UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
DAVID RAY KEASLING	)	CASE NO. 08-14302
NICOLE SUSANN KEASLING	)	
	)	
Debtors	)	

DECISION AND ORDER DENYING MOTION TO RECONSIDER

At Fort Wayne, Indiana, on March 23, 2009.

The order of March 6, 2009, denied confirmation of the debtors' proposed chapter 13 plan and dismissed this case. The debtors have asked the court to reconsider the dismissal and it is that motion which is presently before the court. The motion is addressed to the court's discretion, In re Prince, 85 F.3d 314, 324 (7th Cir.1996), and may be considered without a hearing and without requiring a response. See, Dunn v. Truck World, Inc., 929 F.2d 311, 313 (7th Cir. 1991). See also, N.D. Ind. L.B.R. B-9023-1(b).

This case was dismissed because, by the time the confirmation hearing was held – March 3, 2009 – the debtors had failed to provide the trustee with copies of bank statements showing the balance as of the date the case was filed. The Federal Rules of Bankruptcy Procedure require debtors to provide the trustee with this type of information by the 341 meeting. Fed. R. Bankr. P. Rule 4002(b)(2). In this instance, that meant they were supposed to have done so no later than January 29, 2009. The notice of the 341meeting, which was issued on December 18, 2008, reminded the debtors of their duty in this regard. Furthermore, compliance is of sufficient importance to evaluating the confirmability of a proposed plan and to the proper progress of the case that the notice of the confirmation hearing, which in this case was issued on January 2, 2009, specifically advised

all concerned – including the debtors and their counsel – that:

> If confirmation is denied because of the debtor(s)' failure to fulfill duties imposed by the Bankruptcy Code and rules of procedure, such as the duty to provide the trustee with required information or documentation or to commence making the required plan payments, the court may dismiss the case without further notice or hearing. Order Fixing Time to Object to Confirmation of Chapter 13 Plan and Notice of Hearing, ¶ 4, dated Jan. 2, 2009. (emphasis added).

Three weeks before the scheduled confirmation hearing the Chapter 13 trustee filed an objection to confirmation based, in part, upon the fact that the debtors had failed to provide bank statements that should have been delivered to him at least two weeks earlier. See, Trustee's Objection to Confirmation, ¶ 13, filed Feb. 10, 2009. By the time of the confirmation hearing, March 3, 2009, the debtors still had not given the trustee the required information. Accordingly, the court did what it said it would: it denied confirmation and dismissed the case. What could be wrong with that – dismissing a case because, despite repeated reminders, the debtors had failed to provide required information?

The debtors' motion is based upon Rule 60(b)(1) of the Federal Rules of Civil Procedure. They argue that the order dismissing the case should be vacated and the case should be reinstated because the failure to attend the hearing on confirmation was the product of excusable neglect. Determinations of excusable neglect are, at their core, equitable ones, taking into account all the relevant circumstances surrounding a party's omission including, among other things, the length of the delay and the reasons for it, whether that delay was within the reasonable control of the movant and its impact upon the proceedings. Pioneer Investment Services Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993). As such, it is an issue 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).

Counsel indicates that he did not attend the confirmation hearing because he believed an amended plan, filed on February 4, mooted the trustee's objections and somehow operated to vacate the hearing date. While amending or modifying a proposed plan is often done in order to resolve objections to confirmation, that does not mean the confirmation hearing should not go forward as scheduled. Instead, the question of how to proceed in light of any changes simply becomes an issue to be addressed at the originally scheduled hearing. See, Matter of Gibson, 2007 WL 1467221 (Bankr. N.D. Ind. 2007) (denying motion to vacate confirmation hearing due to an amended plan). Not all changes to a plan require additional notice and many times the plan, as modified, can be confirmed without further delay. Moreover, in this instance, the trustee's most fundamental objection, and the objection which proved fatal to the case, had nothing to do with the language of the proposed plan. It dealt with the debtors' failure to fulfill their duty to provide the trustee with required information. That problem could not possibly be addressed by changing the words or the provisions of their plan.

While counsel was clearly mistaken in his assumption that the amended plan eliminated his need to appear for the scheduled confirmation hearing that was not the reason this case was dismissed. It was dismissed because the debtors had failed to provide the trustee with required information. The need to provide that information is not unique to this particular case. It is not a peculiarity of the case trustee, the court in Fort Wayne, or of the Northern District of Indiana. It is a duty imposed upon all individual debtors by the Federal Rules of Bankruptcy Procedure. See, Fed. R. Bankr. P. Rule 4002(b)(2). Consequently, before they ever file their petitions, all debtors

know – and to the extent they do not they certainly should know – what they are supposed to do and when they are supposed to do it.

Unfortunately, the debtors' motion does not address the real reason their case was dismissed. It is based only upon counsel's mistaken assumptions. As such it does not give the court any basis for concluding that dismissal was the result of excusable neglect. Furthermore, the dismissal was without prejudice. See, 11 U.S.C. § 349(a). See also, Rodriguez v. Washington, 1995 WL 593081 (N.D. Ill. 1995)(dismissal without prejudice gives no just cause to complain). The court has not deprived the debtors of the opportunity to discharge their debts in a future case or restricted their eligibility for further bankruptcy relief. They are free to file a second case at any time. While doing so may impose additional burdens upon them, their creditors and the court, the court is satisfied that those burdens – whether they come from the need to file a motion to extend an otherwise temporary automatic stay, the preparation and filing of additional bankruptcy documents, paying a filing fee, or the scheduling, notices, and various proceedings necessarily associated with any bankruptcy case – do not outweigh the much greater burden placed upon the entire bankruptcy process by debtors who do not take their responsibilities seriously enough and by the problems and delays that come from not meaningfully enforcing the debtor's duties.

Debtors' motion to reconsider the dismissal of this case is DENIED.

SO ORDERED.

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