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PARTIES: Jessie Leonard Johnson, Jr.
CHAPTER: 7
ATTORNEYS: J. M. Orr
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

JESSIE LEONARD JOHNSON, JR.

Case No. 99-11034-MAM-7

Debtor.

**ORDER AND JUDGMENT DENYING MOTION OF DEBTOR FOR
TURNOVER OF FUNDS HELD BY CHAPTER 13 TRUSTEE**

James M. Orr, Mobile, Alabama, Attorney for the Debtor
John C. McAleer III, Mobile, Alabama, Chapter 13 Trustee

This matter is before the Court on the motion of Jessie Leonard Johnson, Jr. for turnover of funds in the possession of the chapter 13 trustee. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the motion of the debtor is denied and the chapter 13 trustee is ordered to distribute the funds in accordance with the debtor's chapter 13 plan.

FACTS

Mr. Johnson filed for relief pursuant to chapter 13 of the Bankruptcy Code on March 18, 1999. His chapter 13 plan was confirmed on May 5, 1999. In November 1999, Mr. Johnson agreed to have his plan payments withheld from his wages and remitted by his employer to the chapter 13 trustee. On January 13, 2000, the chapter 13 trustee received a remittance in the amount of \$1,149.32. On January 18, 2000, Mr. Johnson converted his case to chapter 7. The trustee is holding the \$1,149.32. All other remittances had been distributed in accordance with Mr. Johnson's chapter 13 plan prior to this motion.

LAW

Pursuant to 11 U.S.C. § 348(f)(1)(A), when a case is converted from chapter 13 to chapter 7, the chapter 7 estate does not include wages earned postpetition.¹ The monies held by the trustee clearly were earned postpetition and they therefore are not property of Mr. Johnson's chapter 7 estate. However, notwithstanding their exclusion from his chapter 7 estate, Mr. Johnson is not entitled to turnover of any wages remitted to the chapter 13 trustee prior to the conversion.

In re Hardin, 200 B.R. 312 (Bankr. E.D. Ky. 1996) involved facts virtually identical to this case. The court in that case found that confirmation vests rights in creditors which require postpetition wages paid to the chapter 13 trustee be distributed even after conversion of the case to chapter 7. *Id.* at 314; *see also, In re Verdunn*, 210 B.R. 621, 625-26 (Bankr. M.D. Fla. 1997) (chapter 13 distributions to creditors prior to conversion could not be recovered by debtor; preconversion payments to chapter 13 trustee vest in creditors provided for by the confirmed plan).

This Court agrees with the conclusion in *Hardin*. Postpetition wages remitted to the chapter 13 trustee prior to conversion must be distributed even if the trustee still possesses the funds after conversion.

Counsel for Mr. Johnson contends that this decision will discourage debtors from agreeing to wage withholding orders. These orders are a tool offered to release debtors from the burden of delivering payment to the trustee and from the temptation of spending their wages on unnecessary items. If debtors decline a withholding order and fall behind in their chapter 13

¹ Section 348(a)(1)(A) provides that when a chapter 13 case is converted, "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in possession of or is under control of the debtor on the date of conversion."

payments, their case probably will be dismissed. If these debtors attempt in bad faith to accumulate postpetition wages while under the protections of chapter 13 and then convert, the wages accumulated may be deemed part of the estate of the converted case pursuant to 11 U.S.C. § 348(f)(2).² Therefore, this decision should not deter debtors' consent to wage withholding orders.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. The motion of Mr. Johnson for turnover is DENIED.
2. The chapter 13 trustee is ordered to distribute the \$1,149.32 he is holding in accordance with Mr. Johnson's chapter 13 plan.

Dated: February 1, 2000

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE

² This provision provides: "If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property in the converted case shall consist of the property of the estate as of the date of conversion." 11 U.S.C. § 348(f)(2).