

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
)  
ALAN DAVID AUSTIN ) CASE NO. 06-12140  
DEBORAH KAY AUSTIN )  
)  
Debtors )

**DECISION AND ORDER DENYING MOTION TO REINSTATE**

At Fort Wayne, Indiana, on November 28, 2006

This case was dismissed on November 22, 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). The debtors then filed a motion to reinstate this case, together with a brief in support thereof, apparently asking the court to vacate the order of dismissal and it is that motion which is presently before the court.

The debtors state that the failure to file the required signature page was the result of a clerical error. If this means they are seeking relief pursuant to Rule 60(a), the argument is misplaced. Rule 60(a) does not refer to clerical mistakes of litigants, their counsel, or their counsel's staff, rather it simply provides relief for correcting "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein . . . ." Fed. R. Civ. P. Rule 60(a).

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, that 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 to an oversight on counsel's part which prevented one of the signature pages from being contained within the documents submitted to the court for filing. Apparently, it was not until counsel received notice of the dismissal of this case, that she realized that she failed to file one of the signature pages. Yet, had counsel taken a moment to actually look at the documents being submitted before sending them to the court, she would have easily discovered that the required signature page was not among them. 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 she was sending to the court for filing does not constitute excusable neglect. See, In re Shideler, 2006 WL 2539710 (Bankr. N.D. Ind. 2006).

The debtors' final argument is that the court's order should be vacated pursuant to Rule 60(b)(6) "based on the totality of the circumstances." Relief is available pursuant to Rule 60(b)(6) only if Rules 60(b)(1) through (b)(5) do not apply and the court, in its discretion, finds that equitable action is necessary to accomplish justice. Peacock v. Bd. of School Comm'rs, 721 F.2d 210, 214 (7th Cir. 1983). The court will only use this power if extraordinary circumstances create a substantial danger of an unjust result. Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc., 131 F.3d 625, 628 (7th Cir.1997); Margoles v. Johns, 798 F.2d 1069, 1073 (7th Cir. 1986), cert. denied, 482 U.S. 905, 107 S.Ct. 2482 (1987). Inexcusable attorney negligence, which is all that has

happened here, is not an exceptional circumstance justifying relief under Rule 60(b)(6). Helm v. Resolution Trust Corp., 84 F.3d 874, 879 (7th Cir. 1996). Furthermore, 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). Since the debtors have the opportunity to file again, there hardly seems to be the substantial danger of an unjust result needed to invoke Rule 60(b)(6).

Debtors' motion to reinstate this case is therefore DENIED.

SO ORDERED.

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