

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JANET KAREN LAWSON) CASE NO. 07-11669
)
)
Debtor)

DECISION AND ORDER DENYING MOTION TO RECONSIDER

At Fort Wayne, Indiana, on September 7, 2007.

Nuvell Credit Company's objection to confirmation of the debtor's proposed plan was overruled by the court's order of August 31, 2007. On September 4, 2007, its counsel filed a motion asking the court to reconsider that ruling. It is that motion which is presently before the court.

Unfortunately, despite the local rules of this court, see, N.D. Ind. L.B.R. B-7007-1(a); B-9023-1(a), Nuvell's motion was not accompanied by a brief or any other materials in support thereof. This places the court in the awkward position of having to speculate concerning the procedural basis for the motion, the legal standards which might govern it, and whether the circumstances of this case satisfy the requirements for granting the relief requested. See e.g., In re King, 2006 WL 1994679, 2006 Bankr. LEXIS 1416 (Bankr. N.D. Ind. 2006). Nonetheless, when the motion is measured by the standards associated with the various rules the court thinks might apply to it, it fails.

Nuvell's objection was overruled when its counsel failed to attend the hearing the court had scheduled to consider confirmation and the objections thereto. Nothing in the motion suggests that a court errs when it rejects a position being advocated by a party who fails to appear at the hearing scheduled to consider its arguments. Quite to the contrary, any objections Nuvell might have had to confirmation of the proposed plan were either waived or abandoned when it failed to attend the

scheduled hearing. In re Wright, 340 B.R. 374, 375 (Bankr. N.D. Ind. 2006); In re Wolf, 162 B.R. 98, 104 (Bankr. D.N.J. 1993); In re Parker, 49 B.R. 61, 62 (Bankr. E.D. Vir. 1985).

Counsel tries to justify the failure to appear by arguing that her appearance was not filed until after the notice of hearing was served and, therefore, she did not receive notice of the hearing. The argument is as perplexing as it is wrong. It seems to assume that counsel was entitled to be served with the notice even though she had not yet appeared in the case. That is not so. Unless and until counsel actually filed an appearance on behalf of her client she was not entitled to be served with notice of any of the events in the case; even then she was only entitled to be served with notices issued after she appeared.

The Chapter 13 trustee served all creditors and parties in interest – including Nuvell – with a copy of the order establishing the deadline for filing objections to confirmation and scheduling the hearing at which the court would consider confirmation and any objections thereto, along with a copy of the plan, a full month before counsel filed her appearance – June 28, 2007. That order specifically advised all concerned that “Counsel for the debtor(s) and any objectors will . . . be expected to appear.” Under these circumstances, Nuvell would have only itself to blame if it neglected to provide its attorneys with a copy of the court’s order when it decided to retain them. If, on the other hand, Nuvell provided counsel with a copy of the order and counsel neglected to note the hearing date, that would be a matter between counsel and her client; not a reason to prolong the proceedings. Farzana K. v. Indiana Department of Education, 473 F.3d 703, 706 (7th Cir. 2007).

It is counsel’s responsibility to monitor the progress of cases in which they appear by checking the court’s docket. United States, ex rel. McAllan v. City of New York, 248 F.3d 48, 53 (2nd Cir.2001); Williams v. Hatcher, 890 F.2d 993, 995 (7th Cir.1989); DeRango v. United States,

864 F.2d 520, 523 (7th Cir.1988); Fox v. American Airlines, Inc., 389 F.3d 1291, 1294 (D.C. Cir. 2004). “The need to do so is even greater where an appearance is made in the midst of ongoing litigation, when things may have transpired before counsel became involved.” In re DeLaughter, 295 B.R. 317, 320 (Bankr. N.D. Ind. 2003). Had counsel done so here, she would have quickly become aware of the order scheduling the confirmation hearing.¹ Nuvell Credit Company’s motion to reconsider the order of August 31, 2007 overruling its objection to confirmation is DENIED.

SO ORDERED.

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

¹In the motion, counsel asserts that her office has procedures in place to avoid mistakes such as this but, in this case, they failed. Unfortunately, the motion offers no specific information as to what those procedures might be and makes no effort to explain how they may have failed. Without that type of information the court is not in a position to evaluate those procedures and the impact their existence and/or failure may have on its decision. See, Pioneer Inv. Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 394-96, 113 S.Ct. 1489, 1498-99 (1993)(internal office problems are not excusable neglect).