

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

IN RE: )  
 CLARENCE JACKSON, )  
 )  
 Debtor, )  
 \_\_\_\_\_ )  
 )  
 CLARENCE JACKSON, Debtor- )  
 Appellant, )  
 )  
 v. )  
 )  
 JOHN H. GERMERAAD, Trustee- )  
 Appellee. )

No. 15-3255  
 Appeal from Bankruptcy  
 Case No. 14-71973

ORDER

RICHARD MILLS, U.S. District Judge:

This case is before the Court on appeal from the United States Bankruptcy Court for the Central District of Illinois. Pending before the Court is the Report and Recommendation from Chief Bankruptcy Judge Mary P. Gorman. Pending also is the Motion to Dismiss Appeal by Trustee-Appellee John H. Germeraad.

I.

According to Chief Judge Gorman's Report and Recommendation,

Debtor-Appellant Clarence Jackson commenced the bankruptcy case on November 5, 2014. Following an August 25, 2015 hearing, the bankruptcy court entered an order denying conformation of Jackson's Seventh Amended Chapter 13 Plan.

Subsequently, Jackson filed a motion to dismiss case. The bankruptcy court entered an order granting the motion to dismiss pursuant to 11 U.S.C. § 1307(b). On September 3, 2015, Jackson filed a notice of appeal, appealing the dismissal of his case.

The bankruptcy court entered an order requiring payment of the filing fee of \$298. On September 10, 2015, Jackson filed an application to waive the filing fee. The matter was set for hearing. Chief Judge Gorman's Report and Recommendation states that, because Jackson failed to appear for the hearing and for other reasons given on the record, the application to waive filing fee was denied in an order entered on September 22, 2015. Jackson was ordered to pay the filing fee in full within fourteen days.

The filing fee was not paid by the due date of October 6, 2015, and no extension was sought. According to the report and recommendation,

Jackson claimed to have \$905 in monthly income in excess of his monthly expenses. Additionally, the Trustee issued a refund of several thousand dollars to Jackson upon the dismissal of the case. Chief Judge Gorman found that no excuse for the failure to pay the filing fee had been provided.

## II.

The applicable bankruptcy procedural rule provides, “An appellant’s failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal.” Fed. R. Bankr. P. 8001(a). The bankruptcy judge recommends dismissal of the appeal commenced by the Debtor for failure to pay the filing fee, even after he was given additional time to pay the \$298.

Upon considering the entire record, the Court concludes that dismissal of Debtor Clarence Jackson’s appeal is the appropriate sanction for his failure to pay the filing fee of \$298, after failing to appear for a hearing or request an extension of time. Accordingly, the Court will Adopt

## Chief Judge Gorman's Report and Recommendation.

Even if dismissal was not the appropriate sanction for failure to pay the filing fee, the Court concludes that dismissal of the appeal is warranted for other reasons. The Trustee notes that Jackson has another case (No. 15-71416) pending in the bankruptcy court. Because an individual generally cannot be a debtor in two bankruptcy cases at one time, see *In re Sidebottom*, 430 F.3d 893, 898-99 (7th Cir. 2005), the existence of Jackson's new case forecloses the possibility of reinstatement of the other case.

Additionally, no effective relief is available to Jackson. He requested the precise relief that the bankruptcy court granted—dismissal of his case. This Court cannot grant any relief that would affect the Debtor-Appellant's legal interests.

Ergo, the Court hereby ADOPTS the Report and Recommendation [d/e 5] of Chief United States Bankruptcy Judge Mary P. Gorman and ALLOWS the Trustee-Appellee's Motion to Dismiss [d/e 3].

The Trustee-Appellee's Motion to Strike Notice of other Evidence [d/e

15] is ALLOWED.

The Debtor-Appellant's appeal is DISMISSED for failure to pay the filing fee.

The Clerk will terminate this action.

ENTER: January 7, 2016

FOR THE COURT:

/s/ Richard Mills  
Richard Mills  
United States District Judge