

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

RICHARD ROGER FREDERICKSEN and
SANDRA KAY FREDERICKSEN
Debtors.

Bankruptcy No. 94-50848XS

Chapter 7

ORDER RE: RENEWED MOTION TO RECONSIDER

Debtors ask the court to reconsider its order dismissing their chapter 7 case. Hearing on the motion was held July 13, 1994. Debtors appeared with their attorney, William J. Lane.

Richard and Sandra Fredericksen filed their joint chapter 7 petition on May 20, 1994. They first contacted attorney Lane in early April, but they could not proceed with the case until they had paid Lane a retainer fee of \$350.00. At about the time they were able to pay the fee, the petition was filed. The petition was accompanied by the attorney's Disclosure of Compensation, the debtors' Statement of Intention regarding secured consumer debts, a Statement of Financial Affairs, a list of creditors, a Notice to Individual Consumer Debtors and a matrix. The schedules of assets, liabilities and exemptions were not included. Under Fed.R.Bankr.P. 1007(c), the debtors had 15 days after the filing of their petition to file the completed schedules. The clerk's office gave written notice of the time requirement to debtors and their attorney (docket no. 5). The notice warned that failure to file the schedules would lead to dismissal of the case without further notice or hearing.

Although Rule 1007(c) provides for extensions of the time to file where cause is shown, the debtors and their attorney did not seek an extension. Because the schedules were not filed, the court dismissed the case on June 9, 1994 (docket no. 7). Notice of the dismissal was given to the creditors and parties-in-interest which had been listed on the debtors' mailing matrix (docket no. 8).

On June 13, debtors' attorney filed a motion seeking reconsideration of the order of dismissal. He tried to file completed schedules. The schedules were rejected, and the motion was denied without hearing on the ground that the attorney had not stated sufficient cause in the motion to warrant reconsideration (docket no. 10). The order denying the motion was issued and served June 13, 1994. On July 6, 1994, the attorney renewed his motion to reconsider (docket no. 12).

The attorney alleges that the required schedules were not timely filed because of "the limited intellectual capacity of Debtors and a chronic medical condition which carries a certain stigma, coupled with the resulting difficulties with records and recovering needed information from almost nonexistent records." Paragraph 8, Renewed Motion.

At the hearing, counsel explained that debtors needed to file quickly because their wages were being garnished. He explained also that Mr. Fredericksen does not read and that both debtors have a limited education. He said they did not understand the questions on the informational questionnaire from

which his office prepares the schedules and that on two occasions before the deadline for filing the schedules, debtors submitted incomplete answers to his office. Nonetheless, prior to the deadline, the attorney and his secretary met with debtors and filled out the answers needed for the schedules. The attorney stated that he thought the schedules were being completed by the secretary, but that before they were completed, she missed work because of illness and that he was unaware the schedules had not been filed and that an extension was needed.

The court may vacate its order of dismissal upon a showing of excusable neglect. Fed.R.Bankr.P. 9024; Fed.R.Civ.P. 60(b). Based on the education, abilities and experience of the debtors, their failure to file timely schedules is excusable.

But debtors are accountable for the acts and omissions of their attorneys. Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 113 S.Ct. 1489, 1499 (1993). Therefore, if the court is to set aside its order, it must find also that counsel's neglect was excusable.

"Neglect" encompasses negligent conduct as well as conduct beyond the control of the actor or conduct caused by others. Id. at 1497. In the case at bar, there was neglect. Counsel failed to file the debtors' schedules within the time limits set by the Rules of Procedure. He also failed to seek an extension of the time for filing.

The remaining question is whether his neglect is excusable. Determination of whether neglect is excusable is an equitable undertaking. The court must take into account all relevant circumstances. Id. at 1498. The circumstances include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Id. at 1498.

Here, there is no indication of bad faith. The effect of delay is somewhat misleading. The petition was filed May 20. The fifteenth day was a Saturday, so the omitted schedules were not due until June 6. The court did not dismiss the case until June 9. The order of dismissal was served by mail, so at best, counsel would have been aware of the dismissal by June 10. Three days later, counsel filed the motion to reconsider and tried to file the schedules. The motion was denied on June 13; the schedules were rejected.

The motion was denied because it failed to set out with any specificity the "difficulties" which allegedly prevented timely filing. It was not until July 6 that the renewed motion to reconsider was filed, a date more than three weeks after the denial of the initial motion. No explanation has been given for this delay. Meanwhile, the trustee has filed his final report. It may be argued that the delay in question was only one week--from June 6, when the schedules were due, to June 13, when counsel attempted to file them. But the shortness of this delay can be explained by the dismissal of the case. Delays in these circumstances may always be short if the court is prompt in dismissing, and dismissal prompts filing of the papers. There is no way of knowing how long the delay would have been if the court had merely waited for counsel to file the schedules without prompting. Thus, the court does not consider the short length of "delay" a significant factor in favor of debtors.

Delay in filing schedules has an adverse impact on the bankruptcy process. There is a clear time period for filing schedules. Provision is made for seeking extensions. When debtors or their counsel fail to timely file schedules and fail to seek more time, the court should not have to set hearings to extract the schedules from them. The obvious result of doing so would be that the clerk's office would become counsels' reminder system, and the 15 days would become meaningless. To work most

efficiently, the court must be able to dismiss cases automatically when debtors fail to file required schedules on a timely basis.

Moreover, permitting delays in the filing of schedules, disrupts the orderly flow of information critical to the operation of the bankruptcy process. Any significant delay in filing schedules often could and should delay meetings of creditors and could force extensions of other deadlines. Delay militates against reinstatement.

The expressed reason for the delay is twofold--the inability of the debtors to understand how to fill out counsel's bankruptcy questionnaire and the illness of counsel's secretary. The first is of little relevance. According to counsel, the debtors met with him and his secretary in time to accomplish timely filing.

The main basis for the failure to file appears to be that the secretary became ill and temporarily ceased work on the case. Counsel, however, has given no satisfactory explanation of his failure to ensure that deadlines were not being missed on work assigned by him to his secretary. Ultimately, the responsibility for filling out the schedules and filing them on time was his, not hers. Her illness does not excuse his failure to make sure the work was timely done.

That the Supreme Court would not consider the secretary's illness as a significant factor in determining excusable neglect is borne out by its decision in Pioneer Investments. In determining whether the neglect of counsel in Pioneer was excusable, the court gave little weight to "the fact that counsel was experiencing upheaval in his law practice. . . ." Id. at 1499. To the extent that the illness of Lane's secretary caused any upheaval, this also should be accorded little weight. The court is left with no satisfactory reason for counsel's delay.

Of most concern to the court is prejudice to the debtors. They are apparently people of no financial means. At minimum, the prejudice to them would be the cost of a second filing fee. Counsel, however, indicates that if the motion to reconsider is not granted, he will refile the case and pay the fee out of his own pocket. Such an outcome would not be unjust. No other prejudice has been pointed out by counsel, although it may be that the debtors' authority to avoid liens under § 522 may be affected.

Upon reconsideration of the foregoing facts and factors, the court finds that reconsideration is not warranted, and the case should not be reinstated.

IT IS ORDERED that the renewed motion to reconsider is denied.

SO ORDERED ON THIS 14th DAY OF JULY, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U. S. mail to: Debtors, William Lane, Wil Forker and U. S. Trustee.