

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
TURRQUOISE S. HARVIN) CASE NO. 15-12172
)
)
Debtor) **NOT FOR PUBLICATION**

DECISION AND ORDER

On July 18, 2016.

The court's order of June 22, 2016, granted the trustee's motion for turnover of property following a hearing held on the motion and the debtor's objection thereto. The debtor, who is proceeding pro se, has now filed a letter which the court construes as a motion to reconsider that order. In it, she says she did not attend the hearing on her objection because she was busy and would like another chance to do so.

Construing the motion liberally, it is premised upon Rule 60(b) of the Federal Rules of Civil Procedure and apparently Rule 60(b)(1) which authorizes relief from a judgement due to a mistake, inadvertence, surprise or excusable neglect. The court has wide discretion in deciding motions under Rule 60(b)(1). Zuelzke Tool & Engineering Co. v. Anderson Die Castings, Inc., 925 F.2d 226, 228-29 (7th Cir. 1991). To begin with, the motion must be filed within a reasonable time. Then, where the judgment has been entered by default, the moving party has the burden of showing:

- 1) good cause for the default;
- 2) quick action to correct the default, and;
- 3) a meritorious defense. Zuelzke, 925 F.2d at 229. See also, Nelson v. City Colleges of Chicago, 962 F.2d 754, 755-56 (7th Cir. 1992).

All of these requirements must be met or the motion may be denied. Pretzel & Stouffer v. Imperial Adjusters, Inc., 28 F.3d 42, 46-47 (7th Cir. 1994). The debtor has failed to do so.

The request does not demonstrate good cause for the default – her failure to attend the hearing. To do so, the debtor “must show a good faith reason for failing to appear, ‘meaning that we will grant relief only where the actions leading to the default were not willful, careless, or negligent.’” Swaim v. Moltan Co., 73 F.3d 711, 721 (7th Cir.1996) (quoting Johnson v. Gudmundsson, 35 F.3d 1104, 1117 (7th Cir. 1994)). Inattentiveness to litigation is not excusable and missing a deadline because of slumber can be fatal, Matter of Plunkett, 82 F.3d 738, 742 (7th Cir. 1996); yet, that is all the debtor appears to offer here. Although served with notice of the hearing – which was only scheduled due to her objection, see, N.D. Ind. L.B.R. B-2002-2 – the debtor did not attend, for reasons that are not clearly stated. She was either busy at work or forgot; neither of which is sufficient.

Even if the debtor had a sufficient reason for not attending the hearing, she has not demonstrated a meritorious defense to the trustee’s motion. Everything the debtor said in her objection to the motion was addressed at the hearing, and the present motion does nothing to overcome that. The Bankruptcy Code is very clear as to what constitutes property of the estate: it is comprised of all property in which the debtor has an interest, as of the date of the petition, wherever located and by whomever held, including intangible property, bank accounts, tax refunds, etc. 11 U.S.C. § 541(a). Furthermore, anyone in custody or control of property of the debtor is obligated to turn the property over to the trustee. As of the date of the petition the debtor had \$4,968.52 in a bank account and there were no restrictions on how those funds could be used. The fact that she might have had a particular purpose for them does not change the fact that they constitute property of the estate, to which the trustee is entitled.

Debtor’s motion to reconsider, is DENIED.

SO ORDERED.

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