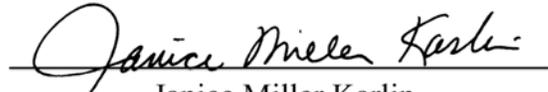


SO ORDERED.

SIGNED this 5th day of September, 2014.




Janice Miller Karlin
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

**In re:
Edward George Butler,**

**Case No. 11-40483
Chapter 13**

Debtor.

**Order Denying Debtor's Motion to Limit Notice of
Motion for Entry of Discharge**

Debtor Edward George Butler ("Debtor") filed a Motion to Limit Notice of his Motion for Entry of Discharge,¹ apparently to save mailing costs, and accompanied it with a one sentence declaration stating he did not seek to exempt any of the property listed in 11 U.S.C. § 522(p)(1). In following this procedure, Debtor appears to be relying on dicta contained in footnote 17 of a recent decision in *In re Church*, Case No. 12-40210,² a case where the same

¹ Doc. 54.

² That decision is Doc. 114 of the *Church* docket sheet, dated June 11, 2014.

counsel represented debtor Church in a similar quest. That footnote suggested there might exist some fact pattern under which notice to all creditors would not be required.

In this case, after hearing argument of counsel on this motion on July 24, 2014, I denied the motion. First, I held that the notice procedure used by this Debtor was deficient because the one sentence declaration too generically stated that Debtor did not seek to exempt any of the property listed in § 522(p)(1). I have my doubts that many debtors would actually know what § 522(p)(1) provides, making the declaration superficial. At a minimum, a debtor would need to indicate in the substance of the declaration that he/she is not exempting the specific items in question: a homestead, a burial plot, a co-op that owns property used as a residence, or any real or personal property used as a residence. In addition, a debtor would need to attach his last filed schedule of exemptions to his declaration or affidavit—confirming it is his/her last one—to make the declaration more meaningful for the debtor to sign and easier for interested parties to review.

I also agreed with the Trustee's argument that even if this Debtor had filed a meaningful affidavit regarding § 522(p)(1), Debtor's proposed procedure would not satisfy me concerning the statutory requirements contained in § 1328(a) that a debtor also confirm at least that 1) he is current

on domestic support obligations, 2) that he has paid any direct payment his plan required, and 3) that there is no reasonable cause to believe that § 522(q)(1), dealing with certain felony convictions or securities or other listed violations, may be applicable to the debtor, pursuant to § 1328(h). Without such certifications, and perhaps others, a debtor may not be entitled to a discharge. As a result, merely addressing § 522(p)(1) satisfies only part of the obligations a debtor must complete—and certify he has completed—before he can receive a discharge.³ In sum, I am now much less convinced than I was when I wrote footnote 17 in *In re Church* that any circumstance might exist where notice to all creditors should be limited. Creditors should be entitled to challenge whether a debtor has or has not complied with the obligations required to obtain a discharge, and without notice to all creditors, they would be unable to evaluate the accuracy of a debtor's claim to be entitled to a discharge.

Further, and as a practical matter, it seems unlikely it is less expensive to simply mail a copy of the Motion for Entry of Discharge to the matrix than it is to draft and have a debtor complete a properly detailed affidavit, draft and file a proper motion to limit notice, and draft the appropriate order,

³ To see the various certifications a debtor is required to make, see Form 283 that Debtor has now filed in this case at Doc. 58.

assuming facts existed to grant it.

Orders Procedure

The decision on the motion to limit notice was issued orally, and when no order was received as a result of those findings, the Clerk published a Notice of Order Due to both counsel. Instead of providing the required order, Debtor's Attorney attempted to simply withdraw the motion on which I had already ruled.⁴ One cannot withdraw a motion after one has already lost on the merits of that motion.

Accordingly, I strike the notice of withdrawal, and enter this order denying Debtor's Motion to Limit Notice of the Motion for Entry of Discharge, for the reasons set forth in *In re Church*, Case 12-40210, and because the obligations required of a debtor seeking entry of discharge go beyond merely addressing § 522(p)(1). The procedure Debtor wishes to use also places undue burden on the Clerk, the Judge, and the Trustee, and I decline to sanction this approach.

IT IS THEREFORE ORDERED THAT Debtor's Motion to Limit Notice of the Motion for Entry of Discharge is denied.

IT IS SO ORDERED.

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⁴ Doc. 61.