

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

IN RE: DREW ALLEN RAYNER
Debtor

CASE NO. 06-50441

CHAPTER 13

OPINION

Before the court is the Debtor's Objection to Order and Motion to Amend (Docket #50) regarding the court's prior Order Reinstating Chapter 13 Case, and the opposition thereto filed by the Chapter 13 Trustee, Warren A. Cuntz, Jr. Having considered the pleadings and memoranda submitted by the parties, the court concludes that the Objection should be overruled in accordance with the following.

I. FACTUAL BACKGROUND

1. A petition for relief under Chapter 13 of Title 11 of the United States Code was filed by Drew Allen Rayner ("Rayner") on May 26, 2006. An order was entered dismissing the case for failure to file schedules and statements on July 25, 2006. Subsequently, an Order Conditionally Granting Motion to Reinstate Case was entered October 5, 2006.

2. Rayner filed an Objection to Order and Motion to Amend on October 17, 2006, objecting to the paragraph 4 of the Order relating to the amount of the plan payment to be proposed by the debtor. That paragraph provided that the debtor was to file an amended Chapter 13 proposing a plan payment equal to the monthly net income listed by the Debtor on Schedule J line 20(c) and which includes the Internal Revenue Service as a creditor. Rayner objects to the provision in the order requiring payment of the full amount of his net income.

3. The Trustee filed his response to the Debtor's Objection and Motion and the parties subsequently filed briefs on the issues and submitted the matter to the court for determination.

II. CONCLUSIONS OF LAW

The matter before the court is a core proceeding pursuant to 28 U.S.C. § 157. The court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. § 157 and § 1334.

The Trustee argues that the Debtor's Objection to the Order and Motion to Amend was not timely filed pursuant to Federal Rule of Bankruptcy Procedure 9023, which makes applicable Federal Rule of Civil Procedure 59(e). Under that rule a motion to alter or amend shall be filed no later than 10 days after the entry of the judgment. The court concludes, based on authorities and arguments cited in the Trustee's brief, that the Debtor's Objection and Motion was not timely filed pursuant to Federal Rule of Bankruptcy Procedure 9023.

To the extent that the Debtor's Objection and Motion to Amend was intended to be a motion pursuant to Federal Rule of Bankruptcy Procedure 9024, which makes applicable Federal Rule of Civil Procedure 60, the court concludes that the debtor has failed to set forth sufficient allegations for a request for relief from judgment under this rule.

The court concludes that the Debtor's Objection to Order and Motion to Amend should be overruled. The court further concludes that the Trustee's alternative request for relief should be granted and the debtor should be required to amend his plan with a proposal to commit all of his disposable income to his plan, in accordance with the amount submitted by the Debtor under Schedule J. The debtor should file his amended plan within fourteen (14) days. Failure to file the amended plan will result in dismissal of the Chapter 13 case.

The debtor recently filed an amended plan that included a provision for treatment of the IRS, to which the IRS has objected. This matter will be dealt with in subsequent proceedings.

An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

DATED this the 21st day of May 2007.

/s/ Edward R. Gaines

EDWARD R. GAINES
UNITED STATES BANKRUPTCY JUDGE

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