

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

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	)	
In Re: BILLIE ELIZABETH COLLINS,	)	
Debtor	)	Chapter 7
	)	Case No. 06-70812
	)	
	)	

**DECISION AND ORDER**

At Roanoke in said District this 24th day of October, 2006:

The matter before the Court is the Debtor's Application for Waiver of the Chapter 7 Filing Fee pursuant to 28 U.S.C. § 1930(f). The Court conducted a hearing in Roanoke on August 15, 2006, on the request of the Debtor to waive the fee. At that time, the Court took the matter under advisement and requested the Debtor submit a memorandum of authorities in support of the Application as well as an affidavit presenting evidence that would allow the Court to more fully understand the Debtor's financial condition. After due consideration of the evidence and authorities, the Application is granted.

**FINDINGS OF FACT**

On July 26, 2006, the Debtor filed a Chapter 7 voluntary petition for relief. Along with the petition, Debtor also filed an Application for Waiver of the Chapter 7 Filing Fee pursuant to 28 U.S.C. § 1930(f). On Schedule I, the Debtor listed two dependents - a four year old son and a ten month old son - and reported

a total gross monthly income of \$1,806.00, less payroll deductions of \$310.68 for a total net monthly income of \$1,495.32. Food stamps and WIC received by the Debtor in the amount of \$200.00 and \$30.00 per month, respectively, were added to the monthly income to arrive at a total combined monthly income of \$1,725.32. Debtor reported total monthly expenses of \$1,665.00.<sup>1</sup> The 2006 poverty line for a family of three is \$16,600 per year or \$1,383.33 per month; accordingly, 150% of the poverty line is \$24,000 per year or \$2,075.00 per month. *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, August 11, 2005, available at <http://www.uscourts.gov/bankruptcycourts/povertyguidelines.pdf>.

The Debtor's schedules reported that the Debtor owned no real property. The Debtor reported personal property totaling \$10,451.20. The Debtor claimed all personal property as exempt. The Debtor's personal property included one automobile - a 1997 Dodge Caravan ES valued at \$3,650.00. Also, included among the personal property were two child support claims of \$1,055.00 and \$800.00, respectively, as well as a \$2,500.00 state court judgement, all of which were claimed as exempt on Schedule C and valued of \$1.00 each.

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<sup>1</sup> The itemization of the reported monthly expenses is as follows:  
Rent/Mortgage \$350.00; Electricity and Heating Fuel \$100.00; Telephone \$ 70.00; Other (Cable) \$60.00; Food \$ 350.00; Clothing \$ 20.00; Laundry and Dry Cleaning \$ 20.00; Medical and Dental Expenses \$ 20.00; Transportation \$ 320.00; Recreation \$ 50.00; Auto Insurance \$ 115.00; Personal Property Taxes \$10.00; Child Care \$180.00; and Total Monthly Expenses \$ 1,665.00. All other potential expenses provided for on Schedule J were listed at \$0.00.

At the August 15, 2006 hearing, the Debtor testified that the \$2,500.00 state court judgment was for payment of unpaid child support payments and that the two child support claims totaling \$1,850.00 were the result of irregular child support payments. The Debtor explained that these three exemptions were each valued at \$1.00 each because she did not expect payment on these obligations, given that the father of her youngest child is incarcerated and she is unaware of the whereabouts of the father of her eldest child.<sup>2</sup>

At the hearing, the Court asked the Debtor if she had received a tax refund for the year 2005, and, if so, whether the refund had been spent. The Debtor explained that she received a refund totaling over \$3,000 in early 2006 and that she had used the money to pay off the remaining balance of her vehicle, which would have repossessed if she had not paid off the entire balance. The Court then took the Debtor's Application under advisement, requesting Debtor's counsel submit authority in support of the Application and an affidavit addressing the tax refund for 2005 and child support in greater detail.

On September 18, 2006, the requested memorandum and affidavit were submitted. According to the affidavit, the Debtor's 2005 tax refund totaled \$3,852.00 and was received in February, 2006. Debtor spent \$3,000 to pay off the lien on her vehicle, which Debtor needed to continue her employment and

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<sup>2</sup> The father of Debtor's eldest child is to pay \$211.00 per month in child support and has a \$2,500.00 judgement against him. The father of Debtor's youngest child is to pay \$65.00 per month.

transport her youngest child to Roanoke for medical treatment. Another \$500.00 was spent to obtain phone service because her prior service had been disconnected after Debtor fell behind in her monthly payments. Approximately \$100.00 was spent on dental care.

The Debtor's affidavit also advised the Court that the father of her eldest child, who has been ordered to pay \$211.00 per month in child support, has made only sporadic payments for an extended period of time, no payments since February 2006, and is approximately \$1,250.00 in arrears. Collection attempts by the Virginia Department of Child Support Enforcement have been unsuccessful. Lastly, the Debtor advised that the father of her youngest child has been ordered to pay \$65.00 per month in child support, but is currently incarcerated. The support payments have been made by a family member of his family since May 2006 and there is currently no arrearage on this support obligation.

### **LAW AND DISCUSSION**

This Court has jurisdiction over the parties and subject matter of this proceeding under 28 U.S.C. §§ 151, 157, and 1334. This is a case filed under title 11, and the Court may hear and determine the outcome of such proceeding under 28 U.S.C. § 157(b). Venue is proper in this District under 28 U.S.C. § 1409(a).

28 U.S.C. § 1930(f) provides the bankruptcy court the authority to waive the filing fee in an individual debtor's Chapter 7 petition filed after October 17,

2005. Because this case was filed on July 26, 2006, § 1930(f) applies; it states as follows:

Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments.

28 U.S.C. (f)(1) (emphasis added). On August 11, 2005, the Judicial Conference of the United States promulgated interim procedures to assist in the implementation of this code provision. *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, August 11, 2005, available at <http://www.uscourts.gov/bankruptcycourts/jcusguidelines.html> [hereinafter *Interim Procedures*].

The Interim Procedures set forth a two step analysis for determining whether the filing fee should be waived. *Interim Procedures*, Section II.A.1. The debtor has the burden of showing that the application should be granted. First, the debtor's income must be less than 150 percent of the poverty guidelines published by the United States Department of Health and Human Services applicable to a family of the size involved. *Interim Procedures*, Section II.A.1. The "Total Combined Monthly Income" as reported on Line 16 of Schedule I is used for comparison, although non-cash governmental assistance, such as food

stamps or housing subsidies, is not included. *Interim Procedures*, Section II.A.3.

Second, if the reported income is less than 150% of the guideline, the applicant must be unable to pay the filing fee in installments. *Interim Procedures*, Section II.A.1. In making such a determination, the court should consider the totality of the circumstances. Section II.A.5. No further guidance is provided.

In this case, Debtor has two children and thus a family of three for the purposes of 28 U.S.C. § 1930(f). Debtor's Schedule I shows a total monthly income of \$1,725.32. However, non-cash governmental aid, in the form of food stamps and WIC, are not included in monthly income for determining whether a Debtor's monthly income is less than 150% of the DHHS Guidelines. Therefore, Debtor's monthly income is \$1,495.32 after subtracting the \$230 per month of non-cash governmental aid.<sup>3</sup> In Virginia, 150% of the 2006 DHHS Guideline for a family of three is \$2,075.00 per month. The Debtor's monthly income is \$579.68 less than 150% of the DHHS Guideline, therefore, the Debtor has satisfied the first prong of the two part test for a waiver of the filing fee pursuant to 28 U.S.C. § 1930(f).

In order to waive the filing fee, a court, after analyzing the totality of the circumstances, must determine that a debtor is unable to pay the filing fee in installments. *Interim Procedures*, Section II.A.3. Although, neither the statute,

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<sup>3</sup> Debtor receives \$200.00 per month in food stamps and \$30.00 per month in WIC.

nor the Interim Procedures provide further guidance, other courts have addressed the interpretation of § 1930(f)(1). *In re Lineberry*, 344 B.R. 487 (Bankr. W.D. Va. 2006); *In re Nuttall*, 334 B.R. 921 (Bankr. W.D. Mo. 2005). In *In re Nuttall*, the court looked at three factors: (1) the type of fee arrangement the debtor had with their attorney, (2) the ability of the debtor to pay the filing fee in installments after taking into consideration the reasonableness Schedule J expenses, and (3) whether the debtor possessed any assets from which the debtor could pay the filing fee. *Id.* at 924-25.

While, the *Interim Procedures* state that a debtor is not disqualified for a waiver of the filing fee *solely* because the debtor has paid or promised to pay an attorney for a bankruptcy case, the Interim Procedures do not prohibit a court from considering such a payment. In this case, the Debtor's schedules and Application for Waiver of the Chapter 7 Filing Fee indicate that the Debtor has paid nothing and has not promised to pay anything to the attorney who filed this case on her behalf.

In determining the reasonableness of the debtor's scheduled expenses, the court in *Nuttall* compared such expenses to the Internal Revenue Service (IRS) guidelines<sup>4</sup> that "establish a standard as to expenses which have been accepted by

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<sup>4</sup>The IRS guidelines are available on the United States Trustee Program website, <http://www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm>.

Congress elsewhere as the starting point in determining reasonableness.” *Id.* at 924.

The IRS guidelines are broken down into three groups: Local Housing and Utilities Standards; Local Transportation Expense Standards; and, National Standards for Allowable Living Expenses. The IRS Local Transportation Expense Standard for the south census region, which includes Virginia, for the operating expenses of one vehicle, excluding property taxes, is \$260, and the National Standard for ownership costs for one vehicle is \$475. The Debtors owns one vehicle - a 1997 Dodge Caravan ES valued at \$3,650.00. The Debtors owes nothing on the vehicle and reports monthly expenses for transportation costs and auto insurance totaling \$435. While the Debtor’s operating expenses are significantly greater than the standard for the south census region, the Debtor’s combined operating and ownership expenses of \$435 is lower than the combined standard operating expenses for the south census region and national ownership costs of \$735.

The IRS National Standard for Allowable Living Expenses, which includes food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous expenses, for a family of three with a gross income of \$1806.00, as indicated on Line 3 of Schedule I, is \$819.00. The Debtor’s expenses for food, clothing, laundry and dry cleaning, recreation, medical and



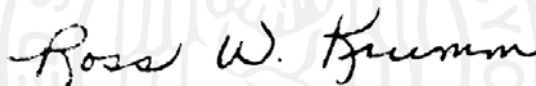
dental expenses, and child care total \$640.00, which is \$179.00 below the national standard.

### CONCLUSION

The court finds, based on the totality of the circumstances, that the Debtor does not have the ability to pay the filing fee. Therefore, it is

### ORDERED:

That the Debtor's Application to waive the filing fee is GRANTED. The filing fee is WAIVED.



*Ross W. Krumm*

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Ross W. Krumm  
U. S. Bankruptcy Judge

Copies of this order are directed to be sent to Counsel for the Debtor, Mark S. Lewis, Esq., 155 Arrowhead Trail, Christiansburg, VA 24073; and to George I. Vogel, Esq., Chapter 7 Trustee, at Post Office Box 18188, Roanoke, VA 24014.