

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF: )  
 )  
WILLIAM R. KING ) CASE NO. 06-40146  
AMY M. KING )  
 )  
Debtors )

**DECISION AND ORDER DENYING MOTION TO RECONSIDER**

At Fort Wayne, Indiana, on June 21, 2006.

This case began on June 8, 2006, when debtors' counsel electronically filed a petition for relief on behalf of the debtors. Despite the court's requirements, that petition was not signed by the debtors and it was not accompanied by a signed copy of the relevant signature pages. See, Fifth Amended Order Authorizing Electronic Case Filing, ¶11(c). As a result, by an order issued on June 9, 2006, the petition was stricken and the case dismissed. Debtors' counsel has now filed a motion to reconsider the order of dismissal and it is that motion which is presently before the court. In essence the motion represents that the failure to file the required signature pages was due to counsel's inadvertence, apparently because counsel routinely practices in the Southern District of Indiana where signature pages are not required. Counsel also indicates that, although she could provide copies of the required signature pages without delay, she would like five (5) days within which to do so. Furthermore, the debtors want to avoid the costs associated with filing a second case and so would like the court to allow their "case to be reopened for the purposes of complying with the local rule." Motion to Reconsider, ¶ 5.

Debtors' motion is deficient on so many levels that it is hard to know where to begin. Nowhere in the motion is there any indication of the grounds upon which it might be based, see, Fed.

R. Bankr. P. Rule 9013 (a motion shall state both the relief sought and the grounds therefor “with particularity”), and since the motion was not accompanied by a brief in support thereof, as required by the local rules of this court, see, N.D. Ind. L.B.R. B-7007-1(a); B-9023-1(a), that deficiency has not been corrected. So, the court is left to speculate concerning the basis for the motion, the legal standards which might govern it, and whether the circumstances of this case satisfy the requirements for granting the relief requested.

This is a situation that amply demonstrates the purpose for the court’s local rules which require motions such as this to be accompanied by a brief in support thereof. The court does not require a brief simply to make work for lawyers or simply to establish hoops they must jump through for no purpose other than jumping through them. A proper legal brief has two components. First, it identifies the law or the rules governing a particular situation; it then advances an argument in which that law, when applied to the facts of the precise matter before the court, demonstrates that the movant is entitled to the relief it seeks. Thus, a proper brief educates both the author and the reader. Because it requires the movant to do its research before things are filed, see also, Fed. R. Bankr. P. Rule 9011(b), it serves as a guide reminding the movant of what must be done in order to demonstrate entitlement to the relief requested. It also helps the reader – whether the court or opposing counsel – to come to a conclusion concerning the merits of that request so that it can respond appropriately. Without a brief offering guidance concerning the foundation for a motion or the legal standards governing it, the only apparent basis for a request is that the court should do what the movant asks simply because the movant has asked. While that might be appropriate for simple things, such as motions for an extension of time or to reschedule a hearing which conflicts with a previous commitment on counsel’s calendar, it is not appropriate where substantive rights are

involved.

Had counsel filed the required brief, the court would not be left to speculate concerning the basis for the debtors' motion and counsel would have known what needed to be done in order to have any chance of the motion succeeding. She did not; thus, it is not surprising that, when the motion is measured by the standards associated with the various statutes and rules the court thinks might apply to it, it is totally inadequate, both legally and factually.

One basis for the motion might be § 350 of the United States Bankruptcy Code which allows the court to reopen a case. 11 U.S.C. § 350. At paragraph five of their motion, the debtors have specifically asked the court to reopen the case for the purpose of complying with its local rules. Assuming this portion of the Bankruptcy Code is the foundation for the motion, it is legally insufficient. A case which has been dismissed cannot be reopened. See, In re Income Property Builders, Inc., 699 F.2d 963, 965 (9th Cir. 1982); In re Critical Care Support Services, 236 B.R. 137, 140-41 (E.D. N.Y. 1999); In re King, 214 B.R. 334, 336 (Bankr. W.D. Tenn. 1997); In re Woodhaven, Ltd., 139 B.R. 745, 747-78 (Bankr. N.D. Ala. 1992); Matter of Garcia, 115 B.R. 169, 170 (Bankr. N.D. Ind. 1990).

The motion is titled as a motion to reconsider; yet there is no such motion in federal practice. In re Curry & Sorensen, Inc., 57 B.R. 824, 827 (9th Cir. B.A.P. 1986). Such a request is usually characterized as a motion to alter or amend, filed pursuant Rule 59 of the Federal Rules of Civil Procedure. In re Watson, 102 B.R. 112, 113 (Bankr. S.D. Ohio 1989). Another reason for characterizing the motion as having been filed pursuant to Rule 59 is that it was filed within ten days of the date of the order in question. Charles v. Daley, 799 F.2d 343, 347 (7th Cir. 1986); Deutsch v. Burlington Northern R. Co., 983 F.2d 741, 744 (7th Cir. 1992), cert. denied, 507 U.S. 1030, 1135

S.Ct. 1845 (1993). A Rule 59 motion requires the movant to demonstrate some type of error of law or fact or newly discovered evidence that would impact the outcome of the proceeding. Deutsch, 983 F.2d at 744; Figgie Int'l, Inc. v. Miller, 966 F.2d 1178, 1180 (7th Cir. 1992). If this is the basis for the debtors' motion, the court should ask what is the legal or the factual error that it is supposed to have committed or what new evidence have the debtors identified – which was not previously available – that would have any bearing on the court's decision to dismiss this case? This question cannot be answered based on the information the court has been given. The motion identifies no new facts or any factual error; indeed, it concedes the fundamental factual premise of the order of dismissal, which is that the petition that was filed with the court was not signed by the debtors. The only other possibility is that the court committed some sort of legal error by dismissing a case which was initiated with an unsigned petition. The debtors make no such argument and could not do so. The Bankruptcy Code and Rules of Procedure are quite clear that in order to initiate a case the petition doing so must be signed under penalties of perjury. See, 11 U.S.C. §§ 301, 302; Fed. R. Bankr. P. Rules 1002(a), 1008. Consequently, an unsigned petition doesn't count. See, In re Morgan, 182 B.R. 4, 5 (Bankr. S.D. N.Y. 1995); In re Brown, 163 B.R. 596 (Bankr. N.D. Fla.1993); In re Harrison, 158 B.R. 246 (Bankr. M.D. Fla.1993); In re JP Enterprises, Inc., 22 B.R. 661, 663 (Bankr. E.D. Pa. 1982).

Yet, another possible basis for the motion is Rule 55(c), which allows a party to ask the court to set aside a default or a default judgment – here characterizing the default as the failure to submit a signed petition or signature pages and the default judgment as the order dismissing the case. If so, counsel's failure to do her pre-filing homework once again leaves the motion coming up short. The reported case law establishes three requirements for relief under Rule 55. There must be good cause

for the default, quick action to correct it and some sort of demonstration of the defaulting party's likelihood of success. Jones v. Phipps, 39 F.3d 158, 162 (7th Cir. 1994); Breuer Elec. Mfg. v. Toronado Sys. of Am., 687 F.2d 182, 185 (7th Cir.1982). Since no brief accompanied the motion, there was no attempt to even identify these requirements, much less demonstrate how they have been fulfilled in this situation, and when we examine the case we find that they have not been satisfied. The court is willing to assume that the debtors have some likelihood of success with regard to the merits of their chapter 7 filing. In other words, the court is willing to assume that if the case were allowed to proceed the debtors would be entitled to a discharge.<sup>1</sup> (There is no good cause for the default, although the court will not discuss that element here because it will do so in connection with the final possible ground for the debtors' motion, which is Rule 60(b) of the Federal Rules of Civil Procedure.). The court will limit its Rule 55 analysis to the second requirement – quick action to correct the default. Here, the default which generated the order of dismissal was the failure to file the required signature pages along with the petition. Nothing has changed in that regard. Although the motion represents that the required signatures can be provided with “without delay”, ¶ 4, and “immediately”, ¶ 6, that has not been done. Furthermore, not only is there no explanation as to why counsel has not yet corrected the problem that led to dismissal, but counsel had the temerity to ask that she be given five more days to do something that should have been done immediately after the petition was filed! See, Tolliver v. Northrup Corp., 786 F.2d 316, 319 (7th Cir. 1986)(“It would take

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<sup>1</sup>This assumption may not be an accurate one. As a result of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, to be eligible for relief under any chapter of title 11 an individual must have received credit counseling from an approved agency “during the 180 day period preceding the date of filing the petition . . . .” 11 U.S.C. § 109(h)(1). Although the debtors did obtain credit counseling prior to filing this case, the certificate concerning the completion of that counseling indicates they received it 181 days before filing the petition. As a result, it would seem that the debtors are not eligible for relief and their case would have to be dismissed for that reason.

an extraordinary set of facts – one we cannot now imagine – to make a case of ‘abuse of discretion’ in failing to restore to the docket a case in which the defaulting party is still in default at the time the [ ] judge rules on the motion to vacate.”).

The final possible basis for the motion is Rule 60(b) of the Federal Rules of Civil Procedure, which is made applicable to these proceeding by Bankruptcy Rule 9024. The motion’s representation that the failure to file the required signature pages was inadvertent, see, ¶¶ 1 and 2, suggests that counsel might have had Rule 60(b)(1) in mind. This rule allows the court to relieve a party from a final judgment or order for mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. Rule 60(b)(1). Consequently, the court needs to examine how the motion indicates that counsel’s failure to file the required signature pages was attributable to some type of mistake, inadvertence, surprise or excusable neglect. To begin with, the need for a signed copy of the petition is clear. See, Fed. R. Bankr. P. Rule 1008. The rules of this court which govern electronic filings are also equally clear.

Debtor’s signatures upon the bankruptcy petition, schedules, statements and lists, and any amendment thereto, may be indicated by any of the following methods:

- A. Submitting a scanned copy of the originally signed document(s);
- B. Attaching a scanned copy of the originally signed signature pages(s) to the electronic document, or:
- C. Separately submitting a scanned copy of the originally signed signature page(s) immediately after the electronic filing of the signed document. Fifth Amended Order Authorizing Electronic Case Filing, ¶ 11(c).

As near as the court can tell, counsel’s explanation for her failure to file the required signature pages is that she “routinely files bankruptcy petitions in the Southern District of Indiana, where scanned

original petitions are not required.” Motion to Reconsider, ¶ 2. This seems to be some type of argument based upon the concept that counsel was not familiar with the requirements of the court’s local rules and procedures and, thus, should not be expected to abide by them.<sup>2</sup> If this is counsel’s argument, it is as astounding as it is wrong. See, Weinstock v. Cleary, Gottlieb, Steen & Hamilton, 16 F.3d 501, 503 (2nd Cir.1994); Bohlin Co. v. Banning Co., 6 F.3d 350, 356-57 (5th Cir. 1993).

The court’s requirements for the submission of debtors’ signatures on the petition, statements and schedules are neither ambiguous nor are they a secret. The order governing electronic filing is publically available on the court’s website and is part of the written materials given to attorneys if they take local ECF training, which is regularly available throughout the district. Not only is the order itself clear, but the court’s policy of strictly enforcing it is also a matter of public record. The reason for the court’s enforcement policy is its earlier, disturbing experience of granting attorneys some leeway or indulgence when the required signature pages were not filed. The court discovered far too many instances in which counsel filed bankruptcy cases on behalf of clients before the petitions were actually signed, apparently hoping that the facts of the matter – the debtors’ signatures – would catch up with what had been done, and no one would ever be the wiser. In the court’s

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<sup>2</sup>In her application for a password to the court’s ECF system, counsel stated:

I have read, understand and will follow the court’s ECF system rules:

\* \* \*

8. I agree to adhere to all court procedures for the ECF system. I understand it is my responsibility to learn and use all updates to the ECF Procedures.

Apparently not.

opinion such deception is intolerable. In order to prevent it, the court changed its original policy and decided to rigorously enforce the requirements of its local ECF rules. Yet, even here, the change was not made overnight or in secret. The court publically announced it ahead of time, with a notice issued on the January 25, 2006. That notice was posted on the court's website, under court announcements, and was e-mailed to all of the court's registered ECF attorneys. It can still be found on the court's website, <http://www.innb.uscourts.gov>, under Court Announcements - Notice to the Bar Regarding Signature Pages, although since it is now old news it is no longer associated with any type of attention-grabbing device. What more could the court do to educate attorneys about what is expected of them? Ignorance of a court's local rules does not excuse failing to comply with them. See, Wakefield v. Northern Telecom, Inc., 13 F.2d 535, 542 (2nd Cir. 1987). See also, Pioneer Inv. Services. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 392, 113 S.Ct. 1489 (1993); Weinstock v. Cleary, Gottlieb, Steen & Hamilton, 16 F.3d 501, 503 (2nd Cir.1994); Bohlin Co. v. Banning Co., 6 F.3d 350, 356-57 (5th Cir. 1993).

The final suggestion in the motion is that the case should be reinstated so that the debtors can avoid the cost of refiling bankruptcy. To this end, the court notes that the dismissal of this case was without prejudice, so that the debtors are free to file a subsequent case without any restrictions, save for those which are automatically associated with filing multiple cases within a 12-month period. See, 11 U.S.C. § 362(c)(3),(4). As for whether they will incur any additional costs in connection with doing so, that is something which is largely within the control of their counsel. Since this case was dismissed because of counsel's failure to do or to understand what was required of her, perhaps counsel should bear the costs associated with any refiling. Having to do so might cause her to be more careful in the future. That, however, is an issue we will leave to the debtors and their attorney.

Debtors' motion to reconsider is DENIED.

SO ORDERED.

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