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2 **So Ordered.**



Frederick P. Corbit

**Frederick P. Corbit
Bankruptcy Judge**

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4 **Dated: August 1st, 2014**

5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF WASHINGTON

7 In re:

8 DEBRA KAY HICKS and JAMES
9 LLOYD HICKS,

Debtors.

Case No. 14-01533-FPC13

ORDER DENYING TRUSTEE'S
MOTION TO DISMISS

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11 THIS MATTER came before the court on the Trustee's Motion to Dismiss for
12 Failure to Timely File Documents (ECF No. 31). The court reviewed the files and
13 records herein, heard argument of counsel, is fully advised in the premises, and
14 enters findings of fact and conclusions of law, and an order.

15 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 16 1. The debtors filed a chapter 13 bankruptcy petition on April 23, 2014
17 (ECF No. 1 at pp. 1-3).
- 18 2. Together with the debtors' bankruptcy petition, the debtors filed
19 schedules, a Statement of Financial Affairs, and a Chapter 13 Statement of Current
20 Monthly Income (ECF No. 1 at pp. 34, 42 and 60). Each of these documents were

1 verified by the debtors as true and correct in accordance with Fed. R. Bankr. P.
2 1008.

3 3. In the debtors' schedules, they verified that both of them were
4 unemployed and that Debra Kay Hicks is disabled (ECF No. 1 at p. 30).

5 4. In the debtors' Statement of Financial Affairs, they verified that during
6 the two years prior to filing their bankruptcy petition that the only income they
7 received "from employment, trade, or profession, or from operation of the debtor's
8 business" was \$7,352.94 that James Lloyd Hicks received from AMR Ambulance
9 Service in 2012 (ECF No. 1 at p. 35).

10 5. In their Chapter 13 Statement of Current Monthly Income, the debtors
11 verified that they received no income from "wages, salary, tips, bonuses, overtime,
12 [or] commissions" during the six (6) month period preceding the petition date (ECF
13 No. 1 at p. 54).

14 6. The debtors have no payment advices to file because the only income
15 they received from employment, trade, a profession, or the operation of a business
16 was more than sixty (60) days prior to the filing of their bankruptcy petition.

17 7. On June 5, 2014, the Chapter 13 Trustee (the "trustee") filed a motion
18 in which he requested that the court dismiss the debtors' bankruptcy case as a result
19 of the debtors' failure to timely file "Payment Advices and/or Declaration re: Lack
20 of Payment Advices" (ECF No. 31). The trustee asserted in his motion that the relief

1 requested was “pursuant to FRBP 1007(c) and/or FRBP 3015 and 11 U.S.C.
2 §521(a).”

3 8. On June 11, 2014, the debtors’ counsel filed an objection to the
4 trustee’s motion to dismiss (ECF No. 36). In the objection the debtors’ counsel
5 stated:

6 The debtors received no payment advices of the kind described in and
7 required to be filed under 11 U.S.C. § 521(a). Contrary to the trustee’s
8 assertion, there is no requirement that debtors file a declaration regarding
9 the lack of such payment advices under the statute, Federal Bankruptcy
10 Rules, or Local Bankruptcy Rules.

11 9. The debtors’ schedules, Statement of Financial Affairs, and Chapter 13
12 Statement of Current Monthly Income each provide statements that are verified
13 pursuant to Fed. R. Bankr. P. 1008 and provide evidence that there are no payment
14 advices that need to be filed in this case.

15 10. On June 18, 2014, the trustee filed a response to the debtors’ objection
16 (ECF No. 41). In the response, the trustee cited 11 U.S.C. § 521(a)(1)(B)(iv) for the
17 proposition that the debtors are required to file copies of payment advices; however,
18 the trustee cited no code section, rule, or other authority for the proposition that a
19 debtor is required to file a declaration where there are no payment advices available
20 for filing.

11. On June 24, 2014, the trustee filed a report that there were no objections
to confirmation of the debtors’ chapter 13 plan, and in that report the trustee

1 recommended that the debtors' plan be confirmed because it satisfies the
2 requirements of the Bankruptcy Code (ECF No. 45).

3 12. On June 25, 2014, the debtors' plan was confirmed (ECF No. 51).

4 13. On July 28, 2014, the trustee filed a supplemental reply in support of
5 his motion to dismiss the debtors' case (ECF No. 55). In the supplemental reply, the
6 trustee asserted for the first time that the debtors are required by Fed. R. Bankr. P.
7 4002(b)(2) to provide a written statement that payment advices do not exist or are
8 not in the debtors' possession.

9 14. In the supplemental reply, the trustee quotes the Advisory Committee
10 Notes to the 2008 amendments to Fed. R. Bankr. P. 4002(b)(2) to support the
11 assertion that debtors are required to cooperate and provide the requested
12 documents; however, the quoted paragraph also provides:

13 Subdivision (b)(2) does not require that the debtor create documents or
14 obtain documents from third parties; rather, the debtor's obligation is to
15 bring to the meeting of creditors under §341 the documents which the
debtor possesses.

16 15. The continuation of the trustee's effort to dismiss the debtors' case is
17 inconsistent with the trustee's recommendation that the debtors' plan be confirmed.

18 16. The debtors have satisfied all of their reporting obligations with respect
19 to payment advices.

ORDER

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2 Based on the foregoing findings of fact and conclusions of law, the trustee's
3 motion to dismiss is **DENIED**.

4 *///END OF ORDER///*

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