

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

IN RE:) In Proceedings
) Under Chapter 7
EARNEST TURNER)
) No. BK 90-30466
)
Debtor.)

ORDER

On June 5, 1990, Earnest Turner (debtor) filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code. Subsequently, the United States Trustee (U.S. Trustee) filed a motion to dismiss pursuant to 11 U.S.C. §707(b)¹. The U.S. Trustee alleged that the debtor was an individual with primarily consumer debts. In addition, the trustee alleged that the debtor had sufficient income to fund a chapter 13 plan that could pay unsecured creditors 100% of their claims in approximately three years.²

At the hearing on the motion to dismiss the debtor did not dispute the allegations of the U.S. Trustee. The debtor's sole argument in response to the motion was that ability to repay was

¹"After notice and a hearing, the court, on its own motion or on a motion by the United States Trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtors." 11 U.S.C. §707(b).

²Specifically, the U.S. Trustee alleged that the debtor had a net monthly income of \$1365.00 while his monthly expenses were only \$835.00, leaving approximately \$530.00 disposable income per month to fund a chapter 13 plan.

not a proper factor to consider when determining whether a chapter 7 filing constitutes substantial abuse.

This Court has previously addressed the question of whether a debtor's ability to repay his debts from future income is a proper factor to consider in resolving a substantial abuse issue. In In re Johnson, 115 B.R. 159 (Bankr. S.D.Ill. 1990), the Court considered the relevant legislative history to §707(b) and concluded that "a debtor's ability to pay his debts out of future income is the primary, though not exclusive factor, to consider in determining whether substantial abuse exists under section 707(b)." Id. at 163. However, a debtor's ability to repay debts will not automatically result in a 707(b) dismissal if other factors, such as sudden illness or unforeseen calamity, tend to show that dismissal is not warranted. Id. at 163-164.

In the present case, the Court has examined the debtor's schedules and concludes that the debts are primarily consumer debts. In addition, it appears the debtor has the ability to repay his debts from future income and has failed to show any mitigating factors that would indicate chapter 7 relief is appropriate.

IT IS ORDERED that the U.S. Trustee's Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that Earnest Turner's chapter 7 case is DISMISSED.

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

Date October 25, 1990