

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

IN RE: BARRY and AUDRIA ZIELINSKI, Debtors

**CASE NO.: 2:05-bk-78263
CHAPTER 7**

ORDER

Thomas E. Robertson, Jr., Trustee [Trustee],¹ filed a Motion for Order for Contempt as Against Donna Minette [Motion], asking that this court hold Donna Minette [Minette] in contempt for failure to comply with this court's order of March 19, 2007. For the reasons stated herein, the Motion is denied.

I. Jurisdiction

This court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334 and 157. This is a core proceeding under 28 U.S.C. §157(b)(2)(O). The following order constitutes findings of fact and conclusions of law in accordance with Federal Rules of Bankruptcy Procedure 7052 and 9014.

II. Findings of Fact

The Motion alleges, and it appears to be undisputed, that Donna Minette is the ex-wife of separate debtor, Barry Zielinski [debtor]. During the administration of the case, the Trustee determined that Minette owed the debtor's estate \$17,000 pursuant to a previously entered state court order attendant to their divorce. The Trustee pursued collection of this amount, which resulted in a proposed resolution set forth in a Motion to Compromise Controversy and Notice of Opportunity to Object filed on February 2, 2007. On March 19, 2007, this court filed its Order

¹ The Trustee is a successor trustee. This distinction is not relevant for purposes of this proceeding, and the court will treat all acts of the original trustee and the successor Trustee as one and the same.

Approving Motion to Compromise Controversy [Order], which provides in part:

IT IS, THEREFORE, CONSIDERED, ORDERED, ADJUDGED and DECREED that Donna Minnette shall pay this bankruptcy estate the sum of \$17,000.00 at the rate of no less than \$500.00 per month with an interest rate of 6% per annum. The \$500.00 monthly payment will be due and owing on the 10th day of each month. The first payment shall be due on the 10th day of April, 2007, and on the 10th day of each month thereafter until this obligation is paid in full. Any payment made by mail and postmarked by the 10th day of the month will be timely. Should Donna Minnette fail to make any payment by the 10th day of the month, then the Trustee of the bankruptcy estate will be entitled to declare the full amount due at that time and have a right of attachment, garnishment and execution as to any assets of Donna Minnette.

Minette failed to make the aforementioned payments to the Trustee and has defaulted pursuant to the terms of the Order. By his letter to Minette of January 16, 2009, the Trustee declared the full amount due and owing and made demand for payment in full. The Trustee's garnishment and collection efforts have not been availing.

Accordingly, the Trustee filed his Motion seeking to hold Minette in contempt of this court for having violated the Order. On September 17, 2009, this court issued its Order Granting Donna Minette an Opportunity to File a Responsive Pleading on or before October 2, 2009, the failure of which would permit this court to enter an order without further notice or hearing. Minette has failed to file a response or otherwise appear.

III. Discussion

Civil contempt is a procedure "instituted to preserve and enforce the rights of private parties to suits, and to compel obedience to orders and decrees made to enforce the rights and administer the remedies to which the court has found them to be entitled." *Wasserman v. U.S.*, 161 F. 722, 722 (8th Cir. 1908). Though expansive in scope, a court's civil contempt powers are rarely utilized to enforce a monetary judgment or court approved settlement. *See Patterson v. Am.'s Voice, Inc. (In re Am.'s Voice, Inc.)*, No. 00-0006, 2000 WL 33529764, at *1 (Bankr.

D.C. Oct. 4, 2000) (describing such limited circumstances as an individual's failure to turn over assets, when a debtor avoids a writ of execution through misleading tactics, and when a court assures compliance with a federal statute that requires payment to a designated class of beneficiaries). A "court cannot use its contempt powers to enforce a court order which merely acknowledges and approves a settlement, without specifically commanding or enjoining any particular conduct." *Gardiner v. A.H. Robins Comp., Inc.*, 747 F.2d 1180, 1190 n.13 (8th Cir. 1984).

The Trustee has recourse to execution and garnishment as well as any other permissible state or federal legal aids in collection of his judgment. "[W]hen a party fails to satisfy a court-imposed money judgment the appropriate remedy is a writ of execution, not a finding of contempt." *Aetna Cas. & Sur. Co. v. Markarian*, 114 F.3d 346, 349 (1st Cir. 1997) (citing *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 980 (11th Cir. 1986)); see also *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1147-48 (9th Cir. 1983); *In re Butler Innovative Solutions, Inc.*, No. 08-00065, 2008 WL 5100181, at *2 (Bankr. D.C. July 29, 2008). Federal Rule of Civil Procedure 69, as incorporated by Federal Rule of Bankruptcy Procedure 7069, provides that "[a] money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution . . . must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies."

In this matter, the Trustee requests that this court hold Minette in contempt of court for defaulting on her obligations pursuant to the Order. Based on the facts and evidence presented, this court finds that Federal Rule of Civil Procedure 69, rather than civil contempt, is the appropriate remedy for Minette's default.

IV. Conclusion

For the reasons stated herein, the Motion is denied.

IT IS SO ORDERED.

Dated this 22nd day of October, 2009.



HONORABLE RICHARD D. TAYLOR
U.S. BANKRUPTCY JUDGE

cc: Kenneth W. Cowan, Attorney for the Chapter 7 Trustee
Roy R. Gean, III, Attorney for Debtors
Donna Minette
Thomas E. Robertson, Jr., Chapter 7 Trustee
Barry and Audria Zielinski, Debtors