

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 15-11015)
)
ANNIE B. JOHNSON)
)
Debtor)
)
)
YVETTE GAFF KLEVEN, Trustee)
)
Plaintiff)
)
vs.)
)
ANNIE B. JOHNSON)
)
Defendant)

NOT FOR PUBLICATION

PROC. NO. 16-1013

DECISION AND ORDER GRANTING MOTION TO RECONSIDER

On August 2, 2016.

The debtor, who is the defendant in this adversary proceeding, filed a petition for relief under chapter 7 on April 28, 2015. Shortly before she filed, she apparently had \$6,646 in cash. The trustee formally requested the debtor comply with her duties under the Bankruptcy Code and turn that money over to her, in addition to documentation regarding a life insurance policy and a bank statement. Although properly served with the motion and notice of the opportunity to object to it, the debtor did not respond, and it was subsequently granted without any objection or other response. See, N.D. Ind. L.B.R. B-2002-2. When the debtor failed to comply with that order, the trustee initiated this adversary proceeding, seeking to revoke the debtor's discharge because she had refused to comply with the court's order. See, 11 U.S.C. § 727(d)(3), (a)(6)(A). The debtor was properly served with the summons and complaint, but, once again failed to respond. As a result, the court

granted the plaintiff/trustee's motion for default judgment and revoked the debtor's discharge.

Shortly after judgment was entered against her, the court received a letter from the debtor stating that she gave the trustee all of the documents which were asked for and does not understand what more is required of her. Given the liberality with which the court is to construe filings made by pro se litigants, Korsunskiy v. Gonzales, 461 F.3d 847, 850 (7th Cir. 2006); Kincaid v. Vail, 969 F.2d 594, 598 (7th Cir. 1992), the court construed this letter as a motion to reconsider or for relief from the default judgment, and scheduled the matter for hearings at which the debtor appeared.

The motion is best construed as premised upon Rule 60(b)(1) of the Federal Rules of Civil Procedure which authorizes relief from a judgment due to a mistake, inadvertence, surprise or excusable neglect. The court has wide discretion in deciding such motions. Zuelzke Tool & Engineering Co. v. Anderson Die Castings, Inc., 925 F.2d 226, 228-29 (7th Cir. 1991). 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).

In light of the Seventh Circuit's "well-established policy favoring a trial on the merits over a default judgment," Passarella v. Hilton Int'l Co., 810 F.2d 674, 675 (7th Cir. 1987), the court finds the motion should be granted.

The motion was filed less than a week after the motion for default judgment and the day after judgment was entered. Attached to it was a letter dated March 14, 2016, stating that the documents the trustee sought had been submitted on several occasions. March 14, 2016 happens to be the date the debtor's answer to the complaint was due, and had the court received this letter it would have

construed it as an answer denying the material allegations of the complaint. It was not received, however, either by the court or the trustee, because the debtor entrusted its mailing to a friend who seems to have mailed it to the state court, rather than this one, leading to the default. Nonetheless, now that the court has the debtor's "answer," the default has been corrected. Finally, the debtor's response suggests a meritorious defense to the action – compliance. Whether or not that is so will need to be the subject of further proceedings.

The debtor's motion is GRANTED, the judgment revoking her discharge is vacated, and further proceedings will be set by separate order.

SO ORDERED.

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