

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

GARY E. SHROYER and DONDRA K.
SHROYER,

Debtors.

Case No. DG 12-02555
Chapter 13
Hon. Scott W. Dales

ORDER REGARDING DEBTORS' OBJECTION TO FEES

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

This matter involves a dispute between the chapter 13 debtors Gary E. Shroyer and Dondra K. Shroyer (the "Debtors") and their attorney, Larry Ver Merris (the "Attorney"), over attorney fees and expenses. In Debtors' fee agreement with their Attorney, dated March 20, 2012, they agreed to pay \$2,800.00 for the Attorney's representation in their chapter 13 case, covering all legal work performed through the § 341 creditors meeting. The fee agreement also provided that the Debtors would pay the Attorney \$200.00 per hour for any legal work performed after the creditors meeting.

The Attorney filed his first fee application on June 8, 2012, seeking \$1,720.00 in fees and \$479.96 in expenses. No one objected to the first fee application, and the court issued an order on July 9, 2012, awarding fees and expenses as requested.

A year later, the Attorney filed a second fee application, seeking \$1,100.00 in fees and \$50.21 in expenses. As before, the Attorney filed an affidavit on July 8, 2013 stating that he had received no response or objections to the fees and expenses listed in his second fee application. Again, the court issued an order, dated July 9, 2013, granting the second fee application.

The Debtors then sent a letter to the chapter 13 trustee, Brett Rodgers, on July 22, 2013, objecting to various fees and expenses included in the second fee application. Because the Debtors raised no objection prior to the court's order granting the fee application, the court is treating the Debtors' informal objection as a motion to reconsider the order dated July 9, 2013. *See* Fed. R. Bankr. P. 5005(c); Fed. R. Bankr. P. 9023.

Gary E. Shroyer appeared before the court on September 4, 2013, but his wife could not attend. Mr. Shroyer amplified the argument the Debtors advance in their written submissions, emphasizing that the Attorney did not consult with them before performing much of the legal work reflected in the second fee application. They feel that some of the fees are not appropriate given that they did not directly authorize him to do some of the work.¹ They also argue that the amount of postage billed for in the second fee application is excessive. Although they continued to complain about some of the charges reflected in the first fee petition, Mr. Shroyer commendably conceded that the Debtors waived their objection to all fees and expenses reflected in the first fee application by failing timely to object.

The Attorney also appeared in court on September 4, 2013. He argued that all the disputed work he performed for the Debtors as set forth in the second fee application was to ensure that there were no issues arising with their chapter 13 plan. He expressed a particular concern for reviewing proofs of claim because the Debtors' confirmed plan promises a 100% dividend to unsecured creditors. Exaggerated or otherwise objectionable claims would directly and adversely affect the Debtors who, after all, agreed to pay all allowed claims in full. The Attorney stated that his services were justified, customary, and necessary to adequately represent the Debtors, particularly given the 100% dividend.

¹ They concede that they did consent to the Attorney's performance of some tasks.

At the hearing, Mr. Shroyer indicated that he objected to approximately \$500.00 in fees and expenses. Given this relatively modest amount in dispute, the parties waived any right to an evidentiary hearing and agreed that the court should decide the matter based on previous records and the paperwork Mr. Shroyer “bench filed” during his September 4, 2013 court appearance.

After reviewing all the relevant documents, the court finds that all the fees and expenses included in the second fee application were necessary and appropriate. Moreover, the court observes that the Attorney incurred fees and expenses reflected in the first fee application evidently without complaint from the Debtors and reasonably assumed that he should continue to represent them in the same manner, as agreed in the fee agreement.

Having carefully reviewed the second fee application (despite the Debtors’ untimely objection) the court finds that all the legal work the Attorney performed for the Debtors was within the normal scope of what an attorney would do for a chapter 13 client. Moreover, the postage charges are modest and supported, particularly given the necessity of serving papers (including fee applications) on creditors. The court finds no basis for reconsidering or disturbing the order dated July 9, 2013. *See GenCorp. Inc. v. American Int’l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999); *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998).

At the end of the day, it appears there was a misunderstanding as to the level and timing of communication the Attorney would provide the Debtors regarding the legal work he performed for them. They felt that they did not have control over the charges, in part because they say the Attorney did not consult them in advance of performing work for them. In addition, they felt chilled in contacting him because every phone call would result in additional charges.

This, of course, is a fact of life in any attorney-client relationship where, as here, the clients agreed to pay an hourly fee.

NOW, THEREFORE, IT IS HEREBY ORDERED that the motion to reconsider the order dated July 9, 2013 is DENIED, and the order will stand.

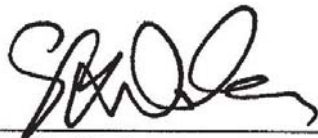
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Gary E. Shroyer and Dondra K. Shroyer, Larry A. Ver Merris, Esq., and Brett N. Rodgers, Esq., chapter 13 trustee.

END OF ORDER

IT IS SO ORDERED.

Dated September 6, 2013





Scott W. Dales
United States Bankruptcy Judge