

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 13
CRYSTAL BERRY,)
) BK No. 91-50350
Debtor(s).)

OPINION

This matter is before the Court on a motion to vacate filed by Crystal Berry (debtor). The instant chapter 13 proceeding was originally filed as a joint petition by Duane and Crystal Berry. On August 27, 1993, Duane Berry filed a motion for dismissal of his chapter 13 case. Crystal Berry did not join in the motion. An order allowing the motion was entered on August 30, 1993, and the case was dismissed "as against Duane Berry, without prejudice." Debtor subsequently filed a motion to vacate the order of dismissal. She contends that pursuant to a Judgment of Dissolution of Marriage entered on April 21, 1993, Duane Berry was ordered to make all the remaining monthly payments due under the parties' chapter 13 plan, and that he "fraudulently entered into the Judgment of Dissolution ... knowing that he was going to dismiss himself from the Chapter 13 petition in bankruptcy." Debtor's Motion to Vacate, ¶ 13. Debtor further contends that she cannot afford to make the remaining chapter 13 payments, and that unless said payments are made, she will lose her vehicle and her only means of transportation to and from work. She asks that the Court

vacate its order of dismissal and reinstate Duane Berry as a joint debtor in this proceeding.

Section 1307(b) of the Bankruptcy Code provides, "on request of the debtor at any time if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter." 11 U.S.C. § 1307(b). Thus, chapter 13 debtors have an absolute right to have their cases dismissed at any time prior to entry of an order of conversion. Specifically:

[T]he debtor is entitled, as a matter of right, to obtain a dismissal of the chapter 13 case, at any time.... [T]he right to a dismissal of the chapter 13 case cannot be waived by the debtor. Nor may it be denied or delayed by the court, even where other parties oppose the dismissal ... since to do so would force a debtor to remain in chapter 13 involuntarily.

5 Collier on Bankruptcy, ¶ 1307.01[3][i] at 1307-6. While debtor has cited cases suggesting that dismissal is inappropriate when a bankruptcy case is filed in bad faith or to abuse or misuse the bankruptcy process,¹ debtor has failed to demonstrate (and in fact has not even argued) that Duane Berry filed the instant proceeding in bad faith or for other improper purposes. While the Court is sympathetic to debtor's position, under the mandatory language of section 1307(b), the Court has no authority to vacate its prior order of dismissal. Accordingly, for the reasons stated, debtor's motion to vacate is

¹The cases cited by debtor include In re Gaudet, 95 B.R. 4 (Bankr. D.R.I. 1989) and In re Merritt, 39 B.R. 462 (Bankr. E.D.Pa. 1984).

DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: October 8, 1993