

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

EOD
06/26/2007

IN RE: §
§
AUDREA S. BOOTHE, § Case No. 04-42766
§
Debtor. §

ORDER

Audrea S. Boothe (the “Debtor”) initiated this bankruptcy case by filing a petition for relief under Chapter 13 of the Bankruptcy Code on June 10, 2004. The Court entered an order confirming the Debtor’s Chapter 13 plan on December 16, 2004. The Debtor subsequently fell behind on her required plan payments, and, on July 20, 2005, the Chapter 13 trustee filed a motion to dismiss the Debtor’s Chapter 13 case. Prior to a hearing on the Chapter 13 trustee’s dismissal motion, the Debtor and the Chapter 13 trustee submitted an Agreed Order on Trustee’s Motion to Dismiss (the “Agreed Order”) to this Court. The Agreed Order provided that the Debtor’s case would be dismissed if (1) the Debtor failed to cure her then-existing payment defaults or to remain current on her required monthly payments to the Chapter 13 trustee, and (2) the Chapter 13 trustee filed a certification of non-compliance with this Court. The Court entered the Agreed Order on August 12, 2005.

On April 20, 2007, the Chapter 13 trustee filed a certificate of non-compliance with the Court. In the certificate, the Chapter 13 trustee stated that the Debtor had failed to remain current on her required Chapter 13 plan payments.

The Debtor and her bankruptcy counsel were served with a copy of the certificate but took no action in this Court for more than ten days. The Court, therefore, entered an Order of Dismissal (the “Dismissal Order”) on May 2, 2007, dismissing the Debtor’s case.

The Debtor promptly filed a two-page “Motion to Reinstate Chapter 13 Case” (the “Motion to Reinstate”). The Court construed the Motion to Reinstate as a request for relief under Rule 60(b) of the Federal Rules of Bankruptcy Procedure, as adopted and applied to this case by Federal Rule of Bankruptcy Procedure 9024, and denied the Motion to Reinstate for failure to establish grounds for relief. On May 9, 2007, the Debtor filed a “Second Motion to Vacate Dismissal Order and Reinstate Bankruptcy Case Pursuant to Federal Rule of Bankruptcy Procedure 9023 and 11 U.S.C. §105” (the “Second Motion”) [Dkt. No. 23] under Federal Rule of Civil Procedure 59(e), as adopted and applied to this case by Federal Rule of Bankruptcy Procedure 9023.¹ Although the Chapter 13 trustee initially objected to the Second Motion, she withdrew her objection after the Debtor filed its “Amended Second Motion to Vacate Dismissal Order and Reinstate Bankruptcy Case Pursuant to Federal Rule of Bankruptcy Procedure 9023 and 11 U.S.C. §105” (the “Amended Second Motion”) [Dkt. No. 38].

Denial of a motion to vacate a judgment under Rule 60(b) can be challenged by a motion under Rule 59(e). *U.S. v. Mt. Vernon Memorial Estates*,

¹ The Debtor’s original Motion to Reinstate contained no legal authority and only limited factual allegations. This Court does not ordinarily grant hearings on motions seeking the vacation or reconsideration of its orders. When submitting such a motion to the Court, a party should include all facts that the party believes are necessary to a decision by the Court.

Inc., 734 F.2d 1230, 1235 (7th Cir. 1984); *Venable v. Haislip*, 721 F.2d 297, 299 (10th Cir. 1983). Motions to alter or amend a judgment under Rule 59(e) “serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.” *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989) (citations omitted). A Rule 59(e) motion should not be granted unless there is: (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; and (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *See, e.g., Schiller v. Physicians Resource Group, Inc.*, 342 F.3d 563, 567 (5th Cir. 2003); *Russ v. Int’l Paper Co.*, 943 F.2d 589, 593 (5th Cir. 1991).

The Debtor in this case argues that extraordinary circumstances are present and that the Amended Second Motion should be granted in order to prevent a manifest injustice. The Debtor admits that she fell behind in her required Chapter 13 plan payments for the months of March 2007 and April 2007. However, she states that she attempted to cure this default by orally tendering the missed payments to the Chapter 13 trustee prior to the entry of the Dismissal Order. She further states that her Chapter 13 plan should be completed this month, June 2007.

In light of the uncontroverted facts set forth in the Amended Second Motion as well as the Chapter 13 trustee’s withdrawal of her opposition to the Second Motion,

IT IS ORDERED the Amended Motion shall be, and it is hereby, **GRANTED** provided that, within 10 days of the entry of this Order, the Debtor

cures any existing defaults under her Chapter 13 plan and makes the final payment due under her Chapter 13 plan.

IT IS FURTHER ORDERED that the Chapter 13 trustee shall file a certification of payment with this Court after receiving all payments due from the Debtor in connection with her Chapter 13 plan.

Signed on 6/26/2007

Brenda T. Rhoades MD

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE