

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: §  
§  
WESLEY JOE YOUNG and TINA § CASE NO. 02-34406-SAF-13  
MELINDA YOUNG, §  
§  
D E B T O R S. §

**MEMORANDUM OPINION AND ORDER**

On August 1, 2003, Thomas D. Powers, Standing Chapter 13 Trustee, filed a motion requesting that the court issue an order to attorney W. Rhett Darby to show cause why he should not be sanctioned for an apparent lack of prosecution of cases and representation of his clients. By order entered August 21, 2003, the court ordered that Darby appear before the court on October 9, 2003, at 2:00 p.m., to explain why he should not be sanctioned for his conduct in certain specified cases, specifically for his failure to attend to his clients' needs and for his failure to communicate forthrightly with the court and the trustee. Darby appeared on October 9, 2003.

Wesley and Tina Young, the debtors, with Darby as their attorney, filed their petition for relief under Chapter 13 of the Bankruptcy Code on May 22, 2002. On May 1, 2003, the trustee filed a motion to dismiss the case for the debtors' failure to confirm a Chapter 13 plan. The court set a hearing on the

trustee's motion on June 12, 2003. Darby requested a continuance. The trustee agreed to the continuance. The trustee re-noticed the hearing to July 10, 2003, at 2:00 p.m., with a pre-hearing conference at 8:30 a.m. Darby did not appear at the pre-hearing conference. The debtors did appear. To protect the debtors, the trustee continued the hearing on his motion to dismiss to August 14, 2003.

On July 11, 2003, Darby filed a motion to continue the hearing scheduled for July 10, 2003. Darby made no effort to present the motion to the court before the scheduled hearing he wanted continued. Instead, on July 8, 2003, he mailed the motion to the court, the trustee and his clients, and then proceeded to ignore the hearing. He did not include a certificate of conference with his motion. Apparently, he did not even take the trouble to discuss the matter with his clients, who appeared without him at the pre-hearing conference on July 10, 2003. The motion states that Darby had a conflicting and prior scheduled court appearance on July 10, 2003. The motion does not include any supporting documentation. If Darby had a conflicting court appearance, he would have known about the appearance before July 8, 2003. The motion also states that because of the court setting, he "will not have an opportunity to prepare for the hearing in the above styled cause for the week of July 7, 2003." The statement does not reflect the narrow focus of the trustee's

motion nor the nature of the actions counsel needed to take to remedy the lack of a Chapter 13 plan. Rather, the statement reflects a meaningless communication to the court, without thought or focus.

Darby did not tend to the needs of the Youngs. Darby did not communicate forthrightly with the court or the trustee. Darby concedes these professional omissions.

Darby explained that he is a sole practitioner. He acknowledged that he had inadequate office management oversight causing him to mishandle several matters. He further stated that he had been "pressed too thin" over the past year, resulting in a failure to attend hearings or otherwise tend to client business. He represented to the court that he has addressed those problems. He waived his fees for representing the Youngs.

The trustee reported that Darby has addressed the outstanding issues in the Youngs' case. The Youngs' Chapter 13 plan is now set for confirmation on November 13, 2003. The trustee has agreed to continue his hearing on his motion to dismiss to November 13, 2003, with the expectation that the grounds for dismissal, failure to confirm a plan, will finally be moot.

The court determined that it would review cases where Darby is the attorney of record. Following that review, if the court concluded that further proceedings were necessary, the court

would open a miscellaneous proceeding addressing Darby's practice before this court.

Lloyd and Gloria Rickard, with Darby as their attorney, filed a petition for relief under Chapter 13 of the Bankruptcy Code on January 6, 2003. Case no. 03-30241-SAF-13. On January 29, 2003, the trustee filed a motion to dismiss the case, alleging that the debtors had multiple bankruptcy filings. The court set a hearing on the motion on March 13, 2003. Meanwhile, Navarro Land Company filed a motion to lift the automatic stay. The court set a hearing on that motion on March 13, 2003.

On March 3, 2003, Darby filed a motion for a continuance of both hearings. He filed an amended motion on March 10, 2003. The motion represented that he had a conflicting continuing legal education program scheduled, that the motion was the first for a continuance and that the motion was not filed for the purpose of delay. The court granted the motion for a continuance regarding the dismissal motion, but denied the continuance regarding the lift stay. The court explained that without an agreement of the secured creditor and without a basis for the court to presume the debtors may prevail on the lift stay motion, a continuance would result in the lifting of the stay. 11 U.S.C. § 362(e). The court noted that Darby did not include a certificate of conference with either the trustee or Navarro Land Company with his

motion for a continuance. The court reset the hearing on the motion to dismiss on April 10, 2003.

On April 7, 2003, Darby filed another motion for a continuance. He again stated that he needed a continuance to attend to continuing legal education requirements. He again alleged that the motion for a continuance was his first request and was not brought for the purpose of delay. He again failed to include a certificate of conference. By order entered on April 7, 2003, the court denied the motion. The court held that it already addressed the CLE basis for a continuance; that the motion misstated the facts; and that the motion was brought for delay. Darby did not appear at the hearing on April 10, 2003, and the court dismissed the case.

In the Rickards' case, Darby failed to adequately represent his clients and did not communicate forthrightly with the court or the trustee.

On March 10, 2003, Terry and Amy Shawver, with Darby as their attorney, filed a petition for relief under Chapter 13 of the Bankruptcy Code. Case no. 003-32654-BJH-13. The trustee set the meeting of creditors on May 1, 2003. Amy Shawver appeared at the meeting; Terry Shawver did not appear. Darby also did not appear, although a non-lawyer from his office was present. The trustee continued the meeting to July 7, 2003. Terry appeared on July 7, 2003, but Darby again failed to appear to represent his

clients. While the case remains pending on the court's docket, Darby has failed to adequately represent his clients by failing to represent them at the meeting of creditors.

Darby must attend to his professional duties to adequately represent his clients. He must further tend to court appearances when noticed. The court questions the veracity of Darby's motions for continuances. Darby must communicate honestly with the court and the parties in a case.

Darby has addressed the issues in the Youngs' case. Darby has agreed that he will receive no fees in the Youngs' case. But the Rickards' case and the Shawvers' case demonstrate that Darby's problems were not isolated events. Darby concedes that he has had problems operating his law practice. Darby represents to the court that he has addressed his office management problems and his personal scheduling problems. The court is not satisfied with a mere representation by Darby that he has addressed his problems.

The court has an obligation to monitor the practice of law before the court to protect parties and the integrity of the court. To fulfill that obligation, the court must have demonstrable evidence that Darby has remedied his practice deficiencies. Accordingly, the court will open a miscellaneous

proceeding and direct Darby to report to the court, with evidence, on the steps he has taken to remedy his practice deficiencies.

Based on the foregoing,

**IT IS ORDERED** that attorney W. Rhett Darby shall receive no fees for his representation of the debtors in case no. 02-34406-SAF-13. According to the amended Chapter 13 plan, Darby has received \$515 with the balance of his fees to be paid after confirmation. All fees received by Darby in case no. 02-34406-SAF-13 shall be paid to the Chapter 13 trustee to be applied to the plan.

**IT IS FURTHER ORDERED** that the clerk of court shall open a miscellaneous proceeding to monitor the practice of law by W. Rhett Darby before this court. The first document in that proceeding shall be a copy of this order.

**IT IS FURTHER ORDERED** that W. Rhett Darby shall appear before this court on March 3, 2004, at 2:30 p.m., to demonstrate to the court how he has addressed the issues discussed in the foregoing memorandum opinion. Darby shall present to the court a written office management policy and procedure that addresses the

scheduling of hearings and conferences and the manner of attending to the details of representing Chapter 13 debtors.

Signed this 28th day of October, 2003

/s/ Steven A. Felsenthal  
Steven A. Felsenthal  
United States Bankruptcy Judge