

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

Transmittal Sheet for Opinions for Posting

Will this Amended Order be Published? Yes

Bankruptcy Caption: *In re* Shelia Gore

Bankruptcy No.: 24 BK 03127

Adversary Caption: N/A

Adversary No.:

Date of Issuance: August 15, 2024

Judge: Jacqueline P. Cox

Appearance of Counsel: N/A

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

In re Shelia Gore,

Debtor.

Bankr. No. 24-03127

Chapter 13

Judge Jacqueline Cox

Amended Order on Application to Proceed Without Prepaying Fees or Costs (Dkt. 42)

On May 20, 2024, this court dismissed Debtor Shelia Gore's bankruptcy Case No. 24-03127 upon the motion of Chapter 13 Trustee Thomas Hooper for the Debtor's failure to appear at several sessions of the section 341 meeting of creditors and for failure to make plan payments.

The court's May 20, 2024 order discussed four other bankruptcy cases the Debtor filed since 2014: Case Nos. 14-45601, 15-14867, 22-15036 and 23-06266.

In Case No. 23-06266 the court granted the Debtor's application to pay the filing fee in installments. According to the court docket, the Debtor did not pay anything toward the filing fee. According to the Trustee's Final Report, no funds were paid on behalf of the Debtor toward plan payments or other obligations.

In Case No. 22-15036 the court granted the Debtor's application to pay the filing fee in installments. According to the court docket, the Debtor did not pay anything toward the filing fee. According to the Trustee's Final Report, no funds were paid on behalf of the Debtor toward plan payments or other obligations.

In Case No. 15-14867 the court granted the Debtor's application to pay the filing fee in

installments. According to the court docket, the Debtor did not pay anything toward the filing fee. According to the Trustee's Final Report no funds were paid on behalf of the Debtor toward plan payments or other obligations.

In Case No. 14-45601 the court granted the Debtor's application to pay the filing fee in installments. According to the court docket, the Debtor did not pay anything toward the filing fee. According to the Trustee's Final Report, no funds were paid on behalf of the Debtor toward plan payments or other obligations.

The Debtor filed a notice of appeal with respect to the May 20, 2024 order of dismissal in this case on June 4, 2024. She also filed an application to proceed without prepaying fees or costs. Docket 42.

On August 1, 2024, the District Court entered an order noting that any request to reinstate the automatic stay should be brought before the bankruptcy court, not the District Court. In addition, that court noted that the Debtor's application to proceed without paying filing fees remained before the bankruptcy court and, that the appeal would not proceed until the Debtor's fee status got resolved. *See* Docket 9, *Gore v. Hooper*, Case No. 1:24-cv-04643, (N.D. Ill. Aug. 1, 2024).

Analysis

Generally, fees can be waived in chapter 7 cases. 28 U.S.C. § 1930(f). This has been interpreted to mean that as a rule a chapter 13 debtor is not eligible to proceed in forma pauperis in connection with appeals from the district court to a U.S. Court of Appeals. The Seventh Circuit noted in *Bastani v. Wells Fargo Bank N.A.*, 960 F.3d 976, 978 (7th Cir. 2020) that chapter 13 debtors must have sufficient income to pay most debts and still have something left

over for living expenses to qualify for bankruptcy relief. That court said it was hard to see how someone eligible for relief under chapter 13 could be unable to pay filing fees and that such a person who tells the bankruptcy court that she qualifies under chapter 13 cannot persuade a court of appeals that she lacks money for judicial fees.

In *Banerjee v. State Dept. of Assessments & Taxation*, 2023 WL 5434636, at *2 (D. Md. Aug. 23, 2023), a District Judge adopted the Seventh Circuit’s *Bastani* rationale in ruling that “in the absence of extraordinary circumstances,” a chapter 13 debtor was not eligible to proceed in forma pauperis in connection with an attempted appeal to a district court. That court directed, pending further order, the Clerk of the Bankruptcy Court and the Clerk of the District Court not to process in any way the Debtor’s appeals pleadings or stay the case unless a bankruptcy judge ruled otherwise. *Id.* at * 6.

In *In re Carter*, 660 B.R. 383, 389 (Bankr. E.D. Mich. 2024), a bankruptcy judge ruled that it could dismiss a debtor’s case if she failed to pay unpaid filing fees from prior bankruptcy cases. That court also noted that the 28 U.S.C. § 1930(f)(1) waiver provision applies only to chapter 7 cases. *Id.* at 389-90; *see also In re Hayes*, 2024 WL 994245, at *3 (Bankr. W.D. Va. Mar. 7, 2024).

The *Carter* court also noted that the debtor’s chapter 13 plan should not have been confirmed because the debtor had not paid filing fees in prior cases, noting that one of the confirmation requirements is that “any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid.” *Carter*, 660 B.R. at 388. (citation omitted).

In addition to the grounds noted above, failure to attend the section 341 meeting and

failure to make plan payments, Debtor Gore's current bankruptcy case could have been dismissed because she owes the court for unpaid filing fees in the four prior cases where the filing fees were not paid.

Conclusion

The Application to Proceed Without Prepaying Fees or Costs is denied because the debtor has not paid filing fees in four prior chapter 13 cases.

The Application is also denied because chapter 13 debtors are not eligible for such relief under 28 U.S.C. § 1930(f)(1).

Should the District Court find that this matter is a non-core issue regarding which the bankruptcy court does not have authority to enter a final judgment, this court asks that the District Court consider this order as proposed findings of fact and conclusions of law under Local Bankruptcy Rule 9033-1 and 28 U.S.C. § 157(c)(1).

Judge:

J. Cox

Date: August 15, 2024