

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

IN RE: JASON MICHAEL GLUR, Debtor

**No. 5:18-bk-71487
Chapter 13**

ORDER DENYING ADDITIONAL APPLICATION FOR COMPENSATION

Before the Court is the *Additional Application for Compensation* [application] filed by the debtor's attorney, Eric J. Backstrom, on August 10, 2020. The Court held a telephonic hearing on September 23, 2020. Mr. Backstrom appeared for himself. The chapter 13 trustee, Joyce Bradley Babin, and her staff attorney, Natasha Graf, also appeared. At the conclusion of the hearing, the Court took the matter under advisement. For the reasons stated below, the Court respectfully denies Mr. Backstrom's application.

The debtor filed his chapter 13 case on May 31, 2018, and his plan was confirmed on October 18, 2019. On August 7, 2020, the debtor's case was dismissed for failure to make plan payments. Three days after the dismissal, on August 10, 2020, Mr. Backstrom filed the "long form" application now before the Court. In his application, Mr. Backstrom seeks compensation in the amount of \$404 for work that he performed in connection with his representation of the debtor from April 17, 2020, to August 10, 2020. Mr. Backstrom attached a 21-day notice of opportunity to object to his application and no objections were filed. Rather than submitting a proposed order granting his application after the objection period passed, Mr. Backstrom—to his credit—contacted the Court and requested a hearing on his application based on his belief that the Court would be disinclined to grant his post-dismissal application because of its prior decision in *In re James*, No. 6:16-bk-70760, 2017 WL 10742586 (Bankr. W.D. Ark. Jan. 9, 2017).

In *James*, the debtor's attorney filed a motion for the allowance of an administrative claim in which he sought to have compensation that had previously been awarded to him

under 11 U.S.C. § 330(a) treated as an administrative claim under § 503(b) in the event the debtor's chapter 13 case was dismissed prior to confirmation. Although Jack W. Gooding, the chapter 13 trustee in *James*, initially objected to the application, the parties subsequently came to an agreement and submitted to the Court a proposed agreed order allowing the administrative claim. However, before the Court could enter the agreed order allowing the claim, the case was dismissed for failure to make plan payments.¹ Because the administrative claim had not been allowed under § 503(b) when the case was dismissed, the Court found that the trustee was not authorized to deduct the proposed claim prior to returning funds in the trustee's possession to the debtor in accordance with § 1326(a)(2). Section 1326 states in relevant part:

(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

(A) proposed by the plan to the trustee;

(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

11 U.S.C. § 1326(a).

At the September 23 hearing, Mr. Backstrom argued that *James* is distinguishable from the present case because the plan in *James* was unconfirmed at the time of dismissal while the plan in this case was confirmed. The chapter 13 trustee voiced support for Mr. Backstrom's application, agreeing that *James* is distinguishable based on the fact that the

¹ Chapter 13 trustees may administer and enter certain routine orders pursuant to General Order 11. The order dismissing the debtor's case in *James* for failure to make payments was such an order.

debtor's plan in this case had been confirmed. The trustee stated that when a case with a confirmed plan is dismissed, she distributes any "plan funds" that she has on hand to creditors pursuant to the confirmed plan rather than refunding the funds in her possession to the debtor.² Although the trustee did not specifically reference a code section, the Court presumes that the trustee distributes funds in this manner based upon her interpretation of the second sentence of § 1326(a)(2), which states that "[i]f a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable." 11 U.S.C. § 1326(a)(2).

As an initial matter, the Court agrees with Mr. Backstrom and the trustee that the issue decided in *James* was different than the issue now before the Court. In *James*, the Court decided that when a chapter 13 case is dismissed prior to the confirmation of a plan, the trustee may pay only those § 503(b) administrative claims that were approved by the Court prior to dismissal before returning any remaining funds to the debtor under § 1326(a)(2). Here, the Court must decide whether the code permits the entry of a post-dismissal order authorizing the trustee to pay compensation to the debtor's attorney under § 330(a) that was not approved—nor even requested—prior to the dismissal of a chapter 13 case in which there was a confirmed plan.³

² The trustee explained that "plan funds" are funds that a debtor has paid into the plan prior to dismissal.

³ To be clear, in *James*, the Court had already approved the debtor's attorney's compensation under § 330(a) and the application at issue in that case sought to have the previously-approved compensation deemed an administrative claim under § 503(b). Here, Mr. Backstrom's application seeks compensation that the Court has not previously approved pursuant to § 330(a) and, as a result, § 503(b) is not at issue. *See* 11 U.S.C. § 503(b)(2) (after notice and a hearing, compensation previously awarded under § 330(a) may be deemed an administrative claim).

There is a split among bankruptcy courts regarding “whether creditors or debtors are entitled to receive funds held by the trustee at the time of a confirmed [c]hapter 13 case’s dismissal.” *In re Edwards*, 538 B.R. 536, 539 (Bankr. S.D. Ill. 2015).

In a minority of courts, such funds must be distributed to creditors pursuant to the plan. *See In re Darden*, 474 B.R. 1, 7-9 (Bankr. D. Mass. 2012); *In re Parrish*, 275 B.R. 424, 425 (Bankr. D.D.C. 2002). A majority of courts, however, hold that such funds must be returned to the debtor. *See Nash v. Kester (In re Nash)*, 765 F.2d 1410, 1414 (9th Cir. 1985); *Williams v. Marshall (In re Marshall)*, 526 B.R. 695, 697-98 (N.D. Ill. 2014); *In re Hamilton*, 493 B.R. 31, 39 (Bankr. M.D. Tenn. 2013); *In re Parker*, 400 B.R. 55, 62 (Bankr. E.D. Pa. 2009); *In re Slaughter*, 141 B.R. 661, 663 (Bankr. N.D. Ill. 1992).

Judicial disagreement as to the resolution of this issue is based on the interplay of two Code provisions: § 1326(a)(2) and § 349(b). Whereas courts in the minority hold that under § 1326(a)(2) the trustee must make disbursements pursuant to the confirmed plan no matter if the case is dismissed, the majority position is undergirded by § 349(b)’s directive that dismissal revests the debtor’s post-petition earnings in the debtor.

Id. at 539-40.

The Court provided the text of §1326(a)(2) above in its discussion of *James*. Section 349(b) states in relevant part:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 349(b). Although neither Mr. Backstrom nor the trustee addressed the effect of § 349(b)(3) during the September 23 hearing, this Court agrees with the majority’s position that § 349(b)(3) controls what happens to property of the estate when a case is dismissed—and it plainly provides that dismissal “revests property of the estate in the entity in which such property was vested immediately before the commencement of the case.” In other words, dismissal revests property of the estate in the debtor. Property of the estate includes undistributed plan payments made by the debtor and being held by the

trustee. *See* 11 U.S.C. §1306(a)(2) (in a chapter 13, property of the estate includes the debtor’s post-petition earnings). Further, the trustee’s duty to distribute plan payments under § 1326(a)(2) ceases to exist once a case has been dismissed.⁴ *See In re Bateson*, 551 B.R. 807, 812 (Bankr. E.D. Mich. 2016) (the “duties of [a] trustee under § 1326(a)(2) do not exist in a vacuum, nor do they exist in perpetuity. Those duties arise only when a [c]hapter 13 case is filed, and they continue in effect only while a [c]hapter 13 case is pending.”); *see also In re Nash*, 765 F.2d at 1413 (dismissal effectively vacates a chapter 13 plan confirmation order). For all of these reasons, the Court finds that the funds that were in the trustee’s possession when this case was dismissed revested in the debtor pursuant to § 349(b)(3) and, as a result, the funds should be returned to the debtor rather than distributed to creditors or used to pay the compensation requested by Mr. Backstrom in his application.⁵ Therefore, the Court denies Mr. Backstrom’s application.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 09/30/2020

cc: Jason Michael Glur, debtor
Eric J. Backstrom, attorney for the debtor
Joyce Bradley Babin, chapter 13 trustee

⁴ The Court notes that the plan in this case addressed only the payment of pre-confirmation attorney fees. *See* Fed. R. Evid. 201; *see also In re Penny*, 243 B.R. 720, 723 n.2 (Bankr. W.D. Ark. 2000) (“a [c]ourt may take judicial notice of its own orders and of records in a case before the court”) As a result, confirmation of this particular plan does not appear to furnish a basis for paying the post-petition attorney fees sought by Mr. Backstrom in his application—even had the Court adopted the minority’s position that § 1326(a)(2) controls over § 349(b)(3) upon dismissal.

⁵ Although the Court recognizes that § 349(b)(3) provides that “for cause,” a court may order that property of the estate does not revest in the debtor upon dismissal, no cause was alleged in this case—and at least one court has held that the fact that an attorney performed work for which he wishes to be paid does not constitute cause. *See In re Demery*, 570 B.R. 220, 224 (Bankr. W.D. La. 2017).