

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MICHELLE R. MOORE,

Debtor.

Case No. DK 09-02783
Chapter 7
Hon. Scott W. Dales

ORDER REGARDING CREDITOR'S CONTEMPT

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Pursuant to its Order to Show Cause dated June 28, 2012, the court held a hearing in Kalamazoo, Michigan on August 8, 2012 to consider whether Riverside Dental, P.C. (the "Creditor") violated the rights of Michelle R. Moore (the "Debtor") by garnishing her state tax refund, after the court had entered the Debtor's discharge.

The court has jurisdiction over the Debtor's case pursuant to 28 U.S.C. § 1334(a). The United States District Court for the Western District of Michigan has referred the case and all related proceedings (including this contested matter) to the Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and LCiv.R. 83.2(a) (W.D. Mich.). Matters concerning the Debtor's discharge are clearly core proceedings within the meaning of 28 U.S.C. § 157(b)(2). The court has authority to enter orders in cases involving civil contempt provided the order is compensatory or coercive, rather than punitive. *In re Burkman Supply, Inc.*, 217 B.R. 223, 226 (W.D. Mich. 1998).

Although the court directed the Creditor to show cause why the court should not hold it in contempt for violating the discharge injunction, the Creditor did not attend or otherwise show

cause. The Debtor, however, appeared and credibly testified under oath. The court makes the following findings based upon the Debtor's testimony and the court's review of the docket (including the Debtor's schedules):

- The Debtor filed for Chapter 7 relief on March 12, 2009.
- The Debtor scheduled the Creditor's claim (the "Debt") and the Creditor had notice of the bankruptcy proceedings.
- The Debt arose from dental services performed in 2007.
- The court entered the Debtor's discharge on July 7, 2009.
- The court reopened the case, after closing it, based upon the Debtor's letters alleging violation of her discharge.
- The Debt was discharged under 11 U.S.C. § 727.
- The Creditor has ignored the discharge injunction (and the court's Order to Show Cause) and has continued to pursue the Debtor after the court entered the discharge order.
- The Creditor garnished the Debtor's 2009 state tax refund post-petition, to collect the prepetition Debt.
- The Creditor is holding \$1,187.00 in violation of 11 U.S.C. §§ 524 & 727.
- As between the Debtor and the Creditor, the Debtor is entitled to the refund.
- The Creditor is in contempt of this court.

To compensate the Debtor for the Creditor's contempt, the court has determined to require the Creditor to return the garnished funds to the Debtor. And, to coerce compliance with this Order, the court will impose a modest *per diem* incentive.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Riverside Dental, P.C. is in contempt of court for violating the discharge order.

IT IS FURTHER ORDERED that within 21 days after entry of this Order, Riverside Dental, P.C. shall remit to the Debtor \$1,187.00 by cashier's check, money order or other immediately available funds.

IT IS FURTHER ORDERED that if Riverside Dental, P.C. fails to comply strictly with this Order, the Debtor shall be entitled to collect an additional \$10.00 per day, starting 21 days after entry of this Order, until the court is satisfied that Riverside Dental, P.C. has purged its contempt.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order by first class United States mail upon Riverside Dental, P.C. at 424 Riverside Drive, Suite 200, Battle Creek, Michigan 49015, Michelle R. Moore, and the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated August 9, 2012



A handwritten signature in black ink, appearing to read "S. Dales".

Scott W. Dales
United States Bankruptcy Judge