

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
NICOLE WILSON, ) CASE NO. 08-21827 JPK  
 ) Chapter 13  
Debtor. )

ORDER DENYING MOTION TO SET ASIDE ORDER  
OF DISMISSAL AND TO REINSTATE ("MOTION")

The Motion, filed on September 3, 2008, requests that the court set aside its order of dismissal of the debtor's case entered on September 2, 2008. The Motion is denied, without prejudice.

On July 22, 2008, the court entered an order, pursuant to the Chapter 13 Trustee's request filed on July 14, 2008, which required the debtor to file a certificate of compliance as to the filing of either an Indiana Individual Income Tax Return for 2004 with the Indiana Department of Revenue, or an affidavit that said tax return was not required to be filed, on or before August 22, 2008. That order further provided that in the event of the debtor's non-compliance with the order, the court could *sua sponte*, after the three day grace period, dismiss the debtor's case. The record conclusively establishes that no certification in accordance with the terms of the order was filed by August 25, 2008. Rather, on September 2, 2008, the debtor, by counsel, filed an Affidavit which stated that she was not required to file an Indiana Individual Income Tax Return in the year 2004. This Affidavit simply came too late. Deadlines stated in the Court's orders are meant to be followed, and one who does not comply with those deadlines does so at his or her peril. The Motion was accompanied by a Notice of Motion and Opportunity to Object, which follows the format of N.D.Ind.L.B.R. B-2002-2. There is nothing in that rule which allows for a "drop dead" procedure with respect to a motion of this nature, and while certain institutional practice in this Division may have allowed those notices, this Judge has never allowed that practice. The Notice of Motion and Opportunity to Object filed on September

3, 2008 was a nullity, and has no effect whatsoever with respect to matters in relation to this case.

The Motion, generously construed, is an attempt to set aside an order of dismissal of the case pursuant to Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b). As such, the Motion does not conform to the requirements of N.D.Ind.L.B.R. B-9023-1(a), in that it is not accompanied by a supporting brief. Additionally, the Motion states no grounds cognizable under Fed.R.Civ.P. 60(b) for relief from the judgment of dismissal.

The bottom line is that the debtor's counsel – or perhaps the debtor by not providing information to her counsel – did not comply with the court's order entered on July 22, 2008, and the case was dismissed pursuant to the explicit terms of that order. There is nothing in the Motion which controverts the basis for the dismissal.

IT IS ORDERED that the Motion is denied, without prejudice to the filing of a motion in conformity with Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b) and N.D.Ind.L.B.R. B-9023-1.

Dated at Hammond, Indiana on October 9, 2008.

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

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee