

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
DEAN SANFORD SHIDELER) CASE NO. 06-11407
ELEANOR E. SHIDELER)
)
Debtors)

DECISION AND ORDER DENYING MOTION TO REINSTATE

At Fort Wayne, Indiana, on August 31, 2006.

This case was dismissed on August 28, 2006, due to the debtors' failure to file a scanned copy of the originally signed signature pages as required by the court's order authorizing electronic case filing. Fifth Amended Order Authorizing Electronic Case Filing ¶ 11. See also, In re King, 2006 WL 1994679 *4 (Bankr. N.D. Ind. 2006). On August 30, 2006, the debtors filed a motion to reinstate this case apparently asking the court to vacate the order of dismissal and it is that motion which is presently before the court.¹ To the extent the debtors are arguing that the failure to file the required signature pages constituted excusable neglect, under to Rule 60(b) of the Federal Rules of Civil Procedure, the argument fails. Determinations of excusable neglect are equitable taking into account, among other things, whether the reason for the delay was within the reasonable control of the movant, Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993), and are addressed to the court's discretion. Lee v. Village of River Forest, 936 F.2d 976, 979 (7th Cir. 1991); Reinsurance Co. of America, Inc. v. Administratia Asigurarilor de Stat, 902 F.2d 1275, 1277 (7th Cir. 1990).

In essence, the motion represents that the failure to file the required signature pages was due

¹The court notes that the motion has not been accompanied by a brief in support thereof as required by the local rules of this court. N.D. Ind. L.B.R. B-9023-1. See also, In re King, 2006 WL 1994679 *1-2 (Bankr. N.D. Ind. 2006).

to a mistaken belief that the signature pages were attached to the petition when the documents were prepared for filing, based upon indications to that effect from the software counsel uses. Yet, apparently, no one thought to take a moment to open the attachment and actually look at that document to confirm that it was what it was supposed to be before sending it to the court for filing. Had that been done, counsel would have easily discovered that the required signature pages were not attached as his software had indicated. Indeed, perhaps the single most common error in electronic filing is that the document actually filed with the court is not the document counsel wanted to file. Viewing electronic documents before sending them to the court avoids this problem. That is the reason for the court's mantra, repeated in its ECF literature, training sessions, and other presentations: "Open the pdf." Counsel's failure to review the documents he was sending to the court for filing and any confusion as to how his software was configured do not constitute excusable neglect. Cf., In re Sizemore, 341 B.R. 658 (Bankr. N.D. Ind. 2006)(counsel's computer problems do not constitute excusable neglect).

The court also notes that the dismissal of this case was without any type of prejudice. See, 11 U.S.C. § 349(a). See also, Johnson v. Indiana Family & Social Service Administration, 2006 WL 978982 (D. N.D. Ind. 2006); Rodriguez v. Washington, 1995 WL 593081 (D. N.D. Ill. 1995). Thus, the debtors are free to refile at any time without any restrictions, save those which are automatically associated with filing multiple cases within a 12-month period. See, 11 U.S.C. § 362(c)(3),(4).

Debtors' motion to reinstate this case is DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court