

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
TRACEY C. THOMAS,)
a/k/a TRACEY-ANN CAMILLE THOMAS,) CASE NO. 08-78130 - MHM
)
Debtor.)

ORDER DENYING MOTION TO REOPEN

On June 28, 2009, Debtor filed *pro se* a motion to reopen this case to allow her to file a proceeding to discharge her student loans. That motion was scheduled for hearing July 28, 2009, but Debtor failed to appear at the hearing. Therefore, the motion is deemed abandoned.

Additionally, however, based upon the factual allegations in Debtor's motion, Debtor would not be entitled to a determination that her student loans are dischargeable; therefore, reopening her case would be an exercise in futility. Specifically, under §523(a)(8), in order for Debtor's student loans to be dischargeable, Debtor must establish that repayment of the loans would be an undue hardship. To establish "undue hardship,"

Debtor must show:

- (1) that [she] cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans;
- (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
- (3) that [Debtor] has made good faith efforts to repay the loans.

Hemar Insurance Corp. of America v. Cox, 338 F. 3d 1238 (11th Cir. 7/23/03), citing *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395, 396 (2d Cir.1987) (*per curiam*). The facts presented by Debtor do not support a finding that her financial difficulties are likely to persist for a significant portion of the repayment period.

Debtor also indicated in her motion to reopen that she seeks an order to relieve her father of his obligation as co-signer on the student loans. The exception to discharge for student loans is not limited in its application to student borrowers. The exception also applies to parties who borrowed funds for their children's education. The relevant focus, in deciding whether the exception to discharge applies, is on the purpose of the loan, not the beneficiaries of the education. *In re Varma*, 149 B.R. 817 (N.D. Tex. 1992)(J. Buchmeyer). *Accord*, *In re Dull*, 144 B.R. 370 (Bankr. N.D. Ohio 1992). *Contra*, *In re Kirkish*, 144 B.R. 367 (Bankr. W.D. Mich. 1992); *In re Wilcon*, 135 B.R. 709 (Bankr. D. Mass. 1992); *In re Pelkowski*, 135 B.R. 254 (Bankr. W.D. Pa. 1992). Therefore, the same dischargeability exemption would apply to Debtor's father. Additionally, Debtor presented no facts that would allow this court to grant any relief to Debtor's father, who is not a debtor in this court.

Accordingly, pursuant to BLR 7041, it is hereby

ORDERED that Debtor's motion to reopen is ***denied*** for want of prosecution.

IT IS SO ORDERED, this the 31st day of October, 2009.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE