

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
LARRY D. MOTE, JR.) CASE NO. 06-12190
MICHELLE M. MOTE)
)
Debtors)

DECISION AND ORDER DENYING MOTION TO REINSTATE

At Fort Wayne, Indiana, on December 5, 2006.

This case was dismissed on November 30, 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 asking the court to reconsider its judgment, vacate the order of dismissal, and reinstate this case.¹ It is that motion which is presently before the court.

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).

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).

In essence, the motion represents that the failure to file the required signature pages was due to a mistake on counsel's part which resulted in the wrong PDF file being selected and attached to the documents submitted to the court for filing. Apparently, until receiving notice of the dismissal of this case, counsel did not realize that she had selected the wrong computer file for submission. However, had counsel taken a moment to actually look at the documents before sending them to the court, she would have easily discovered that the required signature pages were not attached. 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). 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.

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