

# Not intended for Publication and/or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
KIM L. SHORT ) CASE NO. 11-13950  
 )  
Debtor )

## **DECISION AND ORDER DENYING MOTION FOR RELIEF FROM ORDER**

At Fort Wayne, Indiana, on October 26, 2011

This case was dismissed on October 21, 2011, due to the debtor's failure to file a scanned copy of the originally signed signature pages as required by the court's order authorizing electronic case filing. Fifth Amended Order Authorizing Electronic Case Filing ¶ 11. See also, In re King, 2006 WL 1994679 \*4 (Bankr. N.D. Ind. 2006). On October 24, 2011, the debtor filed a motion for relief from the order dismissing this case asking the court to vacate the order of dismissal and it is that motion which is presently before the court. To the extent the debtor is arguing that the failure to file the required signature pages constituted excusable neglect, under to Rule 60(b) of the Federal Rules of Civil Procedure, the argument fails. Determinations of excusable neglect are equitable 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), and are 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).

In essence, the motion represents that the failure to file the required signature pages was due to a mistaken belief that the signature pages were attached when the documents were uploaded for filing, based upon indications to that effect from the software counsel uses. Yet, apparently, no one

thought to take a moment to open the attachment and actually look at that document to confirm that it was what it was supposed to be before sending it to the court for filing. Had that been done, counsel would have easily discovered that the required signature pages were not attached as his software had indicated. Indeed, perhaps the single most common error in electronic filing is that the document actually filed with the court is not the document counsel wanted to file. Viewing electronic documents before (or even after) sending them to the court avoids this problem and will confirm whether what was filed was what counsel intended to submit. That is the reason for the court's mantra, repeated in its ECF literature, training sessions, and other presentations: "Open the pdf." The court recognizes that counsel had good intentions regarding the submission, but this is a situation where the court must focus on the actual results, not good intentions. The failure to review the documents he was sending to the court for filing and any confusion as to how his software was configured do not constitute excusable neglect. Cf., In re Sizemore, 341 B.R. 658 (Bankr. N.D. Ind. 2006)(counsel's computer problems do not constitute excusable neglect).

The court also notes that the dismissal of this case was without any type of prejudice. See, 11 U.S.C. § 349(a). See also, Johnson v. Indiana Family & Social Service Administration, 2006 WL 978982 (D. N.D. Ind. 2006); Rodriguez v. Washington, 1995 WL 593081 (D. N.D. Ill. 1995). Thus, the debtor is free to refile at any time without any restrictions, save those which are automatically associated with filing multiple cases within a 12-month period. See, 11 U.S.C. § 362(c)(3),(4).

Debtors' motion for relief from the order dismissing this case is DENIED.

SO ORDERED.

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