

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
STEVEN LEE STROUP, II) CASE NO. 07-10098
LAURIE ANN STROUP)
)
Debtors)

DECISION AND ORDER

At Fort Wayne, Indiana, on April 11, 2007

This matter is before the court on the debtors' motion to file a belated response to R. David Boyer's objection to exemptions. Pursuant to the local rules of this court, that response was supposed to have been filed no later than seven (7) days prior to the hearing on Mr. Boyer's objection, N.D. Ind. L.B.R. B-9014-1(b), a requirement that was reiterated in the order scheduling that hearing. The debtors' motion indicates that they failed to file a timely response, because the deadline for doing so was not properly placed upon counsel's calendar; thus the failure is attributed to excusable neglect which would permit an after the fact extension of time. Fed. R. Bankr. P. Rule 9006(b)(2).

Bankruptcy Rule 9006(b)(2) gives the court the discretion to belatedly extend a deadline "to permit a late filing if the movant's failure to comply with an earlier deadline 'was the result of excusable neglect.'" Pioneer Inv. Services Co. v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380, 382, 113 S.Ct. 1489, 1491-92 (1993)(quoting Bankruptcy Rule 9006(b)(1)). Ultimately, this "determination is . . . an equitable one, taking account of all relevant circumstances surrounding the party's omission." Pioneer, 507 U.S. at 395, 113 S.Ct. at 1498.

Counsel argues that his failure to have the deadline properly placed upon his calendar

constitutes excusable neglect, and depending upon the circumstances presented, this can be true. See e.g., In re Speciality Plastics, Inc., 85 B.R. 32 (W.D. Pa. 1988). In his response, Mr. Boyer does not seriously contest the debtors' arguments regarding excusable neglect.¹ Instead, he primarily argues that his objection has a legitimate foundation and is well-taken. If so, granting the debtors' motion will not do anything to undermine the validity of Mr. Boyer's objection; it will only allow the debtors to challenge the merits of that objection, rather than lose by default.

Given that this dispute is still in its early stages, it appears that no one will be meaningfully prejudiced by permitting the debtors to file a belated response to the objection, and the court finds that counsel's failure to timely file one was due to excusable neglect.

Debtors' motion to file a belated response to R. David Boyer's objection to exemptions is therefore GRANTED, but only in part. There is no reason for the significant extension counsel has requested – twenty (20) days from the date of the court's ruling. If the debtors have a basis upon which to oppose Mr. Boyer's objection, they presumably know what it is and should be able to file it at this time. (If not, perhaps the failure to file it on time was not due to excusable neglect). Debtors shall therefore file any response to R. David Boyer's objection forthwith.

SO ORDERED.

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

¹Both parties have indicated that they believe they have now reached a settlement of all of the issues that divide them, and that this should be a factor in evaluating both the motion and the response. While the court appreciates the parties' efforts to resolve their dispute, settlement discussions, and any delay which results from them, do not excuse compliance with the court's scheduling orders, Universal Bank v. Collins, 2000 WL 1772764, 2000 Bankr. LEXIS 1469 (Bankr. N.D. Ind. 2000), and therefore are not a proper consideration in the determination of excusable neglect.