



THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: July 11, 2017

A handwritten signature in black ink, reading "Beth E. Hanan", is written over a horizontal line.

Beth E. Hanan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re:

Delores K Schmidt,

Case No. 08-25973-beh

Debtor.

Chapter 7

**ORDER GRANTING DEBTOR'S MOTION TO REOPEN CASE FOR THE
PURPOSE OF FILING FINANCIAL MANAGEMENT COURSE CERTIFICATE
AND OBTAINING A DISCHARGE**

Debtor Delores Schmidt, then in her eighties, filed for bankruptcy relief under chapter 7 on May 31, 2008. Her case was closed on December 10, 2008 without a discharge, due to her failure to file a certification of completion of a course concerning personal financial management. CM-ECF, Doc. No. 12.

On February 25, 2009, one of Ms. Schmidt's daughters, Ms. Deb Weisner, called counsel to obtain an update on her mother's case. See CM-ECF, Doc. No. 23. Ms. Weisner learned that the debtor's case was closed without a discharge, due to the failure to file a certification, and counsel advised her that the debtor would need to reopen her case and file a certification in order to obtain a discharge. *Id.* On July 9, 2009, Ms. Weisner asked counsel that all correspondence regarding the bankruptcy case be

directed to her. *Id.* On January 23, 2013, Ms. Schmidt died. In the intervening years, she had become increasingly forgetful. *Id.*

In May 2017, another daughter of the debtor, Ms. Linda Brown, acting as personal representative for the debtor, sought to reopen the case and obtain a discharge. CM-ECF, Doc. No. 17. Ms. Brown has indicated a lack of knowledge of Ms. Weisner's communications with debtor's counsel some years earlier. *See* CM-ECF, Doc. No. 23. According to the debtor's counsel, Ms. Brown seeks to reopen the case to resolve some underlying judgment liens on the debtor's home, in which Ms. Brown lives and for which she makes mortgage payments. CM-ECF, Doc. No. 23. Additionally, there is a balloon payment due on the home mortgage in July 2017, and Ms. Brown will be unable to make that payment unless the case is reopened and a discharge obtained. *Id.* It appears that all of the judgments encumbering the property were docketed in Milwaukee County prior to the initiation of debtor's bankruptcy case and were listed on her schedules, and that the judgment creditors received notice of the bankruptcy.

No creditors have objected to the debtor's motion to reopen. The court held a hearing on the matter on June 15, 2017 and ordered briefing.

Pursuant to Federal Rule of Bankruptcy Procedure 5010 and 11 U.S.C. section 350(b), a closed case may be reopened for cause. Whether to reopen a case is a matter left to the court's broad discretion. *Redmond v. Fifth Third Bank*, 624 F.3d 793, 797 (7th Cir. 2010). Counsel for the debtor (now, her personal representative) notes that *In re Johnson*, 500 B.R. 594, 597 (Bankr. D. Minn. 2013) describes several factors that may constitute cause to reopen when a debtor wishes to file a belated certificate of completion of the financial management course required by Federal Rule of Bankruptcy Procedure 4004(c)(1)(H). Those factors include: (1) a reasonable explanation for the failure to comply with the financial course requirements; (2) a timely request for relief; (3) explanation of counsel's failure to monitor the debtor's compliance; and (4) no prejudice to creditors. The court also notes that the

Seventh Circuit has provided guidance on when a request to reopen a closed bankruptcy case is appropriate. *See Redmond v. Fifth Third Bank*, 624 F.3d at 798. There, a debtor sought to reopen his chapter 13 case four years after it was closed, to assert a violation of bankruptcy court orders. The *Redmond* court identified several non-exclusive factors to consider in determining whether to reopen, including: (1) the length of time the case has been closed; (2) whether the debtor would be entitled to relief if the case were reopened; and (3) the availability of nonbankruptcy courts, such as state courts, to entertain the claims. *Id.* at 798.

As to the timeliness factor, the *Redmond* court noted that the longer a party waits to reopen a closed bankruptcy case, the more compelling the reason to reopen must be. To determine the strength of the reason, courts may consider the lack of diligence of the movant and the prejudice to the nonmoving party caused by the delay. As to the second factor, a closed bankruptcy proceeding should not be reopened where it appears that to do so would be futile and a waste of judicial resources. *Id.* at 803.

Where the specific reason for seeking to reopen is to file a belated certificate of financial management course completion, several courts outside the Seventh Circuit have applied the *Johnson* factors. A debtor sought to reopen his chapter 7 case more than seven years after it was closed in *In re McGuinness*, No. BR 08-10746, 2015 WL 6395655 (Bankr. D. R.I. Oct. 22, 2015). In that case, the debtor submitted evidence that he had failed to timely take the course because of anxiety and a panic disorder. While the *McGuinness* court acknowledged that some courts frequently find cause to reopen a case to allow a debtor to file such a certificate and obtain a discharge, it instead relied on the decisions of other courts which denied reopening where the justification was not an “emergency” or was “mere ignorance on the part of the debtor.” *Id.* at *2. *McGuinness* then looked for cases analyzing a medical excuse for the delay. The court concluded that because the debtor did not provide specific evidence of the impact of his medical condition on his ability to

function, even though the debtor was functional enough to decide to file bankruptcy and completed other aspects of his case, the debtor had not demonstrated cause to reopen the case. Another court applied the *Johnson* factors when the debtor had completed all the paperwork entitling her to a discharge, but her counsel had failed to file the documents due to clerical oversight. *In re Rising*, No. 07-50123, 2015 WL 393416 (Bankr. M.D. N.C. Jan. 8, 2015). Three years after the case was closed, but finding no prejudice to creditors and no fault of the debtor, the *Rising* court granted the motion to reopen. In another case, *In re Chrisman*, No. 09-30662, 2016 WL 4447251 (Bankr. N.D. Ohio, Aug. 22, 2016) the debtor moved to reopen her chapter 7 case seven years after it had been closed, for failure to file her certificate. There the court considered not only that the length of delay was extreme, but that the debtor would hardly benefit by taking the financial management course so long after her bankruptcy case was filed. *Id.* at *2. In addition, the debtor offered no explanation for the delay, and the docket showed that the court was receiving substantial returned mail from creditors, making prejudice difficult to determine.

Here, the *Redmond* factors do not prevent reopening of the case. Even though the delay is substantial, it appears to be the result of the debtor's declining condition and ultimate demise, as well as a lack of communication between her adult children. While one daughter was aware in 2009 that the debtor did not complete the requirements for a discharge, there is no suggestion that the daughter who has been paying the mortgage on the debtor's home had that same knowledge; there is no evidence Ms. Brown had any communication with debtor's counsel at the time the case was closed without discharge. Under the *Redmond* rubric, it does not appear that the current movant, the debtor's personal representative, lacked diligence in bringing the motion to reopen. As to the second *Redmond* factor, reopening and discharge would not be futile, but instead would achieve a significant goal

of the debtor's original bankruptcy filing, the release of judgment liens against her home. Third, no state court can grant the particular relief requested.

Looked at from the *Johnson* framework, again the length of delay is substantial and the court well appreciates that other courts have declined to reopen when the delay is of a similar length. But there are material distinctions. While the *McGuinness* court declined to reopen because the debtor's anxiety condition allowed him to file and pursue his bankruptcy case, even though he did not complete the last course, here the debtor's apparent physical and mental condition only continued to deteriorate. While she was able to initiate her case, slightly more than a year later her daughter instructed counsel not to direct further correspondence to the debtor, but only to Ms. Weisner. The debtor died four years later in her late eighties without taking the course. This circumstance likewise dilutes the applicability of the court's conclusion in *Chrisman*. There the court declined to reopen in part considering that the purpose of the financial management course was lost by having the debtor take the course so long after filing her case. Here, while the educational benefit of the course will never materialize for the debtor, the benefit of discharge undeniably redounds to her estate, and at no prejudice to her creditors. The delay here is not a fault of counsel, given that counsel timely conveyed information to one daughter, Ms. Weisner, but was not in communication with the personal representative daughter, Ms. Brown, until years later. In sum, while the delay is substantial, and evidence as to the reason for delay in the months or years immediately after case closing could have been more detailed, the court has broad discretion to grant a motion to reopen a closed case, and for the reasons given above will do so here.

Accordingly,

IT IS HEREBY ORDERED that the debtor's case is REOPENED to allow her to file a financial management course certificate (through her personal representative) and obtain a chapter 7 discharge.

IT IS FURTHER ORDERED that upon issuance of the debtor's discharge, this case may again be closed.

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