

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MICHELLE R. MOORE,

Debtor.

Case No. DK 09-02783

Hon. Scott W. Dales

Chapter 7

ORDER REGARDING CONTINUING CONTEMPT

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Four months ago the court held Riverside Dental, P.C. (the “Creditor”) in contempt of the discharge injunction of Michelle R. Moore (the “Debtor”), based on the Debtor’s credible testimony which established that the Creditor illegally garnished the Debtor’s 2009 state tax refund in violation of 11 U.S.C. § 524. After the Creditor disobeyed the court’s first Order to Show Cause and the order holding it in contempt of the discharge injunction, the court issued its Second Order to Show Cause on November 19, 2012, directing the Creditor to purge itself of its contempt, or failing that, to appear in court on December 12, 2012. The court’s order also directed the Creditor’s principal, Dr. Robert A. Baker, to appear.

The court held the hearing as scheduled, and the Debtor appeared, *pro se*. Although a non-lawyer representative of the Creditor addressed the court, neither Dr. Baker nor the Creditor appeared as ordered.¹ The Debtor reported that she has still not received the funds from the Creditor, despite the court’s several orders. Instead, she stated that the Creditor purported to deliver a check to her former counsel, but the check was undated and therefore non-negotiable. The court notes, further, that its second show cause order required the Creditor to file a declaration in advance of the December 12, 2012 hearing if it made the payment as ordered. The docket reflects no such declaration.

Based on the court’s review of the docket and the Debtor’s uncontested statements in open court, the court finds that the Creditor has not purged its contempt, and continues to hold \$1,187.00 that belongs to the Debtor. The court notes, further, that it previously imposed a \$10 per *diem* award to induce the Creditor to remit the funds, commencing 21 days after entry of the court’s initial order finding the Creditor in contempt. The court calculates that 104 days have elapsed since the per diem award took

¹ As the court noted in its first Order to Show Cause, because the Creditor is an artificial entity, it may appear in this court only through counsel. 28 U.S.C. § 1654; LBR 9010-2.

effect, resulting in an additional award of \$1,040.00 above the \$1,187.00 that the Creditor illegally garnished. In light of the Creditor's continuing contempt, the court must decide what remedy to impose.

The court has considered enlisting the United States Marshals Service to arrest Dr. Baker, but rejects the idea, for now, largely because it would entail considerable inconvenience to the Debtor (who would likely feel impelled to attend another hearing), federal law enforcement officials, the court, and Dr. Baker's patients who would be deprived of his services during his incarceration for days if not longer, depending on the court's schedule. Instead, the court favors a less drastic remedy at this time.

Believing that if the Debtor had the assistance of counsel, she would have recovered the original \$1,187.00 from the Creditor with far less inconvenience and aggravation for all interested parties, the court will enter a money judgment against the Creditor and Dr. Baker, jointly and severally. The Debtor may enforce the judgment by recording a lien against the Creditor's and Dr. Baker's real estate, by writ of execution against the property of either, or by writ of garnishment, according to Michigan's usual post-judgment procedures. *See* Fed. R. Civ. P. 69; Fed. R. Bankr. P. 7069 and 9014.

The court also believes that if counsel could be assured of payment, the Debtor may find an attorney willing to assist her. The court has determined to enter a money judgment in the amount of \$2,227.00, comprising the \$1,187.00 originally due and the per *diem* award. The likely proceeds of execution, either by levy or garnishment, should provide enough recovery to permit the Debtor to pay counsel and still receive at least the original \$1,187.00, plus some modest compensation for her several trips to the courthouse necessitated by the Creditor's (and now Dr. Baker's) contempt. This solution, which may permit the Debtor to harness the power of counsel, clearly respects the limits on the court's authority by providing a remedy that is coercive and compensatory, rather than punitive. *In re Burkman Supply, Inc.*, 217 B.R. 223, 226 (W.D. Mich. 1998).

NOW, THEREFORE, IT IS HEREBY ORDERED that the Clerk shall prepare a judgment in favor of the Debtor, and against the Creditor and Dr. Baker, jointly and severally, in the amount of \$2,227.00.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order (and the Judgment) pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Michelle R. Moore, Siri Lipscomb, Esq., the United States Trustee, Riverside Dental P.C., and Dr. Robert A. Baker, DDS.

IT IS SO ORDERED.

Dated December 13, 2012



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

Scott W. Dales
United States Bankruptcy Judge