

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 ON RESPONSE TO SHOW CAUSE

At Fort Wayne, Indiana, on March 24, 2009.

On March 6, 2009, the court held a hearing with regard to confirmation of the debtors' proposed chapter 13 plan. The trustee, Donald Aikman, appeared for the hearing. Debtors' counsel, Steven Taylor, was nowhere to be seen. As a result, the court denied confirmation and dismissed this case, and, on its own motion, issued an order requiring Mr. Taylor to show cause in writing why he should not be sanctioned and/or required to pay the reasonable attorney fees incurred by the trustee as the result of the scheduled hearing. Mr. Taylor filed a timely response to the order to show cause and it is that response which brings the matter before the court for a decision.

A court's most fundamental expectations of the attorneys who appear before it are to show up and be prepared. Thus, an attorney who fails to appear for proceedings scheduled because of something they have filed, or who appears but is substantially unprepared to participate in those proceedings, may be sanctioned either through the court's inherent authority or through Rule 16(f) of the Federal Rules of Civil Procedure. See, G. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648, 651-53 (7th Cir. 1989); Matter of Sanction of Baker, 744 F.2d 1438 (10th Cir. 1984); Matter of Philbert, 340 B.R. 886 (Bankr. N.D. Ind 2006). In bankruptcy cases this is true for both adversary proceedings and contested matters. Philbert, 340 B.R. at 889. See also, N.D. Ind. L.B.R.

B-9014-2(b).

The failure to appear is specifically identified by Rule 16(f) as the basis for sanctions. At least to the extent that the opposing party should be compensated for the reasonable expenses – “including attorney’s fees” – incurred because of counsel’s non-compliance, the rule is almost, but not quite, mandatory. Unless non-compliance was “substantially justified” or other circumstances would make an award “unjust,” the non-defaulting party is entitled to reimbursement. As a result, the imposition of sanctions under the rule does not depend upon a finding of bad faith, willfulness, or contumaciousness. Matter of Sanction of Baker, 744 F.2d 1438, 1440-41 (10th Cir. 1984). A negligent failure to comply will suffice. Id. at 1441. See also, Harrell v. U.S., 117 F.R.D. 86, 88 (D. E.D. N.C. 1987); Barsoumian v. Szozda, 108 F.R.D. 426 (D. S.D. N.Y. 1985).

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. If this belief that the scheduled hearing would be removed from the court’s calendar – without any order, notice or other action by the court – had something to support it, perhaps the court could conclude that the failure to appear was substantially justified or that the imposition of sanctions might be unjust. But it does not. 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). Furthermore, had counsel checked the court’s docket (or even communicated with the trustee prior to the hearing) he would have quickly learned that the hearing

remained on the court's calendar. Yet he did neither of these things.

Counsel's response does not show that his failure to appear for the scheduled hearing was substantially justified or demonstrate that other circumstances would make an award unjust. It may explain counsel's absence, but it does not justify it. Neither does it change the reality that the trustee was required to (and did) go to the trouble of properly preparing for and attending the scheduled hearing. Because of Mr. Taylor's absence, those efforts were largely wasted and the court sees nothing unjust about requiring an attorney who has unnecessarily caused its opposition to devote time and trouble to a matter to reimburse them for the reasonable value of their labors. In the court's opinion such a result is necessary, not only as a matter of economic and procedural fairness, but also in order to impress upon litigants the importance of appearing for and being prepared for proceedings scheduled with regard to the things they file.

Steven Taylor shall, therefore, pay the reasonable attorney fees and expenses incurred by the trustee as a result of preparing for and attending the hearing held in this matter on March 9, 2009. In order to compensate the United States for the costs he has unnecessarily imposed upon it and the additional time and attention he has required the court to devote to this matter, thereby depriving other litigants of its attention, and to deter similar conduct, see, BondPro Corp. v. Siemens Power Generation, Inc., 466 F.3d 562, 563 (7th Cir. 2006) ("The time has come to impose an exemplary public sanction in the hope of deterring further violations."), he shall also pay the clerk of this court the sum of \$150.00.

The amounts due the clerk of this court shall be paid within fourteen (14) days. The trustee shall have fourteen (14) days from this date within which time to file and serve affidavits itemizing any recoverable fees and expenses. Mr. Taylor shall have ten (10) days thereafter in which to file

any objections thereto. In the absence of objection, the court will determine the reasonable amount of any fees and expenses without further notice or hearing.

SO ORDERED.

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