




SO ORDERED,


Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: November 23, 2020

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

JACINTA MARIE NOBLIN-WILLIAMS,

CASE NO. 20-00208-NPO

DEBTOR.

CHAPTER 13

**ORDER DENYING THE DEBTOR'S CERTIFICATION
AND MOTION FOR ENTRY OF CHAPTER 13
DISCHARGE PURSUANT TO 11 U.S.C. § 1328 (b)**

This matter came before the Court for hearing on October 26, 2020 (the "Hearing"), on the Debtor's Certification and Motion for Entry of Chapter 13 Discharge Pursuant to 11 U.S.C. § 1328(b) (the "Motion") (Dkt. 41) filed by Jacinta Marie Noblin-Williams (the "Debtor"); the Trustee's Amended Objection to Debtor's Motion for Hardship Discharge (the "Objection") (Dkt. 47) filed by the chapter 13 trustee, James L. Henley, Jr. (the "Trustee"). At the Hearing, Thomas C. Rollins, Jr. represented the Debtor, and Tylvester O. Goss represented the Trustee. After considering the arguments of counsel, the Court instructed the Debtor to file a brief with legal authority supporting her position. On November 2, 2020, counsel for the Debtor submitted a brief

in the form of a letter (the “Brief”) (Dkt. 49). After fully considering the matter, the Court finds as follows:¹

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J). Notice of the Hearing was proper under the circumstances.

Facts

1. On January 20, 2020, the Debtor filed a voluntary petition for relief under chapter 13 of the U.S. Bankruptcy Code (the “Code”) (Dkt. 1). That same day, the Debtor filed her Chapter 13 Plan and Motions for Valuation and Lien Avoidance (the “Plan”) (Dkt. 2) and her Schedules/Statements (Dkt. 4). In her schedules, the Debtor disclosed tax debt of \$4,337.37 and student loan debt of \$88,466. (Dkt. 4 at 25). Under the Plan, general unsecured creditors receive no distribution. The Court entered the Order Confirming Chapter 13 Plan (Dkt. 20) on March 13, 2020.

2. Approximately one month later, on April 22, 2020, the Debtor filed a Motion to Modify Bankruptcy Plan (Dkt. 24) stating that she and her roommate both had experienced reduced hours at work due to the COVID-19 pandemic, which was a material financial hardship on her household. She requested to modify her plan to extend the term from 60 to 84 months, as permitted under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”). 11 U.S.C. § 1329(d). No objections were filed. On May 27, 2020, the Court entered the Order Modifying Chapter 13 Plan (Dkt. 25), extending the Plan to 84 months.

¹ The following findings of fact and conclusions of law are made pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

3. Less than a month later, on June 19, 2020, the Debtor filed a Motion to Suspend Plan Payments (Dkt. 29), stating that she was temporarily out of work on medical leave and could not afford to make her monthly plan payments. She requested a suspension for two (2) months, July and August 2020, and stated that she hoped to return to work full time and resume making payments in September 2020. On July 15, 2020, the Court entered the Order Suspending Plan Payments (Dkt. 33), suspending the Debtor's past due chapter 13 plan payments and any ongoing mortgage payments paid through the Plan for July and August 2020. The Trustee was authorized to increase the Debtor's plan payment as necessary to compensate for the suspended payments when payment resumed in September 2020.

4. On September 25, 2020, approximately six (6) months after confirmation of the Plan, the Debtor filed the Motion, seeking the entry of a discharge order in her case pursuant to 11 U.S.C. § 1328(b). In the Motion, the Debtor certified that she has met all of the requirements for a discharge under 11 U.S.C. § 1328. She stated that she is unable to complete payments due to a permanent disability and cannot return to work.² She certified that she has paid \$3,128.00 through the course of the Bankruptcy Case and that unsecured creditors have received a \$73.38 distribution, which is more than they would have received under a chapter 7 liquidation. She further stated that a modification under 11 U.S.C. § 1329 is not practicable because her "income leaves me in the negative when basic expenses are taken out, leaving no extra income for plan payments." (Dkt. 41 at 2).

5. On October 23, 2020, the Trustee filed the Objection, stating that the Debtor failed to attach documentation to support the claims in her Motion and that the Debtor's case should be

² Because the Debtor disclosed her condition privately to the Court and did not make details of her condition public, the Court does not name or describe her condition, as to protect her medical privacy.

converted to a chapter 7 if she cannot make the payments as required under chapter 13. Further, the Trustee asserts that the Debtor failed to amend Schedules I and J as proof of a reduction in income or provide an affidavit showing a material change in circumstances, and therefore, the Debtor has not met the burden of proof required for a hardship discharge pursuant to 11 U.S.C. § 1328(b).

6. On November 2, 2020, the Debtor filed the Brief, stating that the Debtor was “removed from work by her doctor” and that her “medical condition and medication prevent her from earning an income.” The Debtor further states that there is no way to know how long she will be out of work. She contends that she has made regular bankruptcy payments until losing her employment, and, at present, her only income consists of contributions made by family members.

7. The Court held a telephonic status conference on November 16, 2020, to clarify the relief sought by the Debtor. At the status conference, the Debtor informed the Court that she only seeks a hardship discharge of debts that are otherwise dischargeable. In other words, she does not seek to discharge her tax debt or student loan debt.

Discussion

Generally, a chapter 13 debtor may receive a discharge upon completion of her chapter 13 plan pursuant to § 1328(a) of the Code.³ *See* 11 U.S.C. § 1328(a). If a debtor fails to complete the chapter 13 plan successfully, she may be entitled to a “hardship discharge” under § 1328(b). A hardship discharge under § 1328(b) discharges the debtor from all unsecured debts provided for by the plan or disallowed under § 502, except for certain long-term debt and any debt of a kind

³ Hereinafter, all references to code sections are to the Code found at title 11 of the U.S. Code.

specified in § 523(a). 11 U.S.C. § 1328(c)(2). Section 1328(b) provides that, subject to certain exclusions, at any time post-confirmation and after notice and a hearing:

[T]he court may grant a discharge to a debtor that has not completed plan payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of the property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor has been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

The burden of proof in satisfying the three, independent conditions precedent to the granting of a hardship discharge lies with the debtor. *In re Elvira*, No. 05-81841-G3-13, 2009 WL 4824001, at *2 (Bankr. S.D. Tex. Dec. 9, 2009). It is well settled that the burden of proof in dischargeability actions is a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279 (1991); *Beauboeuf v. Beauboeuf (In re Beauboeuf)*, 966 F.2d 174, 178 (5th Cir. 1992). The failure to satisfy any subsection could result in a denial. *In re Schleppe*, 103 B.R. 901, 904 (Bankr. S.D. Ohio 1989). If a debtor does satisfy all three elements, then it is within the discretion of the court to grant a hardship discharge after notice and a hearing. *In re Bacon*, No. 02-40665, 2003 WL 26098322 (Bankr. S.D. Ga. Aug. 20, 2003); *In re Quintyne*, 610 B.R. 462, 466 (Bankr. S.D.N.Y. 2020) (citation omitted).

A. Section 1328(b)(1) Standard

Section 1328(b)(1) provides that a debtor is entitled to a hardship discharge where a “debtor’s failure to complete [plan] payments is due to circumstances for which the debtor should not justly be held accountable.” 11 U.S.C. § 1328(b)(1). This is a fact-driven analysis, “with an emphasis properly focused on the nature and quality of the intervening event or events upon which

the debtor relies.” *In re Wilson*, No. 2:10-bk-20883, 2016 WL 699553, at *2 (Bankr. S.D. W. Va. Feb. 22, 2016) (citation omitted). Courts are split under § 1328(b)(1) regarding which circumstances will warrant a hardship discharge, with some courts imposing a catastrophic event requirement and others “refus[ing] to read the word catastrophic into the statute.” The Fifth Circuit Court of Appeals has not addressed the issue. *In re Mixson*, No. 11-81472-CRJ-13, 2016 WL 1544731 (Bankr. N.D. Ala. Apr. 14, 2016). In *In re Nelson*, 135 B.R. 304, 306 (Bankr. N.D. Ill. 1991), the bankruptcy court found that economic hardships such as loss of business revenue and increased expenses were “not the type of catastrophic events such as death or disability which prevents a debtor, through no fault of his or her own, from completing payments.” See also *In re Cummins*, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001) (defining a catastrophic event as being outside the control of those whom it harms). In contrast, the Bankruptcy Appellate Panel for the First Circuit Court of Appeals refused to read the word catastrophic into the statute, finding instead that under the plain language of the statute, there is no requirement that a debtor prove the occurrence of a catastrophic event. *Bandilli v. Bandilli (In re Bandilli)*, 231 B.R. 836, 840 (B.A.P. 1st Cir. 1999). The *Bandilli* court determined that bankruptcy courts should consider whether the debtor is justly accountable for the plan’s failure. *Id.*

To determine whether a debtor is justly accountable, the *Bandilli* court listed the following considerations:

- a) whether the debtor has presented substantial evidence that he or she had the ability and intention to perform under the plan at the time of confirmation;
- b) whether the debtor did materially perform under the plan from the date of confirmation until the date of the intervening event or events;
- c) whether the intervening event or events were reasonably foreseeable at the time of confirmation of the Chapter 13 plan;

d) whether the intervening event or events are expected to continue in the reasonably foreseeable future;

e) whether the debtor had control, direct or indirect, of the intervening event or events; and

f) whether the intervening event or events constituted a sufficient and proximate cause for the failure to make the required payments.

Id. While § 1328(b)(1) requires less than catastrophic circumstances to justify a debtor's failure to complete payments under a chapter 13 plan, determining the foreseeability and substantiality of the changed circumstances is paramount. *See id.*; *Roberts v. Joyajian (In re Roberts)*, 279 B.R. 396 (B.A.P. 1st Cir. 2000), *aff'd*, 279 F.3d 91 (1st Cir. 2002); *In re Bacon*, 2003 WL 26098322 at *2. As to the substantiality of the change in circumstance, termination of employment, standing alone, has been considered insufficiently substantial to justify a hardship discharge. *In re Easley*, 240 B.R. 563, 565 (Bankr. W.D. Mo. 1999).

B. Section 1328(b)(1) Application

The Trustee argues that the Debtor has failed to provide evidence of a permanent disability and, therefore, fails to meet the burden of proof required for a hardship discharge. At the Hearing, the Debtor provided the Court with a letter explaining her condition and attached medical excuses she provided to her prior employer. In the letter, she states that she is out of work due to circumstances beyond her control and that she will not be able to complete the terms of her Plan.

Regardless of whether the "catastrophic event" standard applies, the Court finds that the evidence provided by the Debtor fails to meet her burden of proof. The documentation provided by the Debtor does not indicate that her condition is permanent or expected to "continue into the reasonably foreseeable future." *In re Bandilli*, 231 B.R. at 840. The most recent medical excuse provided by the Debtor referenced an absence only through August 24, 2020, with no indication that her condition is permanent or that it prevents her ability to work in the foreseeable future.

Having considered the entirety of the record and arguments of counsel, the Court finds that the Debtor has presented insufficient evidence to support a finding that her stoppage of payments was “due to circumstances for which the debtor should not justly be held accountable.” 11 U.S.C. § 1328(b)(1). She, therefore, has not shown by a preponderance of the evidence the first prong of the three conditions precedent to the granting of a hardship discharge under § 1328(b). It is thus unnecessary for the Court to consider whether she has met the second and third prongs of § 1328(b).

Conclusion

For the above and foregoing reasons, the Court finds that the Debtor has failed to meet her burden of proof to qualify for a hardship discharge under 11 U.S.C. § 1328(b). Accordingly, the Court concludes that the Motion should be denied.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##