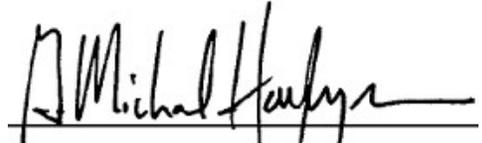


THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:



DATED: December 18, 2018


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Michael J. Flynn,

Case No. 18-24800-GMH

Chapter 7

Debtor.

**ORDER DENYING DEBTOR'S MOTION TO VACATE ORDER OF DISMISSAL
AND REINSTATE CASE**

The debtor filed this chapter 7 case on May 15, 2018, and applied to pay the filing fee in installments. The court approved that application and ordered the debtor to pay the filing fee in three installments due June 14, July 16, and August 13. The court's order states, "If the Clerk does not receive any one of these installments by the applicable deadline, the Court will dismiss this case, and the debtor will not receive a discharge." CM-ECF Doc. No. 6, ¶4 (emphasis omitted).

On the debtor's motion, the court extended the deadline by which the debtor was required to pay the first installment of the filing fee from June 14 to June 21. The debtor missed the extended deadline. On June 29, the court dismissed the case because the

debtor still had not paid any portion of the filing fee. A few days later, on July 2, the clerk received the debtor's first installment.

Months later, on November 12, the debtor paid the balance of the filing fee and moved to vacate the court's June 29 order dismissing the case. The debtor's motion states no legal basis for such relief. Consequently, the motion does not satisfy Local Rule 9013(b): "Motions must state the Bankruptcy Code sections, Federal Rules of Bankruptcy Procedure, and other authority on which they base their request for relief." This is reason enough to deny the motion. And further consideration of the motion's substance leads to the same result.

A motion for relief from an order in a bankruptcy case is governed by Federal Rule of Bankruptcy Procedure 9024, which states that Federal Rule of Civil Procedure 60 applies, subject to certain exceptions that are not relevant here. *In re Dorff*, 480 B.R. 919, 921–22 (Bankr. E.D. Wis. 2012). Rule 60(b) provides, "On motion and just terms, the court may relieve a party . . . from a final . . . order" for any of several reasons, including "mistake, inadvertence, surprise, or excusable neglect". Fed. R. Civ. P. 60(b)(1). For instance, "courts have held that a party should not be deprived of the opportunity to present the merits of [a] claim because of a technical error or slight mistake by the party's attorney." 11 Charles Alan Wright et al., *Federal Practice & Procedure* §2858 (3d ed.), Westlaw (updated Sept. 2018) (collecting cases).

The debtor's motion does not set forth any reason enumerated in Rule 60(b) why the court should relieve him from the order dismissing this case. It simply states that the debtor "believed he made the [first installment] payment on time" but that it "was not received by the court until . . . after the extended due date." CM-ECF Doc. No. 18, at 1. The motion does not explain the circumstances that led the debtor to mistakenly believe that he had timely paid the installment—which the clerk received more than a week after the extended deadline and more than two weeks after the original deadline for the clerk's receipt of that payment. Moreover, the record contains no evidentiary

support for the assertion in the motion as to the debtor's belief that he had timely paid the installment, such as an affidavit from the debtor.

The debtor's motion also states that he "has now made the full filing fee payment". CM-ECF Doc. No. 18, at 1. The record reflects that he has. Yet, while full payment of the filing fee is a *necessary* condition for reconsideration and vacation of the dismissal order—as the court's order approving the debtor's application to pay the filing fee in installments and the dismissal order itself both make clear—it is not *sufficient*, without more, to justify such relief, especially given that the debtor did not pay the balance of the fee until months after the court dismissed this case.

The court notified all creditors in this case of the dismissal long ago, and although the record does not reveal whether the chapter 7 trustee held the meeting of creditors, that meeting was scheduled to occur after the deadline for the clerk's receipt of the first installment and two days before the court dismissed the case. Again, that was months ago. These circumstances weigh in favor of requiring the debtor to file a new bankruptcy case, assuming he wishes to proceed, rather than vacating the dismissal order and reinstating this case. The Bankruptcy Code allows the debtor to file anew and again seek a discharge of his past debts:

Unless the court, for cause, orders otherwise, the dismissal of a case under [Title 11 of the U.S. Code] does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

11 U.S.C. §349(a). If the debtor files a new petition under chapter 7, his case will be administered anew; he will be required to report his current financial circumstances, give proper notice to all of his creditors, and provide the chapter 7 trustee with testimony describing his current state of affairs. This approach better ensures the proper administration of the debtor's case.

As there does not appear to be any basis for granting the relief requested in the debtor's motion, the court will not set a hearing on the matter.

Therefore, based on the record and for the reasons stated above,

IT IS ORDERED that the debtor's motion to vacate the order of dismissal and reinstate this case is denied.

IT IS FURTHER ORDERED that the debtor's request, in the alternative, for a hearing is denied.

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