IT IS SO ORDERED.

Dated: March 19, 2025

Guy R. Humphrey
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
	:	Case No. 20-31986
DARONA NICOLE EDMONDS,	:	Chapter 7
	:	Judge Humphrey
Debtors.	:	

Patricia J. Friesinger,	:	
Plaintiff,	:	
v.	:	Adv. No. 24-3007
Darona Nicole Edmonds,	:	
Defendant.	:	

DECISION GRANTING THE CHAPTER 7 TRUSTEE'S MOTION FOR SUMMARY JUDGMENT (DOC. 29), REVOKING THE DEBTOR'S DISCHARGE PURSUANT TO 11 U.S.C. §§ 727(d)(3) AND (a)(6), AND ENTERING JUDGMENT FOR TURNOVER PURSUANT TO 11 U.S.C § 542

I. Factual and Procedural Background

On August 24, 2020 the debtor, Darona Nicole Edmonds (the "Debtor"), filed a Chapter 7 petition for relief. Estate Doc. 1. Patricia J. Friesinger was appointed as the Chapter 7 Trustee (the "Trustee"). *Id*. The meeting of creditors began on October 22, 2020 and was completed on November 12, 2020. Trustee Aff. at ¶¶ 7, 11, 12. The Debtor received a Chapter 7 discharge on December 29, 2020. Estate Doc. 22.

The Trustee investigated the Debtor's assets as to certain checking accounts and also a life insurance policy. Trustee Aff. at ¶¶ 5-6. One bank account was set up by the Debtor's mother because the Debtor was unable to open a new checking account and her only checking account was "dormant." *Id.* at ¶ 7.d. This new checking account included only funds that belonged to the Debtor. *Id.* at ¶ 7.e. The second bank account was a savings account opened for the benefit of the Debtor's daughter for college and other purposes. *Id.* at ¶ 7.b. and c. In addition, the Debtor owned a life insurance policy for which her brother was the beneficiary. *Id.* at ¶ 6. The cash surrender value of the policy was $1,684. *Id.*

In addition, the Debtor's residence was transferred to her from her father in October 2019 and the Debtor began living there in July 2020. Trustee Aff. ¶ 11.c. The property is not subject to a mortgage and is a three-unit property with two units available for rental. *Id.* at ¶ 11.b. The Debtor subsequently transferred this property back to her father on March 9, 2022 for no consideration. Trustee Ex. 4 (Quitclaim deed); Debtor Aff. at ¶ 19.

On December 31, 2020 the Trustee made a demand to the Debtor to turnover non-exempt equity in estate assets for the benefit of the bankruptcy estate. Estate Doc. 27. The total amount was $4,160.56. *Id.* That figure included $359 for the non-exempt equity in the life insurance policy, $2,597 transferred to the daughter's savings account, and $1,204 of non-exempt funds in the

checking account. The demand figure accounted for any exemptions and the account balances on the petition date. Doc. 29, Ex. 3 (Dec. 31, 2020 email from the Trustee to Debtor counsel). At no time, did the Debtor claim any exemptions beyond what was listed in the Trustee's turnover motion. See Estate Doc. 14 (Debtor's Amended Schedule C). Next, the Trustee corresponded with Debtor's counsel over an extended period of time, and confirmed the petition date balances of the bank accounts. Trustee Aff. at ¶¶ 13-15. As of December 21, 2021, the Trustee's position that the Debtor needed to turnover $4,160.56 was unchanged. *Id.* at ¶ 16. At that time, the Debtor took the position that she lacked the funds to pay this amount in a lump sum. *Id.* at ¶ 17. A proposed agreed order for a payment plan was sent to Debtor counsel but that did not result in an agreement. *Id.* at ¶¶ 17-18.

On May 16, 2022, the Trustee filed a motion for turnover of the non-exempt estate funds. *Id.* at ¶ 21; Estate Doc. 27. The Debtor filed a response indicating that "[t]he Debtor did not have access to her mother's account" and that the Debtor was unemployed and could not pay the funds sought in the motion. Estate Doc. 28. However, on December 18, 2022 the court entered an agreed judgment entry between the Debtor and the Trustee that provided that the parties agreed the non-exempt equity was $4,160.56 and the payment of the entire amount was to be paid in full not later than March 31, 2023 (the "Agreed Judgment"). Estate Doc. 29. The payment required by the Agreed Judgment was never made. Trustee Aff. at ¶ 22.

About a year after the Debtor failed to comply with the Agreed Judgment, specifically on March 15, 2024, the Trustee commenced this adversary proceeding to revoke the Debtor's discharge and for turnover of the $4,160.56, plus pre-judgment interest and costs. Doc. 1; *Id.* at ¶ 25. On April 15, 2024 the Debtor, then acting pro se, filed an unsigned document captioned "Appeal Letter" which the court deemed as an attempt to file an answer to the complaint. Docs. 4,

5. The Debtor then filed a properly signed version of the document. Doc 7. The court then entered an order requiring preliminary pretrial statements from the parties. Doc. 8. On May 23, 2024 the Debtor's estate counsel, Rebecca Barthelemy-Smith appeared in the adversary proceeding by filing an answer on the Debtor's behalf. Doc. 10. On June 3, 2024, the Debtor counsel and the Trustee filed a joint preliminary pretrial statement. Doc. 11. Based on the pretrial statement, the court asked the parties for a joint status report not later than July 12, 2024. Doc. 12.

In the parties' July 12, 2024 joint status report and despite the Agreed Judgment, the Debtor asserted that the life insurance policy was not an estate asset. Doc. 14. The report indicated that, due to the Agreed Judgment, "[t]he Debtor is, therefore, not able now to obtain an order vacating the prior [Agreed Judgment] requiring turnover, although she is hopeful the court will acquiesce." *Id.* However, the Debtor has never filed a motion to modify or vacate the Agreed Judgment.

The court scheduled a pretrial conference on October 1, 2024 that required the Debtor, Debtor counsel, and the Trustee to participate. Doc. 15. However, due to the Debtor obtaining new employment, the Debtor was excused from participation in the pretrial conference. Docs. 17, 18, ECF No. 19 (Virtual Order entered Sept. 25, 2024). Following the October 1, 2024 conference, the parties were given until November 1, 2024 to propose an agreed order to resolve this adversary proceeding, or alternatively to file separate status reports or a joint report. ECF No. 20. On November 1, 2024, the parties filed another joint status report. Doc. 23. This report indicated that the parties were "circulating an agreed order to resolve the dispute." *Id.* When the proposed agreed order was not submitted, the court's staff inquired with counsel as to the status of the proposed agreed order and was advised by Defendant counsel that the Debtor was "not in agreement with the proposed resolution." Doc. 24. Accordingly, the court scheduled a further pretrial conference to fix a date for summary judgment motions, and to schedule trial, if needed. *Id.* Following that

conference, the court entered a Final Pretrial Order that fixed February 14, 2025 for either party to file a summary judgment motion, and set a trial date. On February 14, 2025, the Trustee moved for summary judgment. Doc. 29. The Defendant filed her response on March 4, 2025. Doc. 30. The response included an affidavit from the Debtor ("Debtor Aff."). The Trustee filed a reply on March 11, 2025. Doc. 34. The court then took the matter under advisement.

II. Jurisdiction

This court has jurisdiction pursuant to 28 U.S.C. § 1334(b) and the Standing Order of Reference (Amended General Order No. 05-02) of the District Court for the Southern District of Ohio in accordance with 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E) and (J). Although the complaint does not appear to raise any *Stern* claims, the court notes that, even if it did, the parties have consented to this court entering a final judgment. Joint Preliminary Pretrial Statement, Doc. 11 at 2, ¶ II.E.2. See *Wellness Int'l Network, LTD. v. Sharif*, 575 U.S. 665, 686 (2015) (holding that bankruptcy courts are constitutionally permitted to try *Stern* claims by consent).

III. Summary Judgment Standard

A court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) (made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056). "A 'genuine' dispute exists only where 'evidence is such that a reasonable [finder of fact] could return a [judgment] for the nonmoving party.'" *Papa v. Bolera* (*In re Bolera*), 564 B.R. 569, 577 (Bankr. S.D. Ohio 2016) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 270 (6th Cir. 2009)). A fact

is material if it might affect the outcome of the suit under substantive law. *Niecko v. Emro Mktg. Co.*, 973 F.2d 1296, 1304 (6th Cir. 1992) (citing *Anderson*, 477 U.S. at 248).

"To prevail, the moving party, if bearing the burden of persuasion at trial, must establish all elements of its claim." *Bolera*, 564 B.R. at 577 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)). "[T]he nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted). When reviewing a motion for summary judgment, a court views all evidence and draws all inferences in the light most favorable to the nonmoving party. *Id.*

IV. Analysis

The Trustee's Complaint contains three claims for relief: a) the first claim seeks an order revoking the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(6)(A) and (d)(3); b) the second claim seeks turnover of the $4,160.56 pursuant to 11 U.S.C. § 542; and c) the third claim seeks the recovery of her costs and expenses incurred in connection with the adversary proceeding. The Trustee seeks summary judgment on all three of her claims for relief. The court will address each of the claims in order.

A. The Trustee is Entitled to Summary Judgment Revoking the Debtor's Discharge

The Trustee seeks to revoke the Debtor's discharge pursuant to § 726(a)(6)(A) and (d)(3) of the Bankruptcy Code. As the Sixth Circuit Bankruptcy Appellate Panel has explained:

> Revocation under § 727(d)(3) incorporates the basis for denying a discharge under § 727(a)(6). Therefore, § 727(a)(6)(A), read together with § 727(d)(3), provides for the revocation of a discharge if "the debtor has refused, in the case . . . to obey a lawful order of the court . . . ." 11 U.S.C. § 727(a)(6)(A). Case law is divided as to whether "refused" as used in § 727(a)(6) requires willfulness or intent to not comply with a court order. The Fourth Circuit requires a finding of willfulness or intent, which may be established with evidence "that the debtor received the order in question and failed to comply with its terms." [*Smith v. Jordan* (*In re Jordan*), 521 F. 3d 430, 433 (4th Cir. 2008)] (citation omitted). Upon such showing, the burden shifts to the debtor to explain his lack of compliance. *Id.*

> (citations omitted). The Eleventh Circuit also appears to follow this standard. *The Cadle Co. v. Parks-Matos* (*In re Matos*), 267 Fed. Appx. 884, 886 (11th Cir. 2008). Mistake or inadvertence could negate a finding of intent or willfulness. *See Davis v. Osborne* (*In re Osborne*), 476 B.R. 284, 296–97 (Bankr. D. Kan. 2012) (citation omitted) (contrasting the willful standard with the civil contempt standard).
>
> Other courts, including many bankruptcy court decisions within the Sixth Circuit, follow the civil contempt standard. *See, e.g. Hunter v. Magack* (*In re Magack*), 247 B.R. 406, 410 (Bankr. N.D. Ohio 1999). In the Sixth Circuit, civil contempt is established by showing that "(1) the alleged contemnor had knowledge of the order which he is said to have violated; (2) did in fact violate the order; and (3) the order violated must have been specific and definite." *Id.* (citing *Glover v. Johnson*, 138 F.3d 229, 244 (6th Cir. 1998)). If these elements have been shown, the debtor can provide evidence of impossibility or inability to comply. *Hazlett v. Gorshe* (*In re Gorshe*), 269 B.R. 744, 746 (Bankr. S.D. Ohio 2001).

Stein v. Stubbs (*In re Stubbs*), 565 B.R. 115, 125 (B.A.P. 6th Cir. 2017).

Under either standard discussed in *Stubbs*, the Debtor has refused to obey the court's lawful order entered on December 18, 2022. Under a contempt standard, the Debtor entered the Agreed Judgment to pay these funds not later than March 31, 2023, and therefore she was certainly aware of her obligation. Despite a myriad of conferences and delays, and two years having passed by, the Debtor failed to comply with the terms of the Agreed Judgment.

The order was for a sum certain, due at a specific time, and therefore it is beyond debate that the order was "clear" and "definite." *Hunter v. Magack* (*In re Magack*), 247 B.R. 406, 410 (Bankr. N.D. Ohio 1999). Under the standard used in the Fourth Circuit, there is also no question that the debtor received this order and simply did not comply. *Jordan*, 521 F.3d at 433. The Debtor has been aware of this issue since the meeting of creditors over four years ago and has never paid any amount to the Trustee, despite agreeing to pay the entire $4,160.56 by March 31, 2023, and foregoing further litigation. In addition, the Debtor agreed to the revocation of her discharge in her summary judgment response. Doc. 30 at 2.

For all these reasons, the court finds it appropriate to revoke the Debtor's discharge pursuant to 11 U.S.C. §§ 727(d)(3) and (a)(6).

B. The Trustee is Entitled to Turnover of the $4,160.56 Pursuant to § 542(a)

The Trustee has the benefit of the Agreed Judgment that the Debtor did not pay by the agreed-upon deadline. Nevertheless, this adversary proceeding seeks a turnover order compelling the Debtor to turnover to the Trustee the $4,160.56.

Section 541(a) provides, in pertinent part, that:

> [t]he commencement of a case under section 301 . . . of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) . . . [A]ll legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541(a)(1). Therefore, "[w]hen a debtor files a bankruptcy petition under Chapter 7 of the Bankruptcy Code, all of his assets and property interests become part of the bankruptcy estate, and thus available to the Chapter 7 Trustee to administer for the benefit of creditors." *In re Moore,* 640 B.R. 397, 401 (Bankr. S.D. Ohio 2022) (citations omitted). Through the Agreed Judgment, the Debtor agreed that on the petition date she was holding $4,160.56 in non-exempt property belonging to the bankruptcy estate.

Further, § 542(a) provides, in pertinent part, that:

> [A]n entity . . . in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). Again, through the Agreed Judgment, the Debtor agreed that she was to turnover to the Trustee $4,160.56 in non-exempt property of the bankruptcy estate.

The Debtor states in an affidavit submitted with her response that she "was unable to come up with the funds to pay the trustee for the amount she had requested." Debtor Aff. at ¶ 1 (Doc. 30 at 4). The Debtor also indicated that, to the best of her knowledge, she is not entitled to a tax refund for 2024. *Id.* at ¶ 6. The Debtor also indicated that her daughter's father died "leaving [the Debtor] with no financial help" and has two children. *Id.* at ¶ 3. The affidavit further states that Debtor's son is sick and therefore the Debtor works limited hours. *Id.* at ¶ 5. The affidavit also indicates that "I do not have access to monies in my mother's bank account." *Id.* at ¶ 2. Finally, the Debtor indicates the post-petition transfer of her residence back to her father, for no consideration was because she did not purchase it, and "[i]t was my parents and I had to give it back to my father." *Id.* at ¶ 4.

The requirement of the Debtor to turnover the $4,160.56 was previously determined through the Agreed Judgment. By agreeing to pay the funds, the Debtor waived the opportunity to litigate that issue further, including whether the estate funds existed on the petition date. Even if that were not the case, the summary judgment record does not leave any issue for a reasonable trier of fact. It has been two years since the deadline provided in the Agreed Judgment and the Debtor has not paid any of the balance owed. Doc. 29. Further, the Debtor's explanation for transferring her house back to her father post-petition for no consideration is not an explanation a reasonable trier of fact could find credible. Additionally, regardless of the Debtor's access to the bank account in her mother's name, the Debtor agreed that $4,160.56 was to be paid into the estate. Those funds were due regardless of whether the funds were taken from that bank account or some other source. Moreover, the explanation as to the bank account would also not be credible to a reasonable trier of fact because, by the Debtor's own admission, the purpose of the bank account was to hold the

Debtor's funds, and she indicated at the meeting of creditors that she did control those funds. Trustee Aff. at ¶ 11.a.

In any event, the Debtor's alleged inability to comply with the turnover of the funds due to her present financial circumstances is not a defense to a turnover order under § 542(a). That provision of the Bankruptcy Code requires turnover of property of the bankruptcy estate that is in the hands of the debtor or a third party on the petition date. By agreeing that number was $4,160.56, the Debtor agreed that that was the amount of non-exempt property she was holding on the petition date that needed to be turned over to the Trustee. The fact that she spent or otherwise transferred that $4,160.56 following the filing of her bankruptcy petition is not a defense to her obligation under § 542(a). *See Newman v. Schwartzer* (*In re Newman*), 487 B.R. 193, 201 (B.A.P. 9th Cir. 2013) ("[E]ven though debtor no longer possessed the funds, he was not relieved of his statutory obligation [under 11 U.S.C. § 542(a)] to deliver to the trustee and account for such property or its value.") (cleaned up); *In re Wolfe*, No. 12-02533-JDP, 2013 Bankr. LEXIS 1466, at *8-9; 2013 WL 1410385, at *3-4 (Bankr. D. Idaho Apr. 8, 2013) (similar). As stated by one court,

> This Court reaffirms the holding of *In re Majors* [*Rajala v. Majors* (*In re Majors*), No. KS-04-093, KS-04-097, 330 B.R. 880, 2005 Bankr. LEXIS 1587, 2005 WL 2077497 (B.AP. 10th Cir. 2005) (table decision)] by recognizing that current possession of estate property is not a required element for turnover pursuant to § 542(a). The fact that § 542(a) specifically allows a trustee to recover either the property itself, or the value of such property, clearly establishes that a party need not be in actual possession of the property at the time of the turnover demand to fall within the scope of § 542(a).

Jubber v. Ruiz (*In re Ruiz*), 455 B.R. 745, 752 (B.A.P. 10th Cir. 2011) (footnotes omitted).

While the court sympathizes with the Debtor's economic plight, in the court's experience, debtors in similar or worse economic situations routinely pay the value of non-exempt assets to the bankruptcy estate. Those payments are the responsibility of the Debtor that ultimately comes

with the reward of a discharge of most pre-petition debts. The Debtor has not made any meaningful effort to pay this obligation.

Accordingly, the Trustee is entitled to an order pursuant to § 542(a) compelling the Debtor to turn over to the Trustee $4,160.56.

C. The Trustee is Entitled to Pre-Judgment Interest and Costs

In addition to an order compelling turnover of the $4,160.56, the Trustee seeks an award of pre-judgment interest from the time of the first demand for the funds on December 31, 2020, as well as costs and expenses incurred in filing this adversary proceeding.

The Debtor argues that interest should not be added to the $4,160.56 due to the bankruptcy estate. Doc. 30 at 2. But this fact pattern is a classic situation in which pre-judgment interest is appropriate. *See Gold v. Davis* (*In re Zelazny*), 659 B.R. 544, 583 (Bankr. E.D. Mich. 2024) (stating that "[a] prejudgment interest award is appropriate where it is necessary to fully compensate a party for the lost use of its money and to prevent the defendant's unjust enrichment."). The pre-judgment interest is compensation to the estate for the failure to comply with the Agreed Judgment which delayed payments to creditors. The Trustee requested the pre-judgment interest begin with the date of the first demand for the funds. However, the court will order the pre-judgment interest to begin from the date the funds were due under the Agreed Judgment, March 31, 2023.

Further, as the prevailing party, the Trustee is entitled to costs. Fed. R. Bankr. P. 54(b)(1).

V. Conclusion

For all these reasons, the Debtor's discharge is revoked pursuant to 11 U.S.C. §§ 727(d)(3) and 727(a)(6). Additionally, the Debtor is ordered to turn over to the Trustee $4,160.56 pursuant to 11 U.S.C. § 542(a). The court will enter judgment, by separate order, in the amount of $4,160.56,

plus pre-judgment interest from March 31, 2023, and post-judgment interest, all at the federal judgment interest rate provided by 28 U.S.C. § 1961(a). *See Zelazny*, 659 B.R. at 582-83 (commenting that the federal post-judgment interest rate is also used as the rate for prejudgment interest, and collecting cases). Further, as the prevailing party, the Trustee is entitled to costs. Fed. R. Bankr. P. 54(b)(1).

Copies to:

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