

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:)
)
JOYCE STOKES,) CHAPTER 13 BANKRUPTCY
) CASE NO. 90-50357
)
DEBTOR)
)

ORDER

The Debtor has filed a Motion to Reinstate Dismissal of Chapter 13 Proceeding. The Debtor alleges in the motion that she failed to receive notice of the Motion to Dismiss which was filed by the Chapter 13 Trustee. There is no allegation in the motion that the service was improper. Taking the allegation at face value, it appears the Debtor is saying that the postal service failed to deliver the notice after it was properly dispatched by the Trustee. This assertion, accepted as fact, is not sufficient to warrant the granting of the relief requested.

The Debtor failed to make payments to the Chapter 13 Trustee for a substantial period. It appears from the motion that the Debtor was out of work from June 29, 1993 to November

10, 1993. It appears further that interruption in employment was caused by the Debtor's physical disability.

A Chapter 13 case is a voluntary undertaking by a debtor. Its objective is the repayment of debts. Without funding by the debtor, the objective of a Chapter 13 case becomes impossible to achieve.

The inability of a debtor to make payments to the Chapter 13 Trustee is no different from the debtor's inability to buy gas for his or her automobile. In such a case, neither vehicle can accomplish its intended purpose. If the purpose of a Chapter 13 case fails, the case must be dismissed.

The power of the Court to open a case which has been previously dismissed is problematical. If it were possible, it would certainly create some confusion on the part of creditors who would have previously received the dismissal notice. Even if the result were virtually identical to the refile and reconfirmation of this 100% case, the latter will be preferable because it is more understandable. This Court should always be especially diligent to insure that the things which are done here are as understandable as possible to the creditors who are affected. While it is easy to conclude that a step such as reinstatement of this Chapter 13 case might accomplish more conveniently the rehabilitation of this Debtor, it is a step which would be viewed as most irregular by any untrained observer. This impression is to be avoided whenever possible,

even if it results in some hardship and inconvenience to the Debtor.

The result proposed by the motion is not consistent with the objectives of Chapter 13. Neither is it consistent with the expectations of the creditors who have been receiving notices in this case since it was filed.

Accordingly, the motion is DENIED.

SO ORDERED this 4th day of April, 1994.

JAMES D. WALKER, JR., Judge
United States Bankruptcy Court