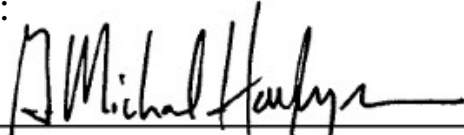




THE FOLLOWING ORDER  
IS APPROVED AND ENTERED  
AS THE ORDER OF THIS COURT:

DATED: April 15, 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:

Lenell Johnson,

Case No. 13-22870-GMH

Debtor.

Chapter 7

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**ORDER DENYING DEBTOR'S MOTION TO VACATE ORDER OF DISMISSAL,  
REINSTATE CASE, AND EXTEND TIME TO PAY FILING FEE**

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On March 14, 2013, the Court granted the debtor's application to pay the \$306 chapter 7 filing fee in three installments. The order set an April 1, 2013 deadline for the debtor to pay the first \$102 installment. The order also provided, "If the Clerk does not **receive** any of these installments by the applicable deadline, the Court will dismiss this 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. 6, 1 (emphasis in original).

The April 1 deadline passed. The debtor made no payment. On April 10, 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 11, 2013, the debtor, by his counsel, filed a motion to vacate the order of dismissal, reinstate the case, and extend the time to pay the filing fee. The motion states as grounds for the requested relief that the debtor "has been attempting, through his attorney, to recover funds that were garnished from his paycheck by a creditor within . . . 90 days prior to filing. These recovered funds were to be used to pay the filing fee installments. To date, the creditor has failed to refund the full funds garnished, and the debtor has not had the requisite funds available that were going to be allocated for these payments." CM-ECF No. 13, 2. The debtor's motion is not supported by an affidavit. Instead, it is accompanied by an undated letter signed by the debtor, which states in full, "To whomever it concerns[:] I am not able to make my April 1 payment and would like to have a[n] extension on my payment. The reason for this request is because bills came up and I received my letter late. I am able to make my payment on April 19, 2013." *Id.* at 3.

The March 14 order required the debtor to pay the filing fee in full before seeking relief from the April 10 dismissal order. The debtor did not tender the \$306 filing fee when he filed his motion to vacate the April 10 order. That failure is sufficient grounds to deny the motion.

The motion is also not well supported. Federal Rule of Bankruptcy Procedure 9024, incorporating Federal Rule of Civil Procedure 60, permits relief from judgments entered as a result of mistake, inadvertence, or excusable neglect. See *In re Dorff*, 480 B.R. 919 (Bankr. E.D. Wis. 2012). Rule 9024's standard "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 Inv. Servs. Co. v. Brunswick Assocs. 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 937.

Neither the motion nor the letter attached to it provides the necessary basis for relief from the dismissal order. Fed. R. Bankr. P. 9013 (motions must “state with particularity the grounds therefor”). The debtor’s motion states that he planned to pay the filing fee with funds garnished from his paycheck that his attorney was attempting to recover. This explanation may have constituted “cause” to extend the payment deadline if the debtor had requested an extension before the deadline passed. Fed. R. Bankr. P. 9006(b)(1) (“the court *for cause shown* may at any time in its discretion [enlarge a period to act] if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order” (emphasis added)). But this explanation does not satisfy the excusable-neglect standard for obtaining relief from a dismissal order, see Rule 9024, or for obtaining relief from an expired deadline, see Rule 9006(b)(1) (“on motion made after the expiration of the specified period [the court may] permit the act to be done where the failure to act was the result of excusable neglect”). See also *Pioneer Investment*, 507 U.S. at 393–95.

The motion states that the debtor’s attorney was unable to recover “the full funds garnished” from his paycheck, but it does not explain how that failure resulted in missing the fee payment deadline out of mistake, inadvertence, or excusable neglect. To the contrary, it suggests that the debtor could have foreseen a potential difficulty in timely making the April 1 payment. The motion does not explain why the debtor did not request an extension before that payment was due.

The debtor’s unsworn statement, moreover, undermines any suggestion that a

mistaken expectation about recovering garnished funds was the cause of not making the filing fee payment. The statement instead attributes the debtor's inability to pay on time to "bills [coming] up" and his receiving his "letter late." CM-ECF No. 13, 3. An unexplained need to pay other bills satisfies neither the excusable-neglect standard nor the more lenient for-cause standard. The statement's reference to receiving a "letter late" is even more obtuse. What letter? Why was it "received" late? The lack of these details makes an award of relief impossible.

For these reasons, IT IS ORDERED that the debtor's motion to vacate the April 10, 2013 order of dismissal is DENIED.

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