

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SHERRYLE WOODS,) CASE NO. 05-61736-jpk
) Chapter 13
Debtor.)

ORDER ON MOTION TO REINSTATE CASE ["MOTION"]

The Motion was on June 25, 2009, and it was accompanied by a Memorandum of Law in Support of Debtor's Motion to Reinstate Case. The Motion is premised upon Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b)(6).

Although phrased as a "motion to reinstate case", the motion actually seeks relief from the courts' final order of dismissal of case entered on February 13, 2009. The court notes that it has been relatively standard practice for a number of years in this Division to file motions for "reinstatement" of a case based upon grounds which essentially fall within the provisions of Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b)(1). This is not appropriate practice. The motion in fact seeks relief from a final order of dismissal of the Chapter 13 case, and as such it should be clearly designated as a "motion for relief from judgment or order pursuant to Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b)".

Putting the erroneous denomination of the motion aside, it appears that the grounds stated in the motion fall within the provisions of Fed.R.Civ.P. 60(b)(1), and not within the provisions of Fed.R.Civ.P. 60(b)(6). As stated in *Brandon v. Chicago Board of Education*, 143 F.3rd 293, 295 (7th Cir. 1998):

"Inherent in the structure of Rule 60(b) is the principle that the first three clauses and the catchall clause are mutually exclusive. Thus, if the asserted grounds for relief fall within the terms of the first three clauses of Rule 60(b), relief under the catchall provision is not available" *Wesco Products Co. V. Alloy Automotive Co.*, 880 F.2d 981, 983 (7th Cir. 1989) (internal citations omitted). Therefore, we must first determine if the relief sought falls with Rule 60(b)(1).

As stated in other Seventh Circuit cases too numerous to cite, if an asserted reason for relief from a final judgment falls within Rule 60(b)(1), the case must be analyzed under that provision alone, and the “catchall” provision of Rule 60(b)(6) is not available. The courts’ reading of the motion and its accompanying memorandum indicates to the court that the basis for seeking relief from the judgement of dismissal is essentially that stated in the first sentence of the second paragraph of the Memorandum, i.e., that “(a)t the time Ms. Woods case was dismissed, she was out of state caring for an ill family member, who has since passed away.” The case was dismissed because the debtor failed to make payments required to be made to the Chapter 13 Trustee under the terms of her confirmed plan. The reason for her failure to make those payments falls within the parameters of Rule 60(b)(1), and all of the other assertions made in the motion and the memorandum are beside the point. This case will rise or fall upon the “excusable neglect” of the debtor with respect to her failure to make payments, and the court deems Rule 60(b)(6) to not be in play. While the court certainly appreciates the stress that was put upon the debtor by the circumstances which she encountered, the court must analyze the motion in accordance with applicable law and determine whether or not those circumstances constitute “excusable neglect” under Rule 60(b)(1). Based upon the motion and its accompanying memorandum; the court determines that Rule 60(b)(6) is not applicable to this case, and that the debtor’s motion will rise or fall under the provisions of Rule 60(b)(1).

IT IS ORDERED that a hearing will be held on **August 12, 2009, at 9:30 A.M.**, to determine whether or not the motion will be granted under the provisions of Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b)(1).

IT IS FURTHERED ORDERED that the foregoing hearing is a Final Evidentiary Hearing, at which the debtor will be expected to appear and establish any grounds which she deems

necessary to sustain her motion.

Dated at Hammond, Indiana on July 21, 2009.

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

Distribution:

Debtor, Attorney for Debtor
Trustee, US Trustee
All Creditors
All Parties-in-Interest