

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
BRENETTA W PERRY,) CASE NO. 12-20572-jpk
) Chapter 13
Debtor.)

ORDER DENYING MOTION TO VACATE DISMISSAL OF CASE ["MOTION TO VACATE"]

The Motion to Vacate was filed by the debtor, by counsel, as record No. 38 on December 29, 2012. The court deems the motion to seek relief pursuant to Fed.R.Bankr.P. 9024, with respect to a final judgment of dismissal of the case entered as record No. 34 by the court on October 22, 2012.

First, contrary to N.D.Ind.L.B.R. B-9023-1(a), the Motion to Vacate was not accompanied by a supporting brief. However, even if it had been, based upon the statements in the motion and the record in this case, the Motion to Vacate will be denied.

The order of dismissal of case was entered on October 22, 2012, based upon the record No. 33 Trustee's Affidavit of Default filed on October 10, 2012 with respect to the debtor's failure to comply with the record No. 23 order of the court concerning filing of the 2010 Indiana income tax return provision thereof to the Chapter 13 Trustee, and the filing of a certification of compliance with that order. Compliance with the record No. 23 order was due on August 24, 2012. Given that the Trustee's affidavit of default on that order was not filed until October 10, 2012, it is apparent that the Trustee gave the debtor a great deal of latitude in complying with the order, albeit late. Paragraph 4 of the Motion to Vacate states that the debtor provided the 2010 State income tax return on November 14, 2012. The record establishes that the debtor has never filed a certification as required by the record No. 23 order. The Motion to Vacate was filed over two months after the entry of the order dismissing the case.

Rule 9024 of the Federal Rules of Bankruptcy Procedure applies Fed.R.Civ.P. 60 to

motions for relief from a final order of judgment. Federal Rule 60(b) states six grounds upon which relief may be granted. The possible ground applicable to the Motion to Vacate is that stated in Fed.R.Civ.P. 60(b)(1), which allows relief from a judgment or order for “mistake, inadvertence, surprise, or excusable neglect.” The Motion to Vacate states nothing as to the reasons for the debtor’s non-compliance with an order of the court or for the delay in ultimately providing the Chapter 13 Trustee with the documents required by that order, and states nothing as to failure to file the certification required by the court’s order. The Motion to Vacate states no grounds whatsoever with respect to relief from the order of dismissal of the case entered on October 22, 2012.

IT IS ORDERED that the Motion to Vacate is denied.

Dated at Hammond, Indiana on February 15, 2013.

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

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
All creditors and parties-in-interest