

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

RICHARD LEE GIBSON,  
  
Debtor.

Case No. 25-10399-JCO  
Chapter 13

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**ORDER DISMISSING CASE**

This matter came before the Court on the Motion to Dismiss (“Motion”) filed by Angela R. Gibson. (Doc. 46). Proper notice of hearing was given and appearances were noted by Attorney E. B. Harrison Willis as counsel for Creditor, Angela Gibson, Attorney Barry Friedman as counsel for the Debtor, and Christopher T. Conte, the Chapter 13 Trustee. The Debtor, Richard Lee Gibson, failed to appear. Upon consideration of the pleadings, the record, and the statements of counsel at the hearing, this Court finds that Angela Gibson’s Motion to Dismiss is due to be GRANTED, with a 180-day injunction against re-filing, for the reasons below.

**FINDINGS OF FACT**

The Debtor, Richard Lee Gibson, filed the above-styled Chapter 13 bankruptcy on February 13, 2025. His prior Chapter 13 case (“2023 Bankruptcy”) was dismissed on February 7, 2025.(Bankr.S.D. Ala. 23-11297). The 2023 Bankruptcy was pending for 610 days without confirmation due to an array of issues including multiple amendments and continuances. (*Id.*) A review of the bankruptcy schedules filed by the Debtor over the past 2 years, reveals six schedules of expenses, with differing amounts and disposable income, despite the Debtor having the same

job, house, and vehicle. (See 2023 Bankruptcy docs. 1,14, 44, 47 and docs. 23, 27).<sup>1</sup> In this case, the Debtor's stated disposable income has ranged from \$1,159.00 to \$2,313.00, within a matter of days. (Docs. 23, 27).

During the pendency of the 2023 Bankruptcy, Angela Gibson, ("Creditor") obtained an Order declaring her pre-petition State Court Judgment<sup>2</sup> against the Debtor non-dischargeable.(Bankr. S.D. Ala., AP No. 23-1021, doc.19). Upon dismissal of the 2023 Bankruptcy, the funds held by the Chapter 13 Trustee, approximating \$28,729.50, were returned to the Debtor. (2023 Bankruptcy, doc.89).<sup>3</sup> The Creditor did not receive any payments in the 2023 Bankruptcy.(*Id.*). Due to the inconsistencies in the Debtor's schedules, the Creditor previously requested documentation from the Debtor, issued subpoenas, and obtained an Order requiring the Debtor to appear for a 2004 examination. (Docs. 46 at 2, 51). The Creditor now seeks dismissal of this case with an injunction asserting the lack of good faith by the Debtor and prejudice to the Creditor.

### ANALYSIS

Section 1307(c) of the Bankruptcy Code permits the court to dismiss a case "for cause". *In re Farber*, 355 B.R. 362 (Bankr. S.D. Fla. 2006); *11 U.S.C. § 1307(c)*. Courts have found that a lack of good faith when filing the petition is sufficient to constitute "cause" under §1307(c). *Id.*

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<sup>1</sup> This Order references documents from three different bankruptcy proceedings that have been pending before the Court involving the Debtor, Richard Lee Gibson. For ease of reference, documents from the Debtor's prior chapter 13 bankruptcy, Case No. 23-11297, are referred to as "2023 Bankruptcy doc.", documents from the prior adversary proceeding Case No. 23-1021 are referred to as "AP doc." and documents from the above-styled case are simply referred to as "doc."

<sup>2</sup> Pre-petition, the Creditor, Angela Gibson, obtained a Final Order of Judgment in the Circuit Court of Monroe County, Alabama against the Debtor in the amount of \$919,153.24. (Bankr. S.D. Ala., AP No. 23-1021,doc. 10-2 at 95). The Judgment was based on the state court's finding that the Debtor intentionally attacked the Plaintiff, subjected her to severe assault and battery, and pled guilty of Domestic Violence in the Second Decree. (*Id.*) This Court previously determined that the Judgment was non-dischargeable. (*Id.* at 19).

<sup>3</sup> Pursuant to Local Administrative Order 2024-01.

Courts in the Eleventh Circuit have employed a totality of circumstances test in evaluating whether a debtor has acted in good faith. *In re: Kitchens*, 702 F.2d 885, 888–89 (11th Cir.1983). Factors often considered in the analysis are: (1) the amount of the debtor's income from all sources;(2) the living expenses of the debtor and his dependents; (3) amount of attorney's fees; (4) probable or expected duration of the debtor's Chapter 13 plan; (5) motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13; (6) the debtor's degree of effort; (7) the debtor's ability to earn and likelihood of fluctuation in his earning; (8) special circumstances such as inordinate medical expense; (9) frequency with which the debtor has sought relief under the Bankruptcy Reform Act; (10) circumstances under which the debtor contracted his debts and his demonstrated bona fides, or lack of same, in dealings with his creditors; (11) the burden which the plan administration would place on the trustee; (12) the type of debt to be discharged and whether such debt would be nondischargeable; (13) the accuracy of the plan's statements of debts and expenses and whether any inaccuracies are an attempt to mislead the court; and (14) extent to which the claims are modified and extent of preferential treatment among classes of creditors. *Id.* at 888–89. Courts have noted that the motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13 is particularly significant in the determination and misleading, incorrect, and inflated schedules including amendments to budget are indicative of the lack of good faith. See *In re: Waldron*, 785 F.2d 936, 941 (11th Cir.1986)(noting that the protections inherent in the bankruptcy laws require conduct consistent with the concepts of basic honesty); *In re Weber*, 208 B.R. 575, 577 (Bankr. M.D. Fla. 1997)(“ . . . A telling sign and a red flag indicating bad faith is an inflated budget . . .”).

The totality of the circumstances here indicates a lack of good faith by the Debtor. The Debtor has paraded a plethora of schedules before this Court depicting wildly different expenses

and disposable income which casts doubt on the veracity thereof. The six differing financial scenarios espoused by the Debtor over the past two years also raise questions about the Debtor's motivations and sincerity in seeking relief under the provisions of Chapter 13. A debtor's bankruptcy schedules cannot be whimsically formulated or prepared with an ulterior motive. Bankruptcy Rules 1008 and 9011 set out the obligations of not only the debtor but also the debtor's counsel with regard to the filing of schedules. They provide in part that:

[a] petition, list, schedule, statement, and any amendment must be verified or must contain an unsworn declaration under 28 U.S.C. § 1746.

*Fed. R. Bankr. P. 1008.*

. . . By presenting to the court a petition, pleading, written motion, or other document--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

(1) it is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase litigation costs;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law;

(3) the allegations and factual contentions have evidentiary support--or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; . . .

*Fed. R. Bankr. P. 9011.*

Inaccuracies in bankruptcy schedules, whether intentional or due to negligence, are of great concern because such information is relied on by the Court, the Trustee, and creditors in the administration of the case. Here the number and nature of the Debtor's amendments together with the lack of sufficient justification and documentary evidence therefore leads the Court to conclude that the Debtor has not been candid with the Court.

The delays occasioned by the Debtor's amendments and continuances in the 2023 Bankruptcy, culminating in dismissal and followed by the filing of this case less than a week later, also supports a finding of bad faith. The Debtor received the benefit of the automatic stay while he lingered in the 2023 Bankruptcy for 610 days, forestalling his creditors from collection efforts. Then upon dismissal without confirmation, he essentially received a refund of the funds he had paid into the case<sup>4</sup> while his creditors received nothing. Under these circumstances, the Debtor's second bite at the apple is due to be more carefully scrutinized. Unfortunately, the Debtor's flippant filing of inaccurate schedules did not end in the 2023 Bankruptcy. In this case, he filed two different Schedule I budgets only days apart, with the latter reflecting inflated expenses totaling \$1,154.00 more than originally stated. (Docs. 23, 27). Yet he failed to satisfactorily address the differences, provide requested discovery, or file a Response to the Motion to Dismiss. Such cavalier conduct is, in the Court's view, not consistent with that of an honest but unfortunate debtor. Upon consideration of the totality of the circumstances, this Court finds that the Debtor has failed to act in good faith and his actions and inactions constitute a pattern of abuse and delay which has been unduly prejudicial to creditors and warrants dismissal with an injunction.

Notwithstanding the foregoing, this Court also recognizes that the Debtor did not act alone in the filing of the various conflicting schedules. This Court's determination, that the Debtor's actions and inactions, including the filing of inaccurate schedules, constituted a pattern of abuse, also supports a finding that his Counsel failed to comply with the Bankruptcy Rules. As Attorney Friedman has represented the Debtor since the inception of the 2023 Bankruptcy, his repeated submission of notably incorrect schedules is concerning. It is incumbent on debtor's counsel to: (1) advise debtors of their duties under 11 U.S.C. §521; (2) make certain that the schedules are

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<sup>4</sup> See The Chapter 13 Trustee's Final Report in the Debtor's Prior Bankruptcy. (2023 Bankruptcy, doc.89).

duly verified pursuant to Rule 1008; and (3) ensure that documents filed with the court have evidentiary support and are not interposed with an improper purpose. See *In re Smith*, 257 B.R. 344, 353 (Bankr. N.D. Ala. 2001)(sanctioning counsel \$10,000.00 and \$2,800.00 fee disgorgement for filing of debtor's bankruptcy petition and schedules which were not supported by the evidence); *In re Husain*, 866 F.3d 832 (7th Cir. 2017)(upholding permanent suspension of attorney for filing bankruptcy documents that were dishonest and not reviewed by clients). Thus, the Court reminds Debtor's Counsel of his ethical obligations and the legal requirements for filing court documents and admonishes him that further instances of non-compliance will constitute cause for sanctions including but not limited to disallowance of fees, suspension from practicing in this Court, and reporting to the State Bar.

#### CONCLUSION

For these reasons, it is hereby ORDERED, ADJUDGED, and DECREED that the above-styled Chapter 13 case is DISMISSED and Richard Lee Gibson is enjoined from filing bankruptcy under any Chapter of the Bankruptcy Code for 180 days from the date of this Order.

Dated: May 2, 2025



JERRY OLDSHUE  
CHIEF U.S. BANKRUPTCY JUDGE