

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

IN RE:)
)
DEBBIE CURRY,) Case No. 19-20160
)
Debtor.)

ORDER GRANTING MOTION TO APPROVE COMPROMISE
AND APPLICATION FOR COMPENSATION

This case is before the court after a hearing on the debtor’s motion to approve compromise (doc. 60) and counsel for debtor’s application for compensation (doc. 61). The debtor had a previous chapter 7 case, case no. 18-4440. She filed a motion to reopen her chapter 7 case, which the court granted. The debtor then filed a motion for contempt against creditor Covington Credit of Alabama Inc. because the creditor filed a proof of claim in this chapter 13 case in the amount of \$1,150.09 for a debt that was discharged in the chapter 7 case. Anthony Bush, counsel for the debtor in the contempt proceeding, and Covington Credit’s counsel thereafter reached a settlement of the motion for contempt. Mr. Bush has filed a motion to approve settlement in the amount of \$2,750.00 and application for compensation in this case.

Under Bankruptcy Code § 524(a)(2), a discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor” While this section “does not explicitly authorize monetary damages for a violation of the discharge injunction[,] a court may rely on its statutory contempt powers set forth in 11 U.S.C. § 105.” *See In re Deemer*, 602 B.R. 770, 776, (Bankr. M.D. Ala. 2019). The court has an interest in ensuring that its orders – including discharge orders – and the provisions of the Bankruptcy Code are followed, even if the discharge violation is de minimus. The court itself cannot monitor creditors and prosecute discharge violations and relies on private attorneys to do so. Discharge violation cases educate creditors about the importance of the

discharge and deter those who might otherwise be tempted to ignore the discharge; attorneys who prosecute these actions thus provide a benefit to the bankruptcy system as a whole. Therefore, in addition to any damages to the debtor, the court “may impose contempt sanctions for actual damages and attorney fees and costs.” *See id.* at 777; *see also id.* at 778 (“Fees and expenses actually caused by a violation of the discharge injunction are assessable as a sanction therefor.”) (citation, quotations marks, and brackets omitted).

There were no objections to the settlement amount of \$2,750.00, and the court thus approves the overall settlement in that amount. From that amount, Mr. Bush requested \$1,750.00 in attorney’s fees and \$1,000.00 to the debtor as damages. The chapter 13 trustee objected at the hearing to the requested fee being in excess of the usual 40% cap for non-specialized litigation. The court approved the attorney’s employment in this case without a specific percentage (doc. 67). In a case like this where attorney’s fees and costs can be awarded as part of contempt sanctions, the court should not just mechanically apply a percentage in determining a fee. Since the fee depends in part upon the amount of time the attorney had to spend plus the other factors set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), it is very possible for court-awarded fees in a litigated discharge violation case to exceed the damages awarded to the debtor. *See, e.g., In re Deemer*, 602 B.R. at 778-79. To hold that an attorney representing the debtor in a discharge violation case is always limited to a percentage of the recovery would also greatly reduce the initiative for attorneys to take on smaller cases, which, as discussed above, serve a useful education and deterrent purpose.¹

Debtor’s counsel represented that he has incurred approximately five hours of time in this matter and anticipates incurring no more than one additional hour to close out the case, for a total of

¹ One of the *Johnson* factors is whether the attorney’s fee is fixed or contingent. This opinion should not be construed as holding that an attorney will always be limited to a straight hourly fee, as a contingency fee award or multiplier of the hourly fee may be appropriate in other cases.

six hours. The court does not find it necessary to perform a detailed *Johnson* analysis and require additional evidence. Based on its own experience in private practice and on the bench, the court finds that the six hours expended is reasonable and that a reasonable hourly rate would be \$250.00. The court thus approves attorney's fees in the amount of \$1,500.00. The debtor is entitled to the remaining \$1,250.00.

The debtor has already exempted the original \$1,000.00 amount on her chapter 13 schedules and should amend Schedule C to exempt the additional amount, if applicable. The chapter 13 trustee raised the issue at the hearing that the debtor is delinquent in her chapter 13 plan payments. However, unless the debtor agrees for any exempt amount to go toward her plan payments, the debtor is entitled to the retain the exempt amount. *See generally Law v. Siegel*, 571 U.S. 415 (2014) (federal law provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Bankruptcy Code).

Accordingly, the court grants the motion to approve compromise (doc. 60) and the application for compensation (doc. 61) as set forth herein.

Dated: November 18, 2019


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE