

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

IN RE:)
)
KENDRA Y. HOLLINS,) Case No. 16-04201
)
Debtor.)

ORDER

This case is before the Court on the debtor's motion (doc. 45) for relief from the Court's order (doc. 30) denying the debtor's motion to waive the filing fee but granting her application to pay the filing fee in installments. The Court has jurisdiction pursuant to 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(b), and this is a core proceeding under 28 U.S.C. § 157(b)(2)(A).

The debtor's income is less than 150% of the income official poverty line, thus meeting the first prong of 28 U.S.C. § 1930(f)(1). The second prong is whether the debtor is unable to pay the filing fee in installments. The Court denied debtor's initial filing fee waiver because the debtor testified at her meeting of creditors that she expected shortly to receive a tax refund (probably Earned Income Tax Credit) of \$1,300. Even though an EITC refund received postpetition may be exempt, it impacts whether a debtor has the ability postpetition to pay filing fees in installments. In re Coleman, 2011 WL 710456 (Bankr. M.D. Ala. 2011).

The debtor bases her motion for relief on the fact that her tax refund ended up being only \$800 instead of the anticipated \$1,300. Debtor testified that at the time of filing she was behind on her prepetition rent because her wages were being garnished in state court. She further testified that she used the \$800 refund to pay rent and utilities to avoid being evicted and having utilities turned off.

The debtor's sworn schedules show that she heads a household with two children. Her schedules do not reveal any liquid assets. She owns no real estate. Debtor has two old, high mileage cars on which she owes far more than the value of the vehicles. She lists \$1,000 of household goods, a computer and cell phone worth \$100 total, clothes worth \$100, pictures valued \$100, \$20 in cash, and a bank account with \$50. The debtor is represented by Legal Services Alabama and has not paid any attorney's fees in connection with her bankruptcy. The Court finds it believable that the debtor was behind on her prepetition rent because of the garnishment and finds it reasonable that she used the lower-than-expected tax refund to keep the lights on and avoid her children and her being evicted.

Under Federal Rule of Civil Procedure 60(b)(2) and (6), as incorporated by Bankruptcy Rule 9024, a court can relieve a party from an order based on newly discovered evidence that with reasonable diligence could not have discovered in time (14 days) for a Rule 59 motion or for any other reason that justifies relief. Pursuant to FRCP 60(c)(1), the motion must be filed within a reasonable time. The original order here was entered on February 14, 2017, and debtor's motion was filed on May 9, 2017, which the Court finds to be reasonable. If the debtor had come into an unexpected postpetition windfall, the Court would not hesitate to vacate a fee waiver order to require that the filing fee be paid. E.g., In re Stickney, 370 B.R. 31 (Bankr. D.N.H. 2007) (waiver order vacated after trustee discovered assets). Conversely, here the debtor did not receive a significant portion of the anticipated funds on which the fee waiver denial was based, and she has satisfactorily explained what she did with the money she did receive. The Court finds this change in circumstance sufficient reason to justify relief. The Court thus grants the debtor's motion for relief from its earlier order (doc. 30), which is vacated. The Court further

finds that the debtor has met the requirements of 28 U.S.C. § 1930(f)(1) and hereby grants her motion to waive the filing fee.

Dated: June 21, 2017


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE