtor is able to effectuate a plan; and
3. Whether the debtor has caused prejudicial delay to creditors.

Elwell, at *2, citing *In re Ruffin*, 2009 WL 7231291, at *2 (Bankr. D. S.C. Nov. 12, 2009). Each of these factors militates against converting the Debtor's case to Chapter 11.

First, the Court has already ruled that the petition was not filed in good faith in connection with the Motion to Extend the Stay. It became even more clear that the petition was not filed in good faith in the most recent hearing. It should have been clear to the Debtor and her attorney that

she was not eligible to be a Chapter 13 debtor from a simple review of her prior schedules, which listed $717,747.83 in nonpriority unsecured debt. *See* Schedule E/F Part 2, Case No. 25-23245, ECF No. 25. The Court believes that Mr. McElroy would have routinely reviewed the prior filing before filing the Debtor's current petition. Even if he did not, the Debtor knew that she had converted a prior case from Chapter 13 to Chapter 11. The Debtor filed her petition not in good faith because there had been no substantial change in her financial or personal affairs, and because she was not eligible to be a debtor under Chapter 13. The Debtor does not seek to convert her petition in good faith for the same reason that the automatic stay was not extended – the Debtor has shown no change in her financial or personal affairs since the dismissal of her prior case. The only change that she can show is a change in attorneys. Moreover, the Debtor knew she was not eligible to be a debtor under Chapter 13 and knew that conversion would be necessary when she filed her petition. The motion to convert is not in good faith because it is part of a scheme to avoid the requirements of the Bankruptcy Code in order to prevent foreclosure by WBL.

Second, the Debtor does not have the ability to effectuate a plan. This case is simply a continuation of her prior attempts to reorganize. Her 2024 case, like the present one, was originally filed under Chapter 13 and converted to Chapter 11, Subchapter V. That case was voluntarily dismissed in the face of the United States Trustee's objection to confirmation of her proposed plan. In her 2025 case, the Debtor failed to make adequate protection payments, including to WBL, and failed to propose a plan capable of confirmation. In the present case, the Debtor has proposed a plan that has no reasonable likelihood of being confirmed. The Debtor has demonstrated an inability to reorganize under Chapter 11.

Third, the Debtor's efforts have been prejudicial to her creditors. The Debtor's pending petition was filed to prevent WBL from foreclosing its interest in her property. According to WBL,

foreclosure was scheduled for August 26, 2026, the day before the petition was filed. *See Motion to Terminate Automatic Stay, For Abandonment and For an Order Under 11 U.S.C. § 362(b)(20) and (d)(4)*, ECF No. 28. The proof of claim filed by WBL shows a note dated December 3, 2015, meaning that WBL has been a creditor in each of the Debtor's five prior bankruptcy cases. WBL claims that it has made seven attempts to foreclose its lien but has been thwarted by the Debtor's multiple filings in the state and bankruptcy courts. A final order was entered in the Debtor's action against WBL in the Chancery Court in 2023 dismissing the action and confirming the rights of WBL under its note and deed of trust. Tr. Ex. 1, Oct. 1, 2026. The amount of the debt owed to WBL seems no longer open to dispute and the Debtor has demonstrated an inability to repay it. WBL is only one of the Debtor's creditors. The claims register in this case shows allowed claims in the amount of $5,749,918.28. The Debtor's efforts have caused prejudicial delay to WBL and other creditors.

Each of the factors used to evaluate a motion to convert a Chapter 13 case to Chapter 11 work against the granting of the motion. The Debtor did not file her petition in good faith because she knew she was not eligible to be a debtor under Chapter 13 when she filed it. The Debtor did not file the motion to convert her case to Chapter 11 in good faith because she has been a debtor in two prior attempts at Chapter 11 and had her motion for reconsideration of the dismissal of her prior case denied on the very day that her present petition was filed. Her motion to convert is simply part of her scheme to continue her efforts to prevent WBL from foreclosing its lien. The Debtor cannot effectuate a plan because her debts exceed her ability to pay. The Debtor's actions have been prejudicial to her creditors, including WBL, which has attempted to foreclose it lien through all of the Debtor's prior five bankruptcy cases.

CONCLUSION

For the foregoing reasons, the Court finds that Motion to Convert was not proposed in good faith and is DENIED. Because the Debtor is not eligible for relief under Chapter 13, the Court, sua sponte, orders the Debtor to appear on **Thursday, November 12, 2026, at 10:00 a.m.**, Courtroom 645, 200 Jefferson Avenue, Memphis, Tennessee, to show cause why this case should not be dismissed with prejudice.

cc: Debtor
Attorneys for Debtor
Chapter 13 Trustee
United States Trustee
Creditor WBL SPO I, LLC
Attorney for Creditor WBL SPO I, LLC
Creditor Strategic Funding Source, Inc. d/b/a Kapitus
Attorney for Creditor Strategic Funding Source, Inc. d/b/a Kapitus
Matrix