

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

In re Sharon E. Jordan, Debtor
Bankruptcy Case No. 95-32559-13

United States Bankruptcy Court
W.D. Wisconsin

February 15, 1996

John W. Gibson, Madison, WI, for debtor.
William A. Chatterton, Ross & Chatterton, Madison, WI, Chapter 13 Trustee.

Robert D. Martin, United States Bankruptcy Judge.

MEMORANDUM DECISION

On October 23, 1995, I held a hearing on the debtor's motion to dismiss this chapter 13 case. At that hearing attorney John W. Gibson admitted that he had filed Ms. Jordan's case without a reasonable belief that a viable plan could be proposed or completed. Mr. Gibson also presented an affidavit of Aloysius Rohmeyer, referred to by Mr. Gibson as his paralegal, suggesting that Mr. Rohmeyer and not Mr. Gibson had made the decision to file Ms. Jordan's case. I entered an order to show cause why Mr. Gibson should not be sanctioned under Bankruptcy Rule 9011 for filing a frivolous chapter 13 petition and for filing an objection to the trustee's motion to dismiss when he had no reasonable belief that a viable plan could or would be filed.

At the hearing on the order to show cause on November 30, 1995, in addition to his testimony, Mr. Gibson offered as evidence Mr. Rohmeyer's affidavit, certain papers from the Gibson Law Office files including a schedule of Ms. Jordan's debts, a questionnaire including a budget, and a list of personal property, which he described as regular office documents used in preparation of chapter 13 plans, a small claims summons and complaint with a return date of August 21, 1995, demanding replevin of Ms. Jordan's automobile, and a copy of a chapter 13 "plan" for Ms. Jordan date-stamped "November 30, 1995," by the bankruptcy clerk's office. All were received without objection. Mr. Gibson's testimony makes it clear that he had no other notes of interviews or telephone calls with the debtor. Ms. Jordan did not appear at the show cause hearing, though prior to the hearing on dismissal she signed an affidavit attesting to the accuracy of Mr. Rohmeyer's affidavit.

The evidence establishes the following facts:

Sharon Jordan came to the Gibson Law Office on April 27, 1994, to discuss filing a chapter 13 bankruptcy. Mr. Gibson worked over a budget with Ms. Jordan and informed her that she did not have sufficient income for a viable chapter 13 plan. She returned for three meetings in September of 1994, but her situation had not substantially changed and Mr. Gibson gave her the same advice.

It is not clear when Ms. Jordan next approached Mr. Gibson. Ms. Jordan's chapter 13 petition was signed and dated by Mr. Gibson on March 3, 1995, and by Ms. Jordan on May 23, 1995. Mr. Gibson testified that he met with the debtor "several times" during the summer of 1995. However, there is no evidence of any specific meetings between May 23, 1995, and the first meeting of creditors on September 19, 1995.

Early on Saturday, August 5, 1995, Mr. Gibson left on a family vacation from which he returned on August 14. In Mr. Gibson's absence, on August 9, 1995, Mr. Rohmeyer filed Ms. Jordan's petition, without a plan or schedules. Mr. Rohmeyer made the decision to file. He did so without seeking specific direction from the traveling Mr. Gibson. Mr. Gibson testified that he was reachable at all times during his vacation. In his affidavit, Mr. Rohmeyer stated: "August 9, 1995, Aloysius F. Rohmeyer, files a Short Form Chapter 13 ⁽¹⁾ for Sharon E. Jordan. The short form was filed due to the Granite Finance Company harassing both the debtor and the co-signer [name omitted]. Debtor said that she needed something filed immediately." Granite Finance Company appears to have sought to enforce its lien on Ms. Jordan's Pontiac automobile. It is not clear when or how Ms. Jordan notified Mr. Rohmeyer of the urgency of her problem, ⁽²⁾ or whether in fact Mr. Rohmeyer had any direct contact with Ms. Jordan prior to filing. It is clear, however, that he did not contact her on the day of filing, or at any time thereafter, until September 19, 1995. Mr. Rohmeyer tried to contact Ms. Jordan at Mendota School, her place of employment, on the day he filed her petition, but was unsuccessful. He tried again on August 24, the date that a plan and schedules were last due, ⁽³⁾ without success. He left several messages with the school between August 25 and September 19, 1995. None was returned.

Mr. Gibson testified that he also had difficulty reaching Ms. Jordan. He said that he believed that he met with her either before or after his trip. His calendar, to which Mr. Gibson referred during testimony, contained notations of two canceled meetings on August 24, 1995, one in the morning and the other in the afternoon. He testified that he believed that Ms. Jordan may have come in with another client. However, Mr. Gibson was unable to connect any of his recollections of meetings with Ms. Jordan with any regularly kept office record.

No plan was timely filed, and on September 1, 1995, William A. Chatterton, the chapter 13 trustee, served a motion to dismiss Ms. Jordan's chapter 13 proceeding. Mr. Chatterton's motion provided that if a response was not made by September 21, 1995, the case would be dismissed without further proceeding.

On September 19, 1995, Ms. Jordan arrived late for the scheduled meeting of creditors. Prior to her arrival, Mr. Gibson told the trustee that he had had difficulty reaching Ms. Jordan, did not have a plan and schedules, and was contemplating dismissing her case and withdrawing as her counsel. After Ms. Jordan arrived, however, and met with Mr. Rohmeyer, or perhaps with both Mr. Rohmeyer and Mr. Gibson, the trustee agreed to continue the meeting to October 3, 1995, to allow Mr. Gibson to finish Ms. Jordan's plan. Ms. Jordan agreed to meet with Mr. Rohmeyer on September 21, 1995. On September 20, Mr. Gibson signed and filed with the court an objection to the motion to dismiss Ms. Jordan's case. A hearing on that objection was scheduled for October 23, 1995. On September 21, Ms. Jordan met with Mr. Rohmeyer and Mr. Gibson to discuss her options, and Ms. Jordan apparently expressed a desire to dismiss her case. Mr. Gibson did not file for dismissal, however, and the trustee held Ms. Jordan's continued §341 meeting at 1:30 p.m. on October 3, 1995. Neither Mr. Gibson nor Ms. Jordan appeared. Some time that day, Mr. Gibson filed the motion for voluntary dismissal.

Although some of the facts and dates are different, this case is substantially similar to another case in which I sanctioned Mr. Gibson under Rule 9011. The legal analysis of

that case is incorporated here by reference and the memorandum decision is attached. See In re Slaughter, Case no. 95-32565-13 (Bkrcty. W.D. Wis., December 21, 1995).

Mr. Gibson conducted virtually no factual inquiry during the course of this bankruptcy, and under the standards discussed in Slaughter, clearly violated his duty to conduct a reasonable inquiry before filing Ms. Jordan's petition and the objection to dismissal. There is no believable evidence that Ms. Jordan conferred with Mr. Gibson's office between May 23, 1995, the date she apparently signed her petition, and September 19, 1995. In fact, Mr. Gibson's own records (Ms. Jordan's chapter 13 questionnaire, schedule of debts, and list of personal property) suggest that neither he nor Mr. Rohmeyer worked on Ms. Jordan's chapter 13 forms at any time between September of 1994 and October of 1995. In January of 1995, Ms. Jordan purchased the Pontiac which became subject to replevin and allegedly triggered the filing of this case. None of the documents proffered as evidence by Mr. Gibson lists an automobile or any debt connected to an automobile. The only transportation cost listed on Ms. Jordan's chapter 13 worksheets is \$30 per month for busfare. A reasonable inference is that these worksheets were substantially completed in 1994 and were not reviewed again by Mr. Rohmeyer or Mr. Gibson until October, 1995, after most of Ms. Jordan's creditors had filed proofs of claim. At some point, presumably between the October 23, 1995, hearing on dismissal and the show cause hearing, the debts on Ms. Jordan's worksheets were altered to reflect the updated debts listed in the proofs of claim, and these figures were then used in the "plan" filed by Mr. Gibson on November 30, 1995. The failure of these updated worksheets to list an automobile purchased in January of 1995 as personal property or as a consumer debt--easily the largest debt owed by Ms. Jordan and the one subject to a collection action--suggests that Mr. Gibson was not truthful when he testified that he had met with Ms. Jordan "several times" during the summer of 1995 in order to work on her "plan."

In answer to a question by the trustee at the hearing on the order to show cause--"If I understand your testimony, there was no hope that a confirmable, feasible plan could be filed between March 3 and September 21?"--Mr. Gibson answered, "Yes." No plan was proffered until November 30, 1995, after the debtor had moved to dismiss the case. The purpose of Mr. Gibson's filing a plan at that time--and offering it as evidence in this matter--is unclear. No plan was or could be filed either at the time set for the trustee's motion to dismiss or within the time, after the September 19 meeting of creditors, in which the trustee consented to consider a plan.

Mr. Gibson testified that he files objections to dismissal as a matter of course in the belief that if he could represent at the hearing scheduled on his objection that a plan might thereafter be proposed within a reasonable time, the case would not be dismissed. As I pointed out in Slaughter, no law supports his position.

It seems even more clear in this case than in Slaughter--and it was quite clear there--that Mr. Gibson filed this petition with insufficient information to formulate a plan, with no reasonable hope that such information was forthcoming or that such information, once obtained, would support the filing of a viable chapter 13 plan. Ms. Jordan's petition was apparently filed to stave off repossession of her car. The decision to file was made by Mr. Rohmeyer, a paralegal. Filing a bankruptcy with the bankruptcy court requires both reasonable inquiry and the reasonable belief that a viable chapter 13 plan can be timely filed. By conceding that no viable plan could have been filed within 15 days of August 9, 1995, Mr. Gibson concedes that the filing was solely for the purpose of delay, which is sanctionable under Rule 9011.

At my request, Mr. Chatterton filed a document listing the cost in time and money to his office of Mr. Gibson's actions in this case. In Slaughter, I tallied costs from the time that Mr. Gibson filed his objection to dismissal because the evidence showed that at that

point he had no reasonable basis for objecting. In this case, the costs may be tallied from the time that Ms. Jordan's petition was filed. That sum--\$502--shall be ordered to be paid to Mr. Chatterton as appropriate restitution. However, that alone does not provide the level of deterrence which the sanctioned conduct requires. For that, an additional sum of \$498 shall be ordered to be paid to the U.S. Bankruptcy Court as a penal fine. As a further sanction, this court's file will be referred to the State Bar of Wisconsin for possible disciplinary action.

As with Slaughter, this decision turns, in some respects, on the facts I have found, and those findings turn on my assessment of the credibility of Mr. Gibson's testimony. I had many reasons to doubt both the memory and the veracity of Mr. Gibson as a witness. His demeanor suggested that many answers were contrived. As in Slaughter, Mr. Gibson offered no corroboration through records or other witnesses, and Mr. Rohmeyer's affidavit, offered by Mr. Gibson in support of his cause, was, if anything, damning.

Sanctions may be ordered consistent with this opinion which stands as my findings of fact and conclusions of law in this matter.

END NOTES:

1. A "short form" filing, in the parlance of the Gibson Law Office, is a petition without a plan or schedules.
2. Nor is it clear what the urgency was, since there would have been one week between Mr. Gibson's anticipated return to his office and the August 21 return date on the replevin summons.
3. Federal Rule of Bankruptcy Procedure 3015(b) provides in relevant part: "The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct."