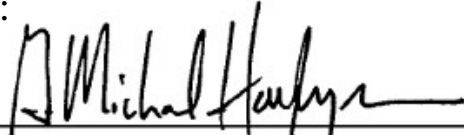




THE FOLLOWING ORDER  
IS APPROVED AND ENTERED  
AS THE ORDER OF THIS COURT:

DATED: April 10, 2013

  
G. Michael Halfenger  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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In the matter:

Laura L. Duckett,

Case No. 13-22312-GMH

Debtor.

Chapter 7

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**ORDER DENYING DEBTOR'S MOTION TO VACATE ORDER OF DISMISSAL**

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On March 1, 2013, the court granted the debtor's motion to pay the \$306 chapter 7 filing fee in three installments. The order set a March 28 deadline for the debtor to pay the first installment of \$102. Typical of orders of this type, the order also provided, "If the Clerk does not **receive** any of these installments by the applicable deadline, the Court will dismiss the case" and "If the Court dismisses the debtor's case for failing to timely pay one of the [ ] installments, the Court **will not** reconsider or vacate the dismissal unless, along with the debtor's request to reconsider or vacate, the debtor pays the \$306.00 filing fee **in full.**" CM-ECF, No. 4 (emphasis in original).

The March 28 deadline passed. The debtor made no payment. On April 5, 2013, the court dismissed the debtor's case for failure to pay the filing fee. Notice of the dismissal was sent to all creditors.

On April 8, 2013, the debtor filed a motion to vacate the order of dismissal. The motion states only that "Debtor's Attorney did not believe they [sic] had received the Order approving the application" and therefore failed to pay the first installment even though there is "\$102.00 being held in trust." The motion adds in a conclusory manner, "the Debtor requests that as a result of mistakes, inadvertence or excusable neglect the order dismissing this case be vacated and the Debtor's case be reinstated." No affidavit accompanied the motion.

Federal Rule of Bankruptcy Procedure 9024, incorporating Federal Rule of Civil Procedure 60, permits relief from judgments entered as a result of mistakes, inadvertence, or excusable neglect. *See In re Dorff*, 480 B.R. 919 (Bankr. E.D. Wis. 2012). Rule 9024's standard is an equitable one "that requires the court to take 'account of all relevant circumstances surrounding the party's omission.'" *In re Canopy Fin., Inc.*, 708 F.3d 934, 936 (7th Cir. 2013) (quoting *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380, 395 (1993)). As *Canopy Financial* explains, "Whenever the judiciary adopts an 'all the facts and circumstances' approach . . . litigants need to supply those details." *Id.* at 936.

The debtor supplies no details at all, making it impossible to determine whether the dismissal resulted from mistake, inadvertence, or excusable neglect of the debtor or her counsel. The debtor makes no effort to explain the motion's statement that her attorney "did not believe [she] had received" the order granting the debtor's installment fee application. The debtor also does not explain why her attorney—to whom the March 1 order was sent electronically—believed this. Nor does she explain why her attorney

failed to check the court's electronic docket or why she did not pay the installment fee on the date requested in the installment fee application. It's possible, of course, that these failures resulted from mistake, inadvertence, or neglect that is excusable: The lawyer may have had systems in place that were reasonably designed to monitor the court's decisions on fee applications and to ensure that clients' fees are timely paid; those systems could have failed for reasons that the court might have found excusable. But the omission of details dooms the motion by depriving the court of any factual basis for making such a finding. *Id.*; see also Fed. R. Bankr. P. 9013 (written motions must "state with particularity the grounds therefor").

What is more, the March 1 order made payment of the filing fee in full a prerequisite to seeking relief from the order dismissing the case for failing to make a timely installment payment. The debtor simply ignored this, stating that she would pay \$102—rather than the required in-full payment of \$306—“upon the granting of [her] Motion.” This incompliance independently makes the motion a nonstarter.

For these reasons,

IT IS ORDERED that the debtor's motion to vacate the April 5, 2013 order of dismissal is DENIED.

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