

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MELINDIA GAIL JACKSON,

Debtor.

Case No. DK 13-07534

Hon. Scott W. Dales

Chapter 7

ORDER REGARDING FILING FEE FOR DEBTOR'S NOTICE OF APPEAL

PRESENT: Honorable Scott W. Dales
Chief United States Bankruptcy Judge

Melindia Gail Jackson voluntarily filed for chapter 7 bankruptcy protection on September 25, 2013. On March 3, 2014, the court entered an order granting the motion of U.S. Bank, N.A., for relief from the automatic stay, authorizing the bank to pursue its foreclosure remedies against Ms. Jackson's residence. On March 5, 2014, Ms. Jackson filed a Motion to Reconsider Order Regarding Relief From Stay (the "Reconsideration Motion," DN 20), which the court heard on June 11, 2014, after adjourning the hearing at Ms. Jackson's request.

The court entered an order denying the Reconsideration Motion (DN 40) on June 13, 2014. On June 27, 2014, Ms. Jackson, *pro se*, timely filed a notice of appeal (DN 42), and applied for a waiver of the \$298.00 filing fee that the Clerk would otherwise collect under 28 U.S.C. § 1930 and paragraph 14 of the Bankruptcy Court Miscellaneous Fee Schedule.¹

The court has discretion to waive filing fees as prescribed by the Judicial Conference for individuals under 28 U.S.C. § 1930(f). For example, the court may waive the chapter 7 filing fee for individual debtors who have income less than 150 percent of the official poverty line and

¹ The \$298.00 filing fee actually has two components: (1) \$293.00 prescribed by the Judicial Conference of the United States pursuant to its authority under 28 U.S.C. § 1930(b); and (2) \$5.00 set specifically in 28 U.S.C. § 1930(c).

who are unable to pay the initial fee in installments. 28 U.S.C. § 1930(f)(1); Fed. R. Bankr. P. 1006. In addition, the Judicial Code does not restrict the court from waiving fees for other debtors and creditors, “in accordance with Judicial Conference policy . . .” 28 U.S.C. § 1930(f)(3).

Although Ms. Jackson applied for this fee waiver on the form designed for seeking waivers of initial chapter 7 filing fees, the application nevertheless establishes that her income is less than 150 percent of the official poverty line —the yardstick for waiving fees under 28 U.S.C. § 1930(f)(1).² See Fed. R. Bankr. P. 9005 (court to disregard errors not affecting substantial rights). Moreover, Ms. Jackson has previously reported that she is losing her house to foreclosure, the natural consequence of her failure to make payments and the court’s decision to grant relief from the automatic stay. Finally, Ms. Jackson’s bankruptcy schedules, signed under penalty of perjury, adequately establish that her assets do not permit her to pay the filing fee in full.

The court is not aware of any specific Judicial Conference policy regarding waiver of fees for filing notices of appeal under 28 U.S.C. § 1930(f)(3), but judicial policy, in general, tends to relax the fee burdens imposed on impecunious debtors.

Given Ms. Jackson’s dire financial situation, and because the waiver is consistent with Judicial Conference general policy relieving income-qualified chapter 7 debtors from paying court fees, the court will grant Ms. Jackson’s request to waive \$293.00 of the filing fee prescribed by the Judicial Conference for filing the notice of appeal. Because the \$5.00 “notice of appeal fee,” however, is imposed directly by statute rather than indirectly through the Judicial Conference, and because the court has doubts about its authority to grant *in forma pauperis* relief

² When she filed her bankruptcy petition, Ms. Jackson paid the filing fee, and did not seek a waiver under 28 U.S.C. § 1930(a). As a result, the court regards her as among the “other debtors” mentioned in 28 U.S.C. § 1930(f)(3).

under 28 U.S.C. § 1915, the court will not waive the \$5.00 notice of appeal fee imposed under 28 U.S.C. § 1930(c). *See* Bankruptcy Fee Compendium III (June 1, 2014), at p. 66, ¶ H.1.A.2 (court may waive \$5.00 notice of appeal fee only if it grants *in forma pauperis* status under 28 U.S.C. § 1915) & *Id.* at pp. 68-69, ¶ H.1.B.3 (noting disagreement about whether bankruptcy courts may exercise authority under 28 U.S.C. § 1915).

NOW, THEREFORE, IT IS HEREBY ORDERED that Ms. Jackson's application to waive the filing fee (included within DN 42) is GRANTED to the extent of \$293.00 and DENIED to the extent of \$5.00.

IT IS FURTHER ORDERED that Ms. Jackson shall pay \$5.00 to the Clerk within 21 days after entry of this Order.

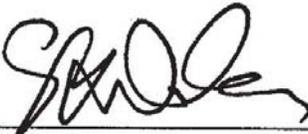
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Melindia Gail Jackson, Elizabeth M. Abood-Carroll, Esq., John M. Van Elk, Esq., Laura Genovich, Esq., and the Office of the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated July 11, 2014





Scott W. Dales
United States Bankruptcy Judge