


ORDERED.

Dated: March 18, 2024



Roberta A. Colton
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Dalton Landen-Wayne Moyer,

Debtor.

Case No. 8:24-bk-01015-RCT

Chapter 7

**ORDER DENYING (1) PETITION FOR APPOINTMENT OF NEXT FRIEND
AND (2) MOTION TO WAIVE APPEARANCE, ATTENDANCE AND TESTIMONY
OF DEBTOR AND FOR ORDER AUTHORIZING NEXT FRIEND TO ATTEND 341
MEETING OF CREDITORS**

This matter came before the Court, without a hearing, on Debtor's Petition for the Appointment of Next Friend (Doc. 6) and Motion to Waive Appearance, Attendance and Testimony of Debtor and Request for Order Authorizing Next Friend to Attend 341 Meeting of Creditors (Doc. 7). As explained below, these motions are denied.

Debtor filed the instant Petition for the Appointment of Next Friend, seeking to have his father appointed as his Next Friend because Debtor is incarcerated and could remain incarcerated for the next four years. Federal Rule of Bankruptcy Procedure 1004.1 guides this Court's determination and provides the following:

If an infant or incompetent person has a representative, including

a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Debtor, however, is not alleged to be an infant or an incompetent person, and as such, there is no basis for the appointment of a Next Friend for a debtor that is incarcerated.¹ Accordingly, the Court denies Debtor's Petition for the Appointment of Next Friend.

Likewise, the Court denies Debtor's Motion to Waive Appearance, Attendance and Testimony of Debtor and Request for Order Authorizing Next Friend to Attend 341 Meeting of Creditors. Because the Court has not appointed Debtor's father as his Next Friend, and because there is no authority for waiving his appearance at the §341 meeting due to incarceration,² there is no basis for granting the relief requested in this motion.

It is **SO ORDERED**.

Attorney Richard Ellis is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of its entry.

¹ See, e.g., *In re Vitagliano*, 303 B.R. 292, 292-93 (Bankr. W.D.N.Y. 2003) (concluding that the debtor's mother could not act as the debtor's attorney-in-fact and sign his bankruptcy petition even though the debtor was incarcerated).

² See *In re Alleca*, 582 B.R. 530, 533 (Bankr. M.D. Ala. 2018) (finding that the debtor's incarceration did not excuse him from attending the § 341 meeting of creditors); *In re Moore*, 309 B.R. 725, 727 (Bankr. N.D. Tex. 2002) (finding that the debtor's attendance at the §341 meeting was mandatory); *In re Moore*, 2012 WL 6947810, at *2 (Bankr. S.D. Ga. August 24, 2012) (finding that incarceration is not a basis to waive the debtor's attendance at the § 341 meeting); *In re Michael*, 2000 WL 35925377, at *3 (Bankr. S.D. Ga. Dec. 20, 2000) (stating "that Debtor's incarceration does not constitute a good and sufficient reason to waive Debtor's personal appearance at the meeting of creditors").