

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:) CHAPTER 13
) CASE NO. 05-50788-JDW
RONALD WALLER and)
JOANN WALLER,)
)
)
DEBTORS.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtors: Ronald and Joann Waller, pro se
1015 Calhoun Street
Macon, Georgia 31201

MEMORANDUM OPINION

This matter comes before the Court on Debtors' motion to vacate the order denying their application to pay filing fees in installments. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(O). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

On August 5, 2002, Debtors Ronald and Joann Waller filed a previous Chapter 13 petition, case number 02-53304. At the time of filing, they paid \$35 toward the \$194 filing fee and submitted an application to pay the filing fee in installments, which was granted. On September 3, 2002, Debtors filed a motion to voluntarily dismiss the case. The motion was granted and the case was dismissed. Debtors never made any additional payments toward the balance due on their filing fees.

Debtors filed their current Chapter 13 petition on February 28, 2005, and paid \$50 dollars toward the \$194 filing fee. At that time, Debtors also filed an application to pay the filing fee in installments. On March 1, 2005, the Court entered an order denying the application and ordering Debtors to pay the balance due within 10 days of the order. Debtors paid the outstanding balance of \$144 on March 11, 2005. Also on March 11, Debtors filed a motion to vacate the order denying their application to pay filing fees in installments. For the following reasons, the Court will deny the motion to vacate.

Conclusions of Law

The fee schedule for filing bankruptcy cases is set forth in § 1930 of the Judicial Code and in the Judicial Conference Schedule of Fees. The Code provides that “the parties commencing a case under title 11 shall pay to . . . the clerk of the bankruptcy court . . . the following filing fees: (1) For a case commenced under chapter 7 or 13 of title 11, \$155.” 28 U.S.C.A. § 1930(a) (West Supp. 2004) (emphasis added). In addition, as authorized by § 1930(b),¹ “[i]n all cases filed under title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of \$39.” Bankr. Ct. Misc. Fee Sched. (8) (emphasis added). Payment of both fees is mandatory. 28 U.S.C.A. § 1930(a) (notwithstanding statute that allows waiver of filing fees in civil and criminal cases, debtor must pay bankruptcy filing fees). Thus, a total of \$194 is due to the clerk of court at the time a bankruptcy petition is filed.

Federal Rule of Bankruptcy Procedure 1006(b)(1) allows the clerk to accept a bankruptcy petition without full payment of fees if it is accompanied by an application to pay the fees in installments. When such an application has been made, the Court “may . . . grant leave to pay in installments.” Fed. R. Bankr. P. 1006(b)(2) (emphasis added). The language of the Rule indicates that granting or denying such an application is within the Court’s discretion.

It has been my policy to deny such applications made by debtors who have failed to pay filing fees in full in a previous case. The first time a debtor makes an application to pay

¹ “The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.” 28 U.S.C.A. § 1930(b) (West 1994).

filing fees in installments, the Court can fairly assume all installments will be paid. However, these Debtors have already demonstrated a failure to pay in full when given the opportunity to pay in installments. They made only a partial payment in their 2002 case. They argue that the Court has falsely characterized their filing fee payment history. According to Debtors, they were not obligated to pay the filing fees on the August 2002 case because they voluntarily dismissed the case prior to making full payment. This argument has no basis in law.

On the contrary, § 1930 and the fee schedule promulgated by the Judicial Conference indicate that the payment of \$194 is mandatory. The debtor “shall pay” the filing fee, and the clerk “shall collect” the miscellaneous fee. The full amount becomes due at the time the bankruptcy case is commenced. That the Bankruptcy Rules allow the fee to be paid in installments does not change the total amount owed. Likewise, voluntarily dismissing a case does not result in a reduction of the amount due. The filing fee is the price of admittance to the bankruptcy system. A debtor cannot avoid the fee by choosing to leave the system early. In Debtors’ previous case, they owed \$194 as of the date of filing and they paid only a fraction of that. The Court denied their current application to pay in installments to prevent the same result in this case. Debtors have failed to demonstrate any reason that denial was improper or erroneous. Therefore, the Court will deny the motion to vacate.

An Order in accordance with this Opinion will be entered on this date.

Dated this 29th day of March, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge

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ORDER

In accordance with the Memorandum Opinion entered on this date, the Court hereby DENIES Ronald and Joann Waller's motion to vacate the order denying their application to pay filing fees in installments.

So ORDERED, this 29th day of March, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge