

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

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|------------------------------|---|--------------------------|
| IN RE: |) | CHAPTER 7 |
| |) | |
| PEGGY ROOP LANCASTER, |) | CASE NO. 09-71867 |
| |) | |
| Debtor. |) | |

DECISION AND ORDER

The matter before the Court is the Debtor’s Motion to Dismiss her voluntary Chapter 7 petition in this Court. This Motion is opposed by the Trustee. No other party in interest appeared at the noticed hearing on May 24, 2010. The factual background and applicable legal principles are set forth in the Brief in Support of Motion to Dismiss filed by counsel for the Debtor on June 3, 2010 and designated as docket entry # 21 in this case and they will not be repeated here.

This Court has jurisdiction over this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. Ruling upon a motion to dismiss a pending case is inherently a matter going to the very essence of a court’s authority over its own docket and the Court concludes that such a matter constitutes a “core” proceeding within the meaning of 11 U.S.C. § 157(b)(2).

The Debtor has asserted that she received ineffective assistance of counsel regarding her initial decision to file her petition. She has not, however, demonstrated in what specific way such legal assistance was inadequate or defective or that she would have made a different decision about filing her case if she had received different advice. It is clear from the Debtor’s testimony at the hearing that she was aware when she consulted counsel of the possibility of an inheritance from her mother who had died some significant time earlier. It is

further clear that she authorized the filing of the petition on her behalf, apparently motivated principally by her desire to obtain relief from inquiries from her creditors seeking payment.

It is further apparent from the statements made by her counsel in support of the Motion at the hearing and in the Brief as well that one of the chief things she would like to accomplish is to be able to use the inheritance to pay her non-dischargeable student loan debt in full and then distribute the remainder among her other creditors. While such a motivation is understandable as it would be in the Debtor's best interest to do that, the Court concludes that such a result would be prejudicial to the not favored creditors as it would seek to make a distribution at odds with the expected results of a bankruptcy administration.

Finally, while the Court has no reason to question the good faith and intentions of the Debtor, it should be noted that if dismissal were granted, the funds would be turned over to her and be subject to her complete control with little practical remedy available to her creditors if she should end up using the funds for some other purposes. In contrast, the bankruptcy estate is held by the Trustee as a fiduciary under bond to distribute the estate to the creditors in accordance with the provisions of the Bankruptcy Code.

For these reasons the Court ADJUDGES and ORDERS that the Motion to Dismiss is DENIED. The Clerk is directed to send a copy of this order to each of the following: the Debtor, counsel for the Debtor, the Trustee and the United States Trustee.

ENTER this 7th day of June, 2010.

William F. Stone, Jr.

UNITED STATES BANKRUPTCY JUDGE