

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
MICHAEL GERALD BROWN, JR.) CASE NO. 06-11725
TANISHA LASHAE BROWN)
)
Debtors)

DECISION AND ORDER DENYING MOTION FOR EXTENSION OF TIME

At Fort Wayne, Indiana, on December 21, 2006

By the court's order of November 30, 2006, this case was dismissed following a hearing held on the court's initiative. The last day to appeal that decision was December 11, 2006. The debtor did not file a notice of appeal within that time period but, instead, on December 15, 2006, filed a motion for an extension of that deadline.¹ It is that motion which is presently before the court.

A motion for a belated extension of time to appeal may only "be granted upon a showing of excusable neglect." Fed. R. Bankr. P. Rule 8002(c)(2). It is the movant's burden to demonstrate that excusable neglect exists. In re Food Barn Stores, Inc., 214 B.R. 197, 200 (8th Cir. BAP 1997). In an effort to demonstrate excusable neglect for failing to file either a timely notice of appeal or a timely motion for an extension of that deadline, counsel states that "the date for filing the appeal was mistakenly calendared incorrectly on debtors' counsel's calendar." Motion ¶ 4. This single sentence, which offers no hint as to how the problem may have arisen, is the sum and substance of counsel's motion. It says nothing about whether the error was the result of excusable neglect or something else. Without knowing how or why the deadline was "mistakenly calendared incorrectly"

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).

the court cannot determine whether the error is excusable. For example, the statement may mean that counsel was unaware of or had miscalculated the deadline for filing a notice of appeal. Yet, miscalculation of the deadline for filing a notice of appeal, ignorance, or clerical errors do not constitute excusable neglect which would justify a belated extension of time. See, Food Barn, 214 B.R. at 200-01; In re Boggs, 246 B.R. 265, 268 (6th Cir. BAP 2000); In re Hall, 259 B.R. 680, 683 (Bankr. N.D. Ind. 2001); Turner v. Ruta, 173 B.R. 165 (D. C.D. Ill. 1994); In re Pernie Bailey Drilling Co., Inc., 111 B.R. 561 (Bankr. W.D. La. 1989). It might also mean that counsel's directions to a member of his staff were not followed correctly. That type of error might or might not be excusable, but without more information, the court cannot tell.

It was movant's responsibility to demonstrate that the failure to act within the time required was due to excusable neglect and it has failed to do so. Debtors' motion for an extension of time to file a notice of appeal is, therefore, DENIED.

SO ORDERED.

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