UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
CHATNEY LAVON MARTIN	)	CASE NO. 09-10932
	)	
Debtor	)	

DECISION AND ORDER DENYING MOTION TO RECONSIDER

At Fort Wayne, Indiana, on April 22, 2009.

This matter is before the court on the debtor's motion to reconsider the order of April 9, 2009. That order dismissed this case due to the debtor's failure to demonstrate eligibility for relief under title 11. The debtor is proceeding pro se and the court construes the motion as having been filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. As such, it is addressed to the court's discretion. See, e.g., 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). See also, C.K.S. Engineers v. White Mountain Gypsum Co., 726 F.2d 1202, 1205 (7th Cir. 1984). Pursuant to Rule 60(b),

> the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons:
>
> > (1) mistake, inadvertence, surprise, or excusable neglect . . . . Fed. R. Civ. P. 60(b)(1);
> >
> > * * *
> >
> > (6) any other reason that justifies relief

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). Relief is available pursuant to Rule 60(b)(6) only if Rules 60(b)(1) through (b)(5) do not apply and the court, in its discretion, finds that equitable action is necessary to accomplish justice. Peacock v. Bd. of School Comm'rs, 721 F.2d 210, 214 (7th Cir. 1983). The court will only use this power if extraordinary circumstances create a substantial danger of an unjust result. Margoles v. Johns, 798 F.2d 1069, 1073 (7th Cir. 1986), cert. denied, 482 U.S. 905, 107 S. Ct. 2482 (1987).

The decision and order of April 9 was the second time the court addressed the debtor's compliance with the requirements of § 109(h), which determine an individual debtor's eligibility for relief under title 11. It first did so on March 19, 2009. An individual debtor is required to demonstrate, on Exhibit D to the petition, either that it has complied with the pre-petition credit counseling requirements of § 109(h)(1) or that it qualifies for a waiver of those requirements. See, 11 U.S.C. § 109(h). The decision and order of March 19 explained why the debtor's original attempt at demonstrating eligibility, by seeking a temporary waiver of the pre-petition credit counseling requirement, was not satisfactory and what needed to be done to provide a statement of the "exigent circumstances" that would satisfy the requirements of the statute. 11 U.S.C. § 109(h)(3). The debtor was given two weeks to correct the deficiency and, yet, failed to do so. It was not until after the case was dismissed, when the debtor filed the motion to reconsider, that the court received a description of the exigent circumstances – a pending wage garnishment – that debtor believes warranted filing this case without having first obtained credit counseling.

A pending wage garnishment may or may not constitute exigent circumstances sufficient to satisfy the requirements of § 109(h)(3)(A)(i) meriting a temporary waiver of the credit counseling

requirement. See e.g., In re Manalad, 360 B.R. 288, 293 fn. 12 (Bankr. C.D. Cal. 2007); In re Rodrigeuz, 336 B.R. 462 (Bankr. D. Idaho 2005); In re Anderson, 2006 WL 314539 (Bankr. N.D. Iowa 2006). Nonetheless, assuming that it does, it is information that needs to be brought to the court's attention before it makes the decision concerning eligibility – it is supposed to be provided when the case is filed – not after the case has been dismissed. Exhibit D to the petition makes this clear when it instructs debtors to "summarize exigent circumstances" which are supposed to merit a waiver of the credit counseling requirement. Exhibit D, ¶ 3, pg. 2 (emphasis original). In bold letters the form warns debtors: "Your case may . . . be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing." Id. (emphasis omitted). The debtor failed to heed these instructions when the case was originally filed; then, after the court brought the deficiency to the debtor's attention, explained how it could be corrected and gave the debtor an opportunity to fix the problem, the debtor failed to do so.

Given the history of this case, Rule 60(b) requires the debtor not only to explain the exigent circumstances that justified a temporary waiver of the credit counseling requirement, but also why the debtor failed to advise the court of those circumstances either when the case was originally filed or in response to the decision and order of March 19, 2009. At best, the debtor has done only the first of those two things, and so, the motion to reconsider the order of April 9, 2009, dismissing this case is DENIED.

SO ORDERED.

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