

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
BENJAMIN D. BAUMGARTNER) CASE NO. 05-15347
)
Debtor)

DECISION AND ORDER
DENYING MOTION TO CORRECT CLERICAL ERROR

At Fort Wayne, Indiana, on June 13, 2007.

The debtor filed a motion to approve a post-confirmation modification of his Chapter 13 plan on March 7, 2007. See, 11 U.S.C. § 1329; Fed. R. Bankr P. Rule 3015(g). When there was no objection following appropriate notice to creditors, see, N.D. Ind. L.B.R. B-2002-2, the motion was granted by the court's order of April 5, 2007. On June 4, 2007, the debtor filed a motion, together with a brief in support thereof, asking the court to correct a clerical error in the modification. The motion represents that the modification was supposed to be based upon and refer to §§ 506(a) and (d) of the United States Bankruptcy Code, but instead incorrectly references § 502. This discrepancy is then characterized as a clerical error which may be corrected through Rule 60(a) of the Federal Rules of Civil Procedure. In appropriate circumstances, the court may properly dispose of such a motion without notice or a hearing. See, Fed. R. Civ. P. Rule 60(a). This is one of those situations.

Rule 60(a), which is made applicable to bankruptcy proceedings by Bankruptcy Rule 9024, provides:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Fed. R. Civ. P. Rule 60(a).

“Whether [the rule] is available depends upon whether the judgment said what the judge actually meant.” Klingman v. Levinson, 877 F.2d 1357, 1360 (7th Cir. 1989). “If the flaw lies in the

translation of the original meaning to the judgment, then Rule 60(a) allows a correction; if the judgment captures the original meaning but is infected by error, then the parties must seek another source of authority to correct the mistake.” U.S. v. Griffin, 782 F.2d 1393, 1396-97 (7th Cir. 1986). Stated somewhat differently: “Rule 60(a) allows a court to correct records to show what was done, rather than change them to reflect what should have been done.” Blue Cross and Blue Shield Assn’ v. American Express Co., 467 F.3d 634, 637 (7th Cir. 2006) (emphasis original). Consequently, if the order or record in question accurately reflects what the court intended to do, there is no clerical error which Rule 60(a) can correct. See, Klingman, 877 F.2d at 1360-61.

Using this standard, the errors made here are not within the scope of Rule 60(a). In essence, the motion argues that, because of the mistaken statutory citation in the modification the court was asked to approve, the order approving that modification does not reflect what the debtor had intended to accomplish. The flaw in this argument is that it focuses upon what the debtor intended to do, rather than what the court intended, and the debtor’s intent cannot be imputed to the court. The court intended to grant the debtor’s motion, to give the debtor what it asked for – approval of a proposed modification – and its order accurately reflects that goal. The error is not in the court’s order, but in the underlying filing the debtor asked the court to approve. Under these circumstances, there is no error which can be corrected using Rule 60(a). This does not mean that the debtor is left without any remedy. The court knows of no reason why the debtor may not propose and seek approval of yet another modification of the confirmed plan, by following the standard procedures for doing so.

Debtor’s motion to correct clerical error is, therefore, DENIED.

SO ORDERED.

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