

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
ANDY ALBERT TERZARIAL and ) CASE NO. 04-65246 JPK  
CINDY RUTH TERZARIAL, ) Chapter 13  
 )  
Debtors. )

ORDER CONCERNING AGREED MOTION TO  
REINSTATE CHAPTER 13 BANKRUPTCY CASE ["AGREED MOTION"]

The Agreed Motion, filed on April 25, 2007, is a joint request by the debtors and the Chapter 13 Trustee to "reinstate" the debtors' Chapter 13 case. In actuality, the relief requested is the vacation/setting aside of a final order of the Court, entered on April 3, 2007, by which the debtors' Chapter 13 case was dismissed. Viewed as such, the Agreed Motion seeks relief apparently either under Fed.R.Bankr.P. 9023 or 9024, thus invoking the provisions of N.D.Ind.L.B.R. B-9023-1(a), which requires that such a motion be accompanied by a supporting brief. A supporting brief was not filed with the Agreed Motion.

The Court also notes that the statements stated in paragraph 1 and 2 of the Agreed Motion will not sustain the requested relief. The order of dismissal was entered following a hearing held on April 2, 2007 on the Chapter 13 Trustee's motion to dismiss the debtors' case. In support of the motion, the Trustee provided the Court with an affidavit which established that as of April 2, 2007, the debtors were \$1,965.76 delinquent with respect to payments required to be made to the Trustee. Paragraph 2 states that at some time prior to April 18, 2007, the debtors sent \$1,380.00 to the Trustee; there is no evidence of record that this amount had been provided to the Trustee by the time of the April 2, 2007 hearing. In addition, even if that were the case, the amount is insufficient to bring the debtors current as of the date of the hearing. The parties are advised that the Court will not set aside an order of dismissal of a Chapter 13 case based upon default to the Trustee unless the debtors clearly establish that at the time of

the hearing they had in some manner provided the Trustee with funds necessary to bring them current under their payment obligations to the Trustee under the plan, but that due to some cause beyond their control the currency of their payments had not then been noted by the Trustee.

IT IS ORDERED that the Agreed Motion is denied, without prejudice to the filing of a motion pursuant to Fed.R.Bankr.P. 9024 which complies with the requirements of N.D.Ind.L.B.R. B-9023-1(a).

Dated at Hammond, Indiana on June 5, 2007.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtors, Attorney for Debtors  
Trustee, US Trustee