

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

In Re: WILLIAM AND CATHERINE SHIFFLETT,
Debtors.

Chapter 13
Case No. 05-50345

DECISION AND ORDER

At Harrisonburg in said District this 14th day of December, 2007:

On July 11, 2007, the Debtors in the above-captioned case filed an application for discharge under 11 U.S.C. § 1328(b) and (c). A hearing on the matter was held September 5, 2007, at which time the court received evidence and heard oral testimony of the Debtors and arguments of Debtors' counsel in support of a discharge. No creditors appeared or otherwise opposed the motion. The chapter 13 Trustee participated in the hearing.

BACKGROUND

The Debtors filed a petition seeking relief under chapter 13 of the United States Bankruptcy Code on March 5, 2005 for which a plan was confirmed on October 18, 2005. The Debtors made timely and adequate payments under the plan through November 6, 2006. These payments totaled \$4,849.00.

The Debtors have not made any further payments to the Trustee since November 6, 2006 because of the onset of a rare, chronic autoimmune

neuromuscular disease in the female Debtor that prompted her physician to suggest she quit her job due to the resulting muscle weakness. The female Debtor had previously been working at a long term nursing facility, which required substantial lifting and walking.

Due to the female Debtor's health situation, the Social Security Administration advised the Railroad Retirement Board (the male Debtor's place of business prior to retirement) on March 21, 2007 to provide the female Debtor with a social security disability benefit of \$1,058.00 a month. Including the female Debtor's disability benefit, the Debtors' monthly income at the time of filing the motion for hardship discharge was \$2,541.24 and their monthly living expenses totaled \$2,543.68.

The Debtors' only property that could have been liquidated in a chapter 7 filing is their real property, owned by the Debtors as tenants by the entirety. The only two creditors to which the Debtors are jointly obligated have been paid in full.

DISCUSSION

Under 11 U.S.C. § 1328(b), chapter 13 debtors can obtain a discharge after confirmation even though complete payments under the plan have not been made so long as three essential criteria are satisfied. The debtors must show that (1) the failure to complete plan payments is due to circumstances for which the debtors cannot justly be held accountable; (2) the value of property

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 had been liquidated under chapter 7 of this title on such date; and (3) modification of the plan is not practicable. 11 U.S.C. § 1328(b)(1)-(3) (2006).

To satisfy the first prong of § 1328(b), a majority of courts require that debtors prove that they have suffered from catastrophic circumstances which directly impact their ability to make plan payments. See e.g., In re Cummins, 266 B.R. 852 (Bankr. N.D. Iowa 2001)(denying discharge where two separate injuries did not leave the debtor incapable of employment); In re White, 126 B.R. 542 (Bankr. N.D. Ill. 1991)(denying discharge where disability neither permanent nor totally disabling); In re Bond, 36 B.R. 49 (Bankr. E.D.N.C 1984)(granting discharge where debtor died). Other courts only require the existence of some unforeseeable economic circumstance that the debtor has made every effort to overcome. See e.g., Bandilli v. Boyajian (In re Bandilli), 231 B.R. 836 (B.A.P. 1st Cir. 1999); In re Edwards, 207 B.R. 728 (Bankr. N.D. Fla. 1997). Although there is no clear precedent within the Fourth Circuit on which standard to apply to a hardship discharge determination, see In re Harrison, 1999 Bankr. LEXIS 1830, at *4 (Bankr. E.D. Va. July 30, 1999), this court finds that the Debtors have failed to meet either standard.

Although the female Debtor has certainly experienced health difficulties which seem to have affected her short term employment status, the

Debtors have failed to provide sufficient evidence to support that her health problems amount to a “catastrophic circumstance.” The female Debtor’s circumstance does not appear “catastrophic” primarily because she has not established that her health difficulties will not improve or that they preclude her from holding any gainful employment.

Furthermore, the Debtors have failed to reach the “less than catastrophic circumstance” standard. See In re Edwards, 207 B.R. at 731 (“Where a debtor is unable to complete payments under a Chapter 13 plan due to economic circumstances that did not exist nor were foreseeable at the time of confirmation of the plan, where those circumstances are beyond the debtor’s control, and where the debtor has made every effort to overcome those circumstances but is unable to complete his plan payments, then I think the requirement of § 1328(b)(1) has been met.”) The female Debtor’s situation does constitute an unforeseeable economic circumstance, but the Debtors have failed to establish that they have made every effort to overcome their situation by failing to present evidence that would preclude the possibility of improvement in the female debtor’s health or the possibility of finding suitable alternative employment.

Based on the pleadings before the court, the facts of this case, and the evidence adduced at the hearing, the court is convinced that a hardship discharge is not warranted. By failing to show that they cannot be held accountable for their failure to complete plan payments under either standard, the

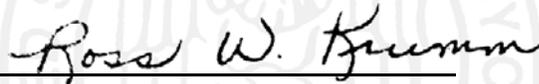
Debtors fail to meet the first prong of § 1328(b) and therefore do not qualify for a hardship discharge.

Based on the foregoing analysis, it is

ORDERED:

That the Application for Discharge of Debtors Under Section 1328(b) is DENIED.

Copies of this order are directed to be sent to William G. Wentz, Esquire, Counsel for the Debtors, 57 South Main St. Suite 312, Harrisonburg, VA 22801; and to Herbert L. Beskin, Chapter 13 Trustee, P.O. Box 2103, Charlottesville, VA 22902.



Ross W. Krumm

Ross W. Krumm
U. S. Bankruptcy Judge

