

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions for Posting

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Bankruptcy Caption: In re Winifred E. Gaddy

Bankruptcy Number: 16 B 25958

Adversary Caption: NA

Adversary Number: NA

Date of Issuance: July 31, 2020

Judge: David D. Cleary

Appearance of Counsel:

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS**

Name of Assigned Judge	David D. Cleary	CASE NO.	16 B 25958
DATE	July 31, 2020		
CASE TITLE	<i>In re Winifred Gaddy</i>		
TITLE OF ORDER	Order Granting Motion for Hardship Discharge		

DOCKET ENTRY TEXT

The motion of Winifred Gaddy for a hardship discharge (EOD 42) is granted and the standing trustee's motion to dismiss for failure to make plan payments (EOD 39) is denied.

[For further details see text below.]

STATEMENT

This case came before the court upon the motions of Winifred Gaddy for a hardship discharge and the standing trustee to dismiss. Gaddy asks that the court discharge her debts pursuant to 11 U.S.C. § 1328(b),¹ and the trustee seeks dismissal of this case because Gaddy has fallen behind on her plan payments. The trustee also objects to the entry of a hardship discharge. Having read the memoranda of law and heard the parties' arguments, the court will grant Gaddy's motion and deny the trustee's motion.

BACKGROUND

Gaddy commenced this chapter 13 case on August 12, 2016. After a secured creditor objected to confirmation of her first proposed plan, Gaddy proposed a 60-month plan that provided for a seven percent dividend to general unsecured creditors. Gaddy also consented to the entry of a wage deduction order to fund the plan. Consistent with this district's procedures, the clerk's office entered an amended payroll order requiring the United States Postal Service to deduct \$270 from Gaddy's monthly earnings. The court confirmed her amended plan on October 5, 2016.

The confirmation order required Gaddy to file federal tax returns during the pendency of this case and submit copies of the same to the trustee. It further directed Gaddy to turn over promptly any tax refunds that she might receive to the trustee, which would then be treated as additional payments into the plan. After Gaddy failed to submit a copy of her next-due return, the trustee moved for dismissal on August 7, 2017. The trustee argued that Gaddy had materially defaulted on her obligations under the plan.

¹ Unless otherwise noted (or apparent from context), all short-form statutory citations are to the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and rule references are to the Federal Rules of Bankruptcy Procedure.

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A week later, Gaddy moved to modify her plan. She disclosed receiving a \$2,440.41 refund (net of an offset by the Internal Revenue Service) and requested that the court waive this default. Her motion further requested that the tax-related requirements set forth in the confirmation order be stricken, plan payments be increased to \$500 per month, and the dividend to unsecured creditors be increased from seven to one hundred percent. The trustee withdrew her motion in open court and reported that she had no objection to Gaddy's motion when the parties presented their motions on September 11, 2017. Gaddy's unopposed motion was then granted, and the clerk entered an amended wage deduction order consistent with the increase in monthly plan payments.

Over two years later, on January 24, 2020, the trustee again moved for dismissal under § 1307(c)(6). The basis for the trustee's second motion was Gaddy's failure to make plan payments. Neither party has asserted that the default has been cured or reduced to an immaterial level.

Instead, Gaddy moves for the entry of a hardship discharge pursuant to § 1328(b). She argues that her post-petition disability stemming from a brain tumor and consequent loss of income merit this relief. In addition to presenting arguments in open court through counsel, she supported her motion with a personal affidavit testifying to her circumstances, a letter from her treating physician, and memoranda of law. Gaddy asserts that she is unable to continue working for the Post Office because she has developed a brain tumor. (Gaddy Aff. ¶¶ 2, 3.) As a result, she is receiving a course of treatment that includes "regular physical therapy, eye appointments, and radiation treatment." (*Id.* ¶ 2.) Consequently, she cannot continue making her plan payments, and she is surviving on nothing more than a few hundred dollars in food stamps each month together with voluntary aid from family members. (*See id.* ¶¶ 4–5.) Gaddy's treating physician, Dr. Stefania Maraka, has provided a brief letter describing her patient's condition. (*See* Maraka Letter at 1.) Dr. Maraka believes that Gaddy's tumor has created "significant neurological defects" which have "incapacitated" her such that she is unable to work. (*Id.*) In fact, Gaddy alleges that she has become legally blind. (*See* Gaddy Mot. ¶ 4.)

After hearing the parties' arguments on the motion to dismiss and the fully briefed motion for hardship discharge, the court took these matters under advisement. In considering the motions, the court takes judicial notice of the contents of the docket in this case.

ANALYSIS

The Bankruptcy Code generally requires that a chapter 13 debtor complete all plan payments before receiving a discharge. *See* 11 U.S.C. § 1328(a). Pursuant to § 1328(b), however, the court may grant a limited discharge to a debtor who is unable to complete the required payments under his confirmed plan. This relief is available only if three requirements are met:

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

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(3) modification of the plan under section 1329 of this title is not practicable.

11 U.S.C. § 1328(b).

Gaddy bears the burden on each element of § 1328(b). *See In re White*, 126 B.R. 542, 545 (Bankr. N.D. Ill. 1991) (Squires, J.). The parties do not dispute Gaddy's satisfaction of the first element.

A. THE VALUE OF DIVIDENDS EXCEED THE ESTATE'S LIQUIDATION VALUE AT CONFIRMATION.

To grant Gaddy's motion, the court must find that the "value" of property distributed to general unsecured creditors holding allowed claims at least matches the dividend that would have been distributed from the liquidated estate. *See* 11 U.S.C. § 1328(b)(2). The value of distributions under the plan (as adjusted for the time value of money) and the worth of the estate in a hypothetical liquidation are both measured "as of the effective date of the plan." *See id.* This subsection exists to prevent chapter 13 debtors from seeking hardship discharges as a means of "avoid[ing] the minimum entitlement that creditors would have in a liquidation." *See* KEITH N. LUNDIN, LUNDIN ON CHAPTER 13 § 160.4 ¶ 2.

A proposed chapter 13 plan becomes effective when it is confirmed and becomes binding. *Hamilton v. Lanning*, 560 U.S. 505, 518 (2010) (interpreting § 1325(b)(1) and 1327(a)). The effective date of Gaddy's plan is October 5, 2016. Its subsequent modification on September 11, 2017, did not move the effective date. *See In re Davis*, 439 B.R. 863, 866 (Bankr. N.D. Ill. 2010) (Wedoff, J.) ("Modifying a confirmed plan under § 1329 does not involve another 'confirmation'; rather, § 1329(b)(2) simply provides that unless the court 'disapproves' the modification, 'the plan as modified becomes the plan.'"). To determine the value of plan distributions under § 1328(b)(2), a court ordinarily must complete a discounted cashflow analysis. This requires that the dividends paid to unsecured creditors be valued by discounting this stream of payments to its present value as of confirmation. The *Till* rate provides an appropriate discount rate. *See Till v. SCS Credit Corp.*, 541 U.S. 465, 483 (2004).

The trustee asserts that, when calculating the liquidation value, Gaddy must include the value of hypothetical tax refunds that she may have received during the term of her modified plan. Emphasis on Gaddy's tax returns is not well taken because, among other things, the modification order removed the tax-related requirements from the plan. This makes immaterial the trustee's argument that "[Gaddy] has failed to establish either that she received no tax refunds or that the creditors have received equivalent value." (*See* Tr. Br. 4.) Gaddy is obliged to pay the estate's liquidation value at confirmation to be eligible for a hardship discharge, and no more.

Here, Gaddy filed her petition on August 12, 2016 and her plan was confirmed less than two months later. No party alleges that Gaddy's estate changed in the mere two months that her case was administered prior to confirmation. Therefore, the nonexempt portion of the estate on the petition date offers appropriate evidence by which to measure the dividend that would have been distributed to unsecured creditors had the estate been liquidated a short time later at confirmation. *See also* 8 COLLIER ON BANKRUPTCY ¶ 1325.05[2][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2020) ("The most logical and practical method for such valuation is to consider the value of the property that would have been liquidated in a chapter 7 case filed on

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the date the chapter 13 petition was filed, i.e., that property that became property of the estate under section 541, but not that property that came into the estate only pursuant to section 1306(a).”) (internal footnote omitted). The court has taken judicial notice of its docket. Gaddy’s sworn schedules submitted with her petition show that this bankruptcy would have been a no-asset case if she had filed under chapter 7. The court need not take judicial notice of the prevailing prime rate at confirmation, study and tabulate payment ledgers, or determine an appropriate discount rate. Because unsecured creditors would have received nothing in a liquidation, any payment to them suffices. *In re Cummins*, 266 B.R. 852, 856 (Bankr. N.D. Iowa 2001); *In re Nelson*, 135 B.R. 304, 308 (Bankr. N.D. Ill. 1991) (Sonderby, J.). Standing trustees have an obligation to “furnish such information concerning the estate and the estate’s administration as is requested by a party in interest.” *See* 11 U.S.C. §§ 704(a)(7), 1302(b)(1). Consistent with that duty, the trustee reported that she has distributed \$1,538.46 to general unsecured creditors, which is about a 12.86% dividend. (*See* Tr. Br. 2.) The second criterion is satisfied.

B. MODIFICATION OF GADDY’S PLAN IS NOT PRACTICABLE.

Hardship discharges are unavailable to debtors who can resolve their inability to complete the plan through a modification under § 1329. *See* 11 U.S.C. § 1328(b)(3). The trustee insists that Gaddy has failed to offer sufficient evidence to meet her burden, and that “[t]he motion and supporting affidavit fail to establish that the current income situation is expected to exist for the foreseeable future.” (*See* Tr. Br. 4.) Gaddy need only persuade the court that it would remain infeasible for her to carry out the terms of her plan following a hypothetical but permissible modification under § 1329, *see* LUNDIN § 156.2 ¶¶ 4–6, and she has done so.

This is not an instance where a debtor strategically waits until the end of the plan’s term in order to manufacture impracticality. *Cf. Nelson*, 135 B.R. at 308 (noting “the events allegedly creating the need for the hardship discharge occurred several years earlier.”). In fact, the opposite is true; Gaddy quickly petitioned the court for relief after falling drastically ill.

She is a permanently disabled former postal worker barely able to pay for the expenses of herself and her two children with her income and the temporary help of her former spouse. (*E.g.*, Gaddy Aff. ¶¶ 2, 4; Maraka Letter at 1.) Specifically, her ex-husband pays her rent as well as some household expenses (Aff. ¶ 4) uncovered by the \$509 that Gaddy receives each month from the Illinois Department of Human Services (Aff. ¶ 5). As of the order for relief, however, Gaddy was unmarried and receiving neither maintenance nor child support on account of her two young children. No party has alleged that the former spouse is obligated to continue making these payments. Therefore, the court is persuaded that Gaddy’s financial circumstances are accurately represented in these documents, that she cannot resume employment for the foreseeable future, and that modification is not feasible.

The trustee is concerned by, among other things, the possibility that Gaddy’s deteriorating health may qualify her for Social Security benefits. Debtor’s counsel argues that, even if the debtor were to receive benefits, her entitlement would barely cover living expenses. The court takes judicial notice of the statistics published in the semi-annual Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program by the Office of the Chief Actuary of the Social Security Administration at www.ssa.gov/OACT/FACTS/. This report shows that eligible

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workers were receiving an average of \$1,258 per month in Social Security disability payments at the end of 2019. Added to her state-level subsidies of \$509 per month, Gaddy's governmental benefits would total approximately \$1,767 per month. This is beneath the federal poverty line of \$1,810 per month for three-person households living in the lower forty-eight. *See Annual Update of the HHS Poverty Guidelines*, 85 Fed. Reg. 3060-01 (Jan. 17, 2020). Assuming *arguendo* that Gaddy will go on to receive such payments and that any prospective disability payments would be within the reach of creditors or the trustee, these modest stipends will provide Gaddy little more than a portion of her necessities. Because she will neither be able to make further plan payments nor cure her growing default on so lean an income, a plan modification is not practicable. The third criterion is met.

IT IS HEREBY ORDERED THAT:

- (1) Gaddy's motion for hardship discharge is **GRANTED**; and
- (2) The trustee's motion to dismiss is **DENIED**.

Date: July 31, 2020

DAVID D. CLEARY
United States Bankruptcy Judge