Dated: November 09, 2023
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re:

HERBERT L. PARSONS, JR. and VICKIE A. PARSONS,

Debtors.

Case No. 07-10113

Chapter 7

MEMORANDUM OPINION RE: DEBTORS' PRO SE MOTION FOR UNCLAIMED FUNDS (ECF NO. 187)

At the conclusion of the chapter 7 case of Herbert L. Parsons, Jr., and Vickie A. Parsons, ("Debtors"), the Chapter 7 Trustee paid $9,705.33 in unclaimed funds into the bankruptcy court pursuant to 11 U.S.C. § 347(a). The unclaimed funds represented checks that two creditors failed to negotiate during the pendency of the chapter 7 case.

Over four years after the case was closed, the Debtors filed a Pro Se[1] Motion for Payment of Unclaimed Funds ("Application") (ECF No. 187). The Debtors attached various unattested documents to their Application that they assert support their claim of entitlement to the funds. The Court conducted

[1] During the pendency of their bankruptcy case, the Debtors were represented by attorney Michael Tabor. Since the closing of their case in 2019, Mr. Tabor has retired. Thus, the Debtors are currently proceeding on a pro se basis.

a hearing on the Application on November 2, 2023. The Debtors appeared at the hearing, but did not present any evidence in support of their Application.

After reviewing the relevant statutory and case law, the Court concludes that the Debtors are not entitled to payment of any of the unclaimed funds in this case. For the reasons that follow, the Court will deny the Debtors' Application.

JURISDICTION

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and, thus, may hear and enter a final order in this matter. This memorandum opinion and order shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

FACTS

The Debtors commenced this case by filing a chapter 13 petition for bankruptcy relief on January 12, 2007. The Debtors listed "SBC Ohio c/o Asset Acceptance, LLC" ("Asset Acceptance") as an unsecured nonpriority creditor on schedule F of their petition with a claim of $412.00. (ECF No. 1 at 25.) They also listed the U.S. Department of Education[2] as an unsecured nonpriority creditor on Schedule F with a claim of $5,000.00. (ECF No. 1 at 25, 27.) The chapter 13 plan filed contemporaneously with the petition provided that the student loan claim would be paid at $10.00 per month with the balance to survive discharge. (ECF No. 2.)

Asset Acceptance timely filed an unsecured proof of claim on January 25, 2007, in the amount of $819.24. (Proof of Claim 5-1.) In support of their proof of claim, Asset Acceptance attached an Affidavit of Account in which the manager of the Bankruptcy and Probate department stated that Asset Acceptance's "business records show that there is due and payable on account 28733172 the amount of $819.24 as of this date on a debt originally held by PROVIDIAN NATIONAL BANK" and that the "account has been assigned, transferred and sold to Asset Acceptance[.]" (*Id.* at 2.) Asset Acceptance

[2] On April 19, 2007, the Court entered an order substituting Educational Credit Management Corporation ("ECMC") for the U.S. Department of Education. (*See* Order Substituting Creditor, ECF No. 63.) ECMC filed the proof of claim for the student loan. Thus, unless quoting the Debtors' pleadings, reference to the student loan claimholder will be to ECMC.

also attached what appears to be a statement of an account in the name of Herbert L. Parsons, Jr. (*Id.* at 3.)

ECMC timely filed an unsecured proof of claim on March 27, 2007, in the amount of $5,652.90 for "Money-Loaned-Student Loan." (Proof of Claim 21-1.) In support of their proof of claim, ECMC attached an itemized statement of the account, a copy of an application for a PHEAA[3] Guaranteed Student Loan executed by Vickie A. Stewart[4] on October 19, 1988, and a copy of an application for a loan under the PLUS/SLS Programs[5] executed by Vickie A. Stewart on October 19, 1988. Both loan applications indicated the student loans were to be used by Vickie A. Stewart to attend United Schools, Inc., in Clearwater, Florida. (*Id.* at 4-5.) The Debtors did not object to either proof of claim.

The Court confirmed the Debtors' chapter 13 plan on April 12, 2007. The confirmed plan provided that the $5,000.00 student loan claim would be paid $10.00 per month through the plan with the balance to survive discharge. Pursuant to an Administrative Order Allowing Claims entered on June 11, 2007, Asset Acceptance's claim was allowed as a general unsecured claim in the amount of $819.24 and ECMC's student loan claim was allowed as a "continuing debt-unsecured" claim in the amount of $5,652.90. (ECF No. 72.) The Debtors never filed an objection to any of these orders.

The Debtors voluntarily converted their case to chapter 7 on July 17, 2007. The Debtors listed Asset Acceptance's claim on schedule F of their chapter 7 petition in the amount of $412.00. The Debtors listed their student loan claim on schedule F of their chapter 7 petition in favor of the U.S. Department of Education in the amount of $5,000.00.

When the Debtors converted their case, they indicated they had no non-exempt assets with which to pay creditors. The case proceeded as such and the Debtors received their chapter 7 discharge on December 18, 2007. The case was closed on December 26, 2007.

On May 9, 2012, the United States Trustee filed a motion to reopen the case to administer assets. When filing their original chapter 13 petition, the Debtors had failed to list a prepetition personal injury claim as an asset of their estate. The Court granted the motion to reopen the case on May 10, 2012. The

[3] PHEAA stands for Pennsylvania Higher Education Assistance Agency.
[4] The Debtors do not dispute that Vickie A. Stewart is Vickie A. Parsons.
[5] This loan was also issued by the Pennsylvania Higher Education Assistance Agency.

Chapter 7 Trustee then sought, and was granted, permission to employ an attorney to pursue the prepetition claim. The claim eventually settled and the estate received $230,814.81 in proceeds.

From the settlement proceeds, the Chapter 7 Trustee issued two checks to Asset Acceptance in the amounts of $819.24 and $409.26 and two checks to ECMC in the amounts of $5,652.90 and $2,823.93. According to the trustee's final report, neither Asset Acceptance nor ECMC negotiated the trustee's disbursements. Thus, in accordance with 11 U.S.C. § 347(a), the trustee paid the $9,705.33 in unclaimed funds into the court's registry at the conclusion of the Debtors' chapter 7 case. (*See* April 21, 2017 Notice of Unclaimed Dividend, ECF No. 169.) The Court discharged the Chapter 7 Trustee and reclosed the Debtors' case on March 15, 2019.

On September 19, 2023, the Debtors filed their Application for payment of the unclaimed funds in which they asserted that they were the "owner[s] of said funds and appear[ ] as the owner on the records of the Court;" and that they were "seeking to claim funds deposited in the name of another individual or business or corporation, as evidenced by the attached Affidavit *and* other identifying documents." (ECF No. 187 at 1 (emphasis added).) Although the Debtors attached several documents to their Application, none of them were attested or verified in any way. The Debtors also failed to attach the required affidavit.

The first attachment to the Application was an undated letter from the Debtors to the Court wherein the Debtors assert that "[t]hese funds have sat for 7 years and no one has contacted us since 2007 for any type of payment." (ECF No. 187 at 3.) In support of their claim of entitlement to the funds, the Debtors made the following allegations:

> Asset Acceptance, LLC, is no longer in business as per attachment and we don't know how to contact anyone due to this.
>
> On September 14, 2023, we contacted ECMC bankruptcy department and spoke to a Claire and was told that while they filed a claim in 2007, for the amount of $5,652.90, they returned the funds to the Bankruptcy court due to them not finding an account for Vickie A. Parsons or Herbert L. Parsons, Jr. Claire also stated that the loan was written off and they did not see it or know where it went, but on their end there was nothing.
>
> Only after they were asked to email us a letter stating the above mentioned, when they found out there were funds, Claire stated that they "would create an account" for Vickie A. Parsons and request the $5692.90 in funds.

(*Id.*) In a subsequent letter the Court received on October 17, 2023 ("October 2023 Letter"), the Debtors asserted that the student loan "was a private loan for a now defunct United Travel School in Florida, to which Vickie A. Parsons did not attend." (ECF No. 192 at 2.)

The second attachment to the Debtors' Application was a document in which the Debtors stated that Asset Acceptance was no longer in business. In their October 2023 Letter, the Debtors stated that Asset Acceptance "sold their accounts to Midland," and that when the Debtors searched Midland's website, "the only thing that came up was Synchrony for JC Penny, which that account was opened in 2015 after the bankruptcy was filed[.]" (ECF No. 192 at 1.)

The last attachment to the Debtors' Application was a copy of the Chapter 7 Trustee's April 21, 2017 Notice of Unclaimed Dividend.

The Debtors did not include a mailing or service list on their Application nor have they indicated that they served a copy of the Application on any party.

Aside from the attachments to their Application and October 2023 Letter, the Debtors have not filed any additional documentation in support of their alleged entitlement to the unclaimed funds. No party has filed a response to the Application.

The Court conducted a hearing on the Debtors' Application on November 2, 2023. The Debtors appeared at the hearing and argued in support of their Application. They restated their arguments from their Application and October 2023 Letter. They did not, however, present any evidence in support of these arguments.

ANALYSIS

Section 347(a) of the Bankruptcy Code addresses the disposition of unclaimed property in chapter 7 cases. It provides that

> [n]inety days after the final distribution under section 726 . . . of this title in a case under chapter 7, . . . the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

11 U.S.C.A. § 347(a). As stated *supra*, the Chapter 7 Trustee in the Debtors' case paid $9,705.33 in unclaimed funds into the Court at the conclusion of the Debtors' case in accordance with this provision.

Once unclaimed funds are deposited with the court, disposition of those funds is governed by Chapter 129 of title 28. Section 2041 of chapter 129 provides that:

> [a]ll moneys paid into any court of the United States, or received by the officers thereof, in any case pending or adjudicated in such court, shall be forthwith deposited with the Treasurer of the United States or a designated depositary, in the name and to the credit of such court.
>
> This section shall not prevent the delivery of any such money to the rightful owners upon security, according to agreement of parties, under the direction of the court.

28 U.S.C.A. § 2041. Section 2042 of chapter 129 governs the withdrawal procedure for unclaimed funds deposited with a court.

> No money deposited under section 2041 of this title shall be withdrawn except by order of court.
>
> In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

28 U.S.C.A. § 2042.

"There are three requirements that a claimant must meet to withdraw funds held under these statutes." *In re Bradford Prod., Inc*., 375 B.R. 356, 358–59 (Bankr. E.D. Mich. 2007). "First, the claimant must file a petition." *Id.* at 359. "Second, there must be notice of the petition to the United States attorney." *Id.* "The third requirement is that the claimant must show that it is 'entitled to any such money' by providing 'full proof of the right thereto.' " *Id.* The Debtors in the case at bar failed to satisfy the second and third prongs of the *Bradford* test and, thus, their Application must be denied.

Failure to serve notice of the application for payment of unclaimed funds on the United States attorney, in and of itself, is a basis for denial of the application. *In re Future Trust, Inc.*, 387 B.R. 574, 578 (8th Cir. B.A.P. 2008). The Debtors in this case did not include a service list on their Application and the Court is unable to find any evidence that the Debtors served notice on the United States attorney. The Court could deny the Application on this basis alone; however, given the Debtors' pro se status, the Court will also address their unclaimed funds request under the third prong of the *Bradford* test.

In pursuing an application for payment of unclaimed funds, the movant carries the burden of proof and must demonstrate its entitlement to the funds by a preponderance of evidence. *In re Transp. Grp., Inc*., No. 93-30015, 2007 WL 734817, at *2 (Bankr. W.D. Ky. Mar. 7, 2007). "Under statutory requirements and due process principles, the Court has the duty to protect the original claimant's property interest by making sure that unclaimed funds are disbursed to their true owner." *In re Applications for Unclaimed Funds Submitted in Cases Listed on Exhibit "A"*, 341 B.R. 65, 69 (Bankr. N.D. Ga. 2005).

> Because the Court typically considers an application for unclaimed funds payable on a proof of claim in a bankruptcy case ex parte, the Court must insist on a claimant's exact compliance with legal requirements relating to the authority of an individual or entity to act on behalf of the claiming party and a definitive showing that it is actually entitled to the funds.

In re Scott, 346 B.R. 557, 558–59 (Bankr. N.D. Ga. 2006) (citation omitted).

Pursuant to 28 U.S.C. § 2041, "[t]he 'rightful owner' of unclaimed funds paid into the Court under § 347(a) is the holder of the proof of claim on account of which the trustee made the distribution." *In re Applications for Unclaimed Funds Submitted in Cases Listed on Exhibit "A*," 341 B.R. at 69. As the court in *In re Bradford Production* held,

> [t]he rightful owners of the unclaimed funds in [a] case are the creditors to whom [the] distributions were intended to be made. That they have not yet received their distributions does not make them any less the rightful owners of these unclaimed funds. Nor does it somehow elevate [a debtor's] request for these funds over the entitlement of such creditors. Creditors who filed timely proofs of claims but have not been located may still apply to the Court for payment of their claims. There is no limitation period that would preclude them from doing so.

375 B.R. at 361–62.

In filing an application for unclaimed funds, a debtor must be mindful of the difference between surplus assets and unclaimed funds. "Surplus assets, as the name denotes, are assets left over after the payment of all allowed claims" and chapter 7 debtors may well be entitled to payment of such funds. [6] *In re Transp. Grp., Inc.*, No. 93-30015, 2007 WL 1083887, at *1 (Bankr. W.D. Ky. Apr. 9, 2007); *In re Eriksen*, 647 B.R. 192, 195 (Bankr. N.D. Ohio 2022). "Unclaimed funds, however, belong to a particular

[6] In the case at bar, the Chapter 7 Trustee disbursed $10,296.22 in surplus funds to the Debtors. (*See* Notice of Disbursal of Surplus Funds to Debtors, ECF No. 170.)

creditor, that has failed to collect or receive those funds." *In re Transp. Grp., Inc.*, 2007 WL 1083887, at *1.

In the case at bar, the Debtors voluntarily listed Asset Acceptance and the U.S. Department of Education on their chapter 13 petition. They included both debts in their chapter 13 plan. Asset Acceptance and ECMC filed timely proofs of claim. Both creditors attached supporting documentation to their claims. The Debtors never objected to either proof of claim. Consequently, the Court allowed the claims in the amount of $819.24 (Asset Acceptance) and $5,652.90 (ECMC). When the Debtors converted to chapter 7, they again listed Asset Acceptance and the U.S. Department of Education on their petition. At no point during the pendency of their case did the Debtors challenge the validity of either claim despite being represented by competent bankruptcy counsel throughout the entirety of the chapter 13 and chapter 7 proceedings.

In seeking the unclaimed funds, the Debtors assert that the "funds have sat for 7 years and no one has contacted" them for payment. (ECF No. 187 at 3.) A creditor's failure to seek payment does not, by itself, demonstrate withdrawal or abandonment of its right to payment of the unclaimed funds. *In re Pickett*, 632 B.R. 78, 83 (Bankr. E.D. Cal. 2021). The Court allowed the claims of Asset Acceptance and ECMC in accordance with 11 U.S.C. § 502(a). This adjudication bestowed the right to payment upon both creditors. Thus, the creditors are the rightful owners entitled to payment of the unclaimed funds. *Id.* Although it may be difficult to understand why neither Asset Acceptance nor ECMC have sought payment of the funds to which they are entitled, that does not transmute the Debtors into the owners of the funds. Until such time as Asset Acceptance or ECMC formally abandon or withdraw their claims, they are the owners of the money deposited with the Court.

"While a court may give a pro se party the benefit of the doubt in construing pleadings, allegations, and arguments, pro se parties nevertheless proceed at their own peril without counsel and are bound by the same rules of procedure and evidence as a party represented by counsel and a final judgment is just as binding on a pro se party as a party represented by counsel." *In re Kreitzer*, 489 B.R. 698, 709 n.6 (Bankr. S.D. Ohio 2013). The Debtors in the case at bar did not satisfy the rules of procedure or evidence in prosecuting their Application. They did not provide proper notice of the Application to the United States attorney nor did they present evidence of their entitlement to the unclaimed funds. The Court will deny the Debtors' Application without prejudice. Should the Debtors obtain evidence that Asset Acceptance and/or ECMC have abandoned their claims against the Debtors, they may file a new application that complies with the relevant requirements.

A separate order will be entered in accordance herewith.

Mailing list
Debtors
Chapter 7 Trustee Marianna Williams
United States Trustee