

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-31579

VIRGINIA LEE HOLLINGSWORTH

Debtor

**MEMORANDUM ON MOTION TO
SET ASIDE DISMISSAL AND REINSTATE CASE**

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Chapter 13 Trustee

**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

The Debtor's Chapter 13 case was dismissed by Order entered on October 16, 2001. Dismissal occurred upon certification by the Chapter 13 Trustee, Gwendolyn M. Kerney (Trustee), that the Debtor failed to make the plan payments required by her First Amended Chapter 13 Plan (Plan). The Trustee's certification also cited an approximate uncured Plan arrearage of \$1,399.00 as of September 14, 2001.

Now before the court is the Debtor's motion entitled "Agreed Order Motion to Set Aside Dismissal and Reinstate Case" (Motion), which was filed on November 13, 2001. In support of her Motion, the Debtor points out that her payment problems occurred early in her case and asserts that all payments were regularly and consistently made after July 2001. The Debtor additionally claims to have approximately \$2,600.00 on hand to cure her Plan arrearage. The Chapter 13 Trustee, by her Chapter 13 Trustee's Objection to Debtor's Motion to Reinstate Bankruptcy Case filed November 28, 2001, opposes the Motion.

I

The Debtor's First Amended Chapter 13 Plan was confirmed on July 3, 2001. It called for \$350.00 bi-weekly payments through May 2001, and \$465.00 bi-weekly payments thereafter. The Plan contained certification language, agreed to by the Debtor, that "[i]n the event debtor fails to make any bankruptcy payment, the trustee may certify this case for dismissal without necessity of notice or hearing."

The Debtor commenced payments under the Plan on April 24, 2001. A case status report from the Chapter 13 Trustee's office appended to the Debtor's Motion indicates that she missed

one payment per month in May, June, and July 2001. Additionally, in contrast to the Debtor's assertion of consistent payment, only one full payment was made in September 2001.

II

Orders of dismissal are final orders which may be set aside under FED. R. BANKR. P. 9024. See *In re King*, 214 B.R. 334, 336 (Bankr. W.D. Tenn. 1997). Rule 9024 incorporates FED. R. CIV. P. 60(b), which in turn provides for relief from a "final judgment, order, or proceeding" for:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment.

FED. R. CIV. P. 60(b).

The Debtor has not alleged grounds for relief under FED. R. CIV. P. 60(b)(1)-(5). Instead, she merely claims to now have sufficient funds on hand to cure her Plan arrearage, which might at first glance appear to be "any other reason justifying relief" under FED. R. CIV. P. 60(b)(6). However, Rule 60(b)(6) is reserved only for "extraordinary cases." See *Ackermann v. United*

States, 71 S. Ct. 209, 212-13 (1950); see also *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990) (“unusual and extreme situations where principles of equity mandate relief”) (emphasis in original); *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989) (Courts may employ subsection (b)(6) “only in exceptional or extraordinary circumstances which are not addressed by [subsections (b)(1)-(5)].”). Simply put, subsection (b)(6) requires “something more” than the comprehensive grounds contained in subsections (b)(1)-(5). See *Olle*, 910 F.2d at 365; *Hopper*, 867 F.2d at 294.

In the present case, the court is unable to find that “something more.” Accordingly, because the Debtor has not demonstrated grounds for relief under Rule 60(b), the present Motion must be denied. An appropriate order will be entered.

FILED: November 29, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons set forth in the Memorandum on Motion to Set Aside Dismissal and Reinstate Case filed on this date, the court directs that the Debtor's motion, titled "Agreed Order Motion to Set Aside Dismissal and Reinstate Case," filed November 13, 2001, is DENIED.

SO ORDERED.

ENTER: November 29, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE