

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CHARLES McAULEY ADAMS)	
)	
Appellant,)	
)	
)	
v.)	No. 02-2097
)	
LINCOLN A.R. HODGES, et al,)	
)	
Appellees.)	

**ORDER AFFIRMING BANKRUPTCY COURT’S
ORDER DENYING THE DEBTOR’S MOTION TO ALTER
AMEND PRIOR ORDER DISMISSING CASE WITH PREJUDICE**

Charles M. Adams (“Debtor” or “Appellant”) appeals the bankruptcy court’s December 5, 2001 Order Denying the Debtor’s Motion to Alter or Amend Prior Order Dismissing the Case With Prejudice. Appellant filed a voluntary chapter 13 petition for bankruptcy on July 27, 2001. Secured creditors of Appellant, Bettye Sue Morrison and Lincoln A.R. Hodges, filed objections to confirmation of the debtor’s plan. The bankruptcy court entered an Order Sustaining Objections to Confirmation on November 1, 2001, dismissing the case with prejudice. Subsequently, Appellant filed a Motion to Alter or Amend the November 7, 2001 Order Dismissing Case With Prejudice on December 5, 2001. The bankruptcy court denied Appellant’s Motion on the grounds that 1) Appellant filed the petition in bad faith; 2) under the Rooker-Feldman doctrine the bankruptcy court lacked subject matter jurisdiction because the core issues in this case already had been or currently were being decided in Tennessee state court; and 3) Appellant’s debts exceeded the statutory limits

for eligibility as a chapter 13 debtor. See 11 U.S.C. § 109(e). The issue on appeal is whether the bankruptcy court erred in making these findings. This Court has jurisdiction pursuant to 28 U.S.C. § 158(a) (“The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees ... of bankruptcy judges ...”). For the following reasons, the Court **AFFIRMS** the Order Denying the Motion to Amend.

I. Standard of Review

““On an appeal[,] the district court ... may affirm, modify, or reverse a bankruptcy judge’s judgment, order, or decree or remand with instructions for further proceedings.”” Hardin v. Caldwell, 851 F.2d 852, 857 (6th Cir. 1988) (internal citations omitted). When assessing what should be done to the judgment, decree or order, the district court reviews factual findings of the bankruptcy court for clear error, and legal conclusions de novo. 255 Park Plaza Assoc. Ltd. P’ship v. Conn. Gen. Life Ins. Co., 100 F.3d 1214, 1216 (6th Cir. 1996). De novo review requires a court to review the legal conclusions without regard to the bankruptcy court’s determinations. First Union Mortgage Corp. v. Eubanks, 219 B.R. 468, 469 (B.A.P. 6th Cir. 1998). However, factual ““findings of a bankruptcy court should not be disturbed by the district court judge unless there is “most cogent evidence of mistake or miscarriage of justice.””” Hardin, 851 F.2d at 857 (internal citations omitted). Furthermore, “the district court ‘may not make its own independent factual findings. If the bankruptcy court’s factual findings are silent or ambiguous as to an outcome determinative factual question, the district court ... must remand the case ... for necessary factual determinations.’” Id. (internal citations omitted).

II. Analysis

At the heart of the bankruptcy court's dismissal of Appellant's chapter 13 petition is the bankruptcy court's finding that Appellant filed his bankruptcy petition in bad faith. It is well-settled in the Sixth Circuit that "[c]hapter 13 eligibility should normally be determined by the debtor's schedules checking only to see if the schedules were made in good faith." Comprehensive Accounting Corp. v. Pearson, 773 F.2d 751, 757 (6th Cir. 1985). Evaluating the good faith bases for filing a chapter 13 petition is "a fact-specific and flexible determination." In re Nan Beth Alt, 303 F.3d 413, 419 (6th Cir. 2002). Where a bankruptcy court finds that a chapter 13 petition was filed in bad faith, the court has the authority to dismiss the petition. Id. at 419; In Re Ruben Badalyan, 236 B.R. 633, (B.A.P. 6th Cir. 1999) ("Failure to file chapter 13 petition in good faith is ... cause for dismissal under [11 U.S.C.] § 1307."). After reviewing the record below and for the reasons set forth herein, the Court holds that the bankruptcy court's finding that the petition was not filed in good faith must be affirmed.

The bankruptcy court found that "the core of the Debtor's reason for filing bankruptcy is his ongoing disputes with his former spouse, her attorney and First Tennessee Bank over child support-related debts, property ownership and disposition of trust property. ... Those disputes ... are pending in state-court actions." Order Den. the Debtor's Mot. to Alter or Amend Prior Order Dismissing Case With Prejudice (hereinafter "Order Den. Debtor's Mot."), Dec. 5, 2001, at p. 1. This finding "persuaded [the bankruptcy court] that [the] bankruptcy filing [was] not[hing] more than forum shopping, since the Debtor has been unsuccessful in at least one round of the disputes that went to the Tennessee Supreme Court." Tr., at p. 14. Consequently, the bankruptcy court found that Appellant filed his petition in bad faith.

Appellant's brief extensively discusses First Tennessee Bank's alleged mishandling of trust property to which Appellant asserts current and/or future ownership rights. See Br. of Debtor-Appellant Charles McAuley Adams in Supp. of Appeal of Right to U.S. District Court From Bankruptcy Court (hereinafter "Appellate Br."), at pp. 2-3, 7-8, 10-11. Furthermore, Appellant stated at the December 5 hearing on the Motion to Alter or Amend that "how [the bankruptcy case] got started" related to arrearages in child support payments of approximately \$15,000, which First Tennessee refused to pay out of the trust. Tr. of Hrg. on Debtor's Mot. to Alter or Amend Prior Order Dismissing Case With Prejudice (hereinafter "Tr."), at pp. 4-5. Instead of paying the child support out of the trust in which Appellant claims an interest, First Tennessee filed an interpleader in an action filed by Appellant regarding disposition of trust property in order to determine to whom the money should be paid. Tr., at p. 5. Although Appellant admitted that this issue of payment is currently pending before a state court, Tr., at p. 6, Appellant asserted his "belie[f] [that] the [bankruptcy] court has jurisdiction over the matter of the child support arrearage[,] and . . . respectfully ask[ed] the court to allow [him] to pay the child support arrearage through the court." Tr., at p. 11.

In light of the above, the Court finds that the bankruptcy court's finding that Appellant's chapter 13 petition was filed in bad faith is substantially supported by the record. Accordingly, the bankruptcy court's dismissal of the petition on this basis was not clearly in error. See In re Nan Beth Alt, 303 F.3d at 418 ("The key inquiry in [bad faith filing] cases is whether the debtor is seeking to abuse the bankruptcy process.").

The bankruptcy court further found that the petition was filed in bad faith because the Debtor exceeded the monetary limits for chapter 13 relief. See Order Den. Debtor's Mot., at p. 3. On

Schedule D of Appellant's petition, Appellant claims that he owes approximately 100 million dollars to secured creditors. Title 11, section 109(e) of the United States Code states that "[o]nly an individual with regular income that owes ... noncontingent, liquidated, secured debts of less than [\$871, 550] ... may be a debtor under chapter 13." 11 U.S.C. § 109(e), as amended April 1, 2001 by 11 U.S.C. § 104. Appellant argues that the 100 million dollar debt is irrelevant to his status as a chapter 13 debtor because the debt is contingent and therefore not regulated by 11 U.S.C. § 109(e). The Court finds that Appellant's argument is without merit.

Appellant argued at the December 5 hearing that the debt is contingent because of the possibility that the property on which the debt is owed was sold improperly by First Tennessee. Tr., at p. 8. Appellant adds that First Tennessee's actions with respect to the property are currently the subject of a lawsuit. Id. However, debt is not contingent solely because the property for which the debt was incurred is the subject of dispute. Cf. In re Charles V. Hutchens, 69 B.R. 806, 810-811 (Bank. E.D. Tenn. 1987) (holding that merely because the extent of debtor's tax liability is in dispute does not diminish the fact that the debt is noncontingent). Thus, Appellant's first contingency argument is without merit.

Appellant later contended that the 100 million dollars worth of debt is contingent because it is debt related to property in which he has only a contingent remainder interest. Appellate Br., at p. 7. However, Appellant asserts inconsistent positions as to his interest in the property. First, in a case filed by Appellant styled Adams v. First Tennessee Bank, et al, No. 01-1571 (Chancery Ct. of Shelby County, Tenn. filed July 26, 2001), at p. 7, Appellant specifically asserts that "he is the true and lawful owner of the real property" at issue in the lawsuit. Appellant now claims a mere contingent remainder interest although he previously claimed, and sued to quiet title in, fee simple

absolute. The Court finds these inconsistent positions indicative of bad faith, and rejects Appellant's argument that he has a mere contingent remainder interest in the property.

Second, Schedule D required that Appellant indicate whether he believed that the 100 million dollar debt was contingent. Appellant did not mark that box designating the debt contingent. Appellant did, however, specifically indicate on other schedules that he believed certain debts were contingent by placing an X under the column labeled "Contingent." Appellant's shifting classification of the debt from noncontingent on the schedules to contingent in his brief supports the bankruptcy court's finding that Appellant has no good faith argument that the 100 million dollar debt is contingent. The Court finds, therefore, that the bankruptcy court's holding that Appellant demonstrated bad faith by filing his petition knowing that his amount of debt exceeded the statutory limit for chapter 13 protection was not clearly erroneous.

The bankruptcy court's dismissal of Appellant's petition on bad faith grounds is further justified by the inconsistencies and inaccuracies in Appellant's Schedules. See In re Nan Beth Alt, 305 F. 3d at 419 (among the factors to be considered when making a good faith determination is the "sincerity with which the debtor has petitioned for relief"). Appellant's Schedule A is inconsistent with his Schedule D. On Schedule A, Appellant states that the property that is at the center of the controversy in Adams v. First Tennessee Bank, et al, No. 01-1571 (Chancery Ct. of Shelby County, Tenn. filed July 26, 2001) is valued at ten millions dollars; but on Schedule D Appellant values the same property at 100 million dollars. Appellant offers no explanation as to how this 90 million dollar inconsistency can be reconciled.

Furthermore, Appellant's schedules are incorrect in two different places. On Schedule C, Appellant claims that "[a]ll assets and proceeds from any and all claims and lawsuit [sic], filed and

unfiled, in excess of debts (including actual and punitive damages [sic]” is property exempt from bankruptcy calculations, pursuant to 11 U.S.C. § 522(b)(1). The exemptions which may be claimed under 11 U.S.C. § 522(b)(1) are specifically enumerated at 11 U.S.C. §§ 522(d) and 542(d). Even if the 100 million dollars that is the subject of pending litigation qualified for every applicable category of exemption provided in §§ 522(d) and 542(d), the maximum amount of money Appellant could exempt would be \$59,200. Thus, assuming arguendo that Appellant could exempt \$59,200 of the 100 million dollar debt from his bankruptcy calculations, Appellant improperly exempted \$999,408,000 of the 100 million dollars on his Schedule C.

In addition, Appellant’s schedules improperly classify the alimony and child support owed to his ex-wife. Schedule D enumerates which creditor claims are to be treated as priority claims. Priority claims include “[c]laims of a ... former spouse, or child of the debtor for ... alimony, maintenance, or support.” See 11 U.S.C. § 507(a)(7). The Shelby County Chancery Court entered a divorce decree, which was affirmed by the Tennessee Court of Appeals, requiring Appellant to pay \$150,000 in alimony and \$50,000 in child support to his ex-wife. Schedule D requires a chapter 13 petitioner to check the box next to this category to demonstrate that this type of priority debt is owed. Appellant did not check the appropriate box. Appellant stated on Schedule D that he had no unsecured, priority claims, and listed alimony and child support as unsecured, nonpriority claims on Schedule E.

Finally, Appellant’s petition is incomplete. Chapter 13 petitioners are required to file a plan indicating how they will repay their debts. Thus, on Schedule J, chapter 13 petitioners must state how much they can afford to pay on their debts periodically, and at what intervals they will make the payments. Although Appellant states how much he is capable of paying under the plan, he does

not mention how often he will pay the sum. This is not a trivial omission. See In re Nan Beth Alt, 305 F.3d at 419 (one of the factors to be taken into good faith considerations is “the expected duration of the chapter 13 plan”). This information is critical to a bankruptcy court’s ability to evaluate the feasibility of the plan by which a petitioner will repay its debts. Further, once a bankruptcy court confirms a plan, there must be a mechanism by which the court may hold the debtor responsible for compliance with the plan. If there is no regular payment schedule by which a debtor must abide, then there is little or no means to hold the debtor accountable for debt repayment.

Thus, the Court will affirm the bankruptcy court’s conclusion that Appellant’s petition was not filed in good faith because 1) Appellant repeatedly expressed his intention to litigate in bankruptcy court issues currently pending before Tennessee State Court; 2) Appellant had noncontingent, liquidated, secured debts in excess of the chapter 13 statutory limit; and 3) Appellant’s schedules contained numerous errors.

Appellant contends that regardless of whether the petition was filed in good faith, chapter 13 eligibility may be found where negotiations between the petitioner and his creditors are impractical pursuant to 11 U.S.C. § 109(c). The Court finds this argument facially deficient. The first sentence of § 109(c) reads: “An entity may be a debtor under chapter 9 of this title if” 11 U.S.C. § 109(c) (emphasis added). Thus, § 109(c) has no application to Appellant, a chapter 13 petitioner. As none of the other issues Appellant raises on appeal save the petition from dismissal on bad faith grounds, the Court finds that the petition was properly dismissed with prejudice.

III. Conclusion

For the foregoing reasons, the bankruptcy court's Order Denying the Motion to Amend is
AFFIRMED.

IT IS SO ORDERED this _____ day of _____, 2003

BERNICE BOUIE DONALD
UNITED STATE DISTRICT JUDGE