

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)	
)	
WILLIAM L. BEST, and)	Case No. 04-52586-293
JOHANNA BEST,)	Chapter 7
)	
Debtors.)	
)	
TRACY A. BROWN,)	
)	
)	
Plaintiff,)	
)	
-v-)	Adv. No. 05-4238-659
)	
WILLIAM L. BEST, and)	
JOHANNA BEST,)	
)	
Defendants.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The matter before the Court is Trustee's Complaint for Turnover of Property and to Revoke Discharge ("Complaint") and Debtors' Response to Trustee's Complaint to Revoke Debtors' Discharge ("Response"). Pursuant to the Order of Court Relating to Trial, the matter was set for trial on October 11, 2005. Pursuant to this Order, the parties were to complete pre-trial compliance consisting of filing a Stipulation of Fact, exchanging witness lists and exhibits, stipulating to exhibits, and filing Briefs and Findings of Fact and Conclusions of Law. The parties failed to submit any pre-trial compliance to the Court. The parties appeared at the trial setting and stated that the matter was being submitted to the Court on the Complaint and Response. Upon consideration of the record as a whole, the Court makes the following FINDINGS OF FACT:

William L. and Johanna Best ("Debtors") filed for relief under Chapter 7 of the Bankruptcy Code on October 1, 2004. Trustee, Tracy A. Brown ("Trustee") is the duly appointed and acting Chapter 7 Trustee. Trustee made the following allegations in her Complaint: Trustee determined that Debtors' received a 2004 federal tax refund in the amount of \$6,830.00 and state tax refund in the amount of \$526.00 (collectively the "Refunds") which were property of the Bankruptcy Estate,

with the Estate being entitled to a pro-rated value of the Refunds in the amount of \$5,544.00. Debtors claimed valid exemptions in the amount of \$2,343.00, leaving the non-exempt value of the Estate's interest in the Refunds at \$3,201.00. Trustee thereafter requested that Debtors turnover this sum, and Debtors failed to comply with Trustee's request. On July 1, 2005, the Court entered an Order directing Debtors to turn over \$3,201.00 within 14 days of the date of the Order. To date, Debtors have failed to comply with the Court Order to tender said Refunds to Trustee.

Debtors' Response to Trustee's Complaint states that Counsel for Debtors has attempted to contact Debtors but was unsuccessful and that a copy of Trustee's Complaint was mailed to Debtors. Debtors' Response fails to respond to the specific allegations contained in Trustee's Complaint. The Court issues its decision below after consideration of the record as a whole.

JURISDICTION

The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 151, 157, and 1334 (2005), and Local Rule 81-9.01 (B) of the United States District Court for the Eastern District of Missouri. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(E) (2005). Venue is proper under 28 U.S.C. § 1409(a) (2005).

CONCLUSIONS OF LAW

"Averments in a pleading to which a responsive pleading is required, other than those to the amount of damage, are admitted when not denied in the responsive pleading..." Fed. R. BANKR. P. 7008(d) (2005).

Here, there is no dispute as to the facts since each allegation in Trustee's Complaint is deemed admitted as not having been denied by Debtors. Trustee seeks a judgment in the amount of the \$3,201.00 together with cost, interest and attorneys fees. However, Trustee provides no evidence regarding her costs, rate of interest sought or amount of attorneys fees requested, so these requests will be denied. Trustee is therefore entitled to a judgment in the amount of \$3,201.00, which equals the non-exempt portion of the Debtors' Refunds.

Trustee also seeks to revoke Debtors' discharge for Debtors' failure to turnover the non-

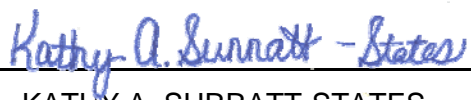
exempt portion of the Refunds, and Debtors' failure to comply with the July 1, 2005, Order for turnover of the Refunds to Trustee.

"On the request of the trustee...and after notice and a hearing, the court shall revoke a discharge...if (2) the debtor acquired property that is property of the estate...and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or (3) the debtor committed an act specified in subsection (a)(6)..." 11 U.S.C. §§ 727(d)(2), (d)(3) (2005).

"The court shall grant the debtor a discharge, unless the debtor has refused...to obey any lawful order of the court..." 11 U.S.C. § 727(a)(6)(A) (2005). "A trustee seeking revocation of discharge must establish that the debtor willfully and intentionally refused to obey [a court] order." *In re Ireland*, 325 B.R. 836, 838 (Bankr. E.D. Mo. 2005).

Here, Debtors received the Refunds and knowingly and fraudulently failed to surrender these funds to Trustee in violation of Section 727(d)(2). Furthermore, Debtors willfully and intentionally failed to comply with an order issued by this Court to turnover said funds to Trustee in violation of Section 727(a)(6)(A). Therefore, Debtors' discharge will be revoked under Sections 727(d)(2) and (d)(3).

By separate order judgment will be entered in favor of Trustee and Debtors' discharge will be revoked.


KATHY A. SURRATT-STATES
United States Bankruptcy Judge

DATED: February 10, 2006
St. Louis, Missouri

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