

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 07-10047)
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MARK A. BOLDRY)
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Debtor)
)
)
DAVID POPE)
SHARON POPE)
)
Plaintiffs)
)
vs.) PROC. NO. 07-1123
)
MARK A. BOLDRY)
)
Defendant)

DECISION AND ORDER

At Fort Wayne, Indiana, on December 20, 2007.

A joint pretrial order was due in this case on July 31, 2007. When that date had long since come and gone without anything having been filed, the court issued an order on October 11, 2007, ordering the parties to jointly file a proposed pretrial order within twenty-one days or show cause why this case should not be dismissed. The order went on to specifically state that the failure to do so would result in dismissal of this proceeding without further notice. The parties did not respond to that order, neither did they seek an extension of time in which to do so. Accordingly, on December 10, 2007, the court did what it said it would do and dismissed the case. Order dated Dec. 10, 2007. One week later, on December 17, 2007, the plaintiffs filed a motion to reopen this case, apparently asking the court to vacate the order of dismissal. It is that motion which is presently before the court.

Nowhere in the motion is there any indication of the grounds upon which it might be based,

see, Fed. R. Bankr. P. Rule 9013 (a motion shall state both the relief sought and the grounds therefor “with particularity”), and since the motion was not accompanied by a brief in support thereof, as required by the local rules of this court, see, N.D. Ind. L.B.R. B-7007-1(a); B-9023-1(a), that deficiency has not been corrected. So, the court is left to speculate concerning the 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.

The plaintiffs’ motion simply asks the court to reopen the case. The apparent basis for the motion is that, in essence, that plaintiffs’ counsel had computer problems beginning in early October, and that, by the time the computer had been repaired, counsel had been admitted to the hospital for treatment and is currently receiving treatment at a facility out-of-state where she will remain until early February. Construing this as a motion filed pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure as a result of excusable neglect, which is a matter 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), the motion fails.

A determination of excusable neglect is an equitable one 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). See also, Raymond v. Ameritech Corp., 442 F.3d 600 (7th Cir. 2006); Robb v. Norfolk & Western Ry. Co., 122 F.3d 354 (7th Cir. 1997). To begin with, the pretrial order in this proceeding was due on July 31, 2007, well before counsel experienced computer problems or began receiving treatment. At no time prior to the date the order to show cause was issued, did counsel ask for an extension of time to file the required pretrial order.

Counsel provides no explanation as to why the pretrial order was not filed when it was initially due. Over two months passed between the deadline for the proposed pretrial order and the court's order. The computer plaintiffs' counsel uses apparently was operational during this period, as she filed things, not only in this case, but in others in which she is counsel as well. To the extent this is the justification for counsel's failure to respond to the court's order of October 11, this court has held several times that counsel's computer problems are not a product of excusable neglect. See, In re Sizemore, 341 B.R. 658 (Bankr. N.D. Ind. 2006)(counsel's computer problems do not constitute excusable neglect); In re Shideler, 2006 WL 2539710 (Bankr. N.D. Ind. 2006).

As to admittance to the hospital for treatment, again, that did not occur until October 22, 2007. Counsel had ample opportunity prior to that date to file a proposed pretrial order or otherwise respond to the court's order. Furthermore, once counsel realized that she would not be able to monitor and handle her cases, she should have made arrangements to have substitute counsel do so in her absence. Counsel's current hospitalization and subsequent treatment are not the product of excusable neglect. See, Gibbons v. U.S., 317 F.3d 852, 855 (8th Cir. 2003); In re Key Energy Resources, Inc., 230 F.3d 1197, 1201 (10th Cir. 2000).

Finally, counsel still has not corrected the underlying problem that led to the order of dismissal – the failure to file the joint pretrial order required by the scheduling order of May 2, 2007. See, Tolliver v. Northrup Corp., 786 F.2d 316, 319 (7th Cir. 1986)(“It would take an extraordinary set of facts – one we cannot now imagine – to make a case of ‘abuse of discretion’ in failing to restore to the docket a case in which the defaulting party is still in default at the time the [] judge rules on the motion to vacate.”).

For all of these reasons, plaintiffs' Motion to Reopen Case is DENIED.

SO ORDERED.

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