



IT IS ORDERED as set forth below:

Date: December 03, 2009

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 08-84962

Jovita Chizoba Ibeh and Reginald Nnaemeka
Ibeh,

CHAPTER 7

Debtor.

JUDGE MASSEY

American Express Centurion Bank,

Plaintiff,

v.

ADVERSARY NO. 09-6147

Reginald Nnaemeka Ibeh,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO EXTEND TIME TO APPEAL

Defendant moves to extend the time within which Defendant may timely file a notice of appeal on the ground that he was not informed by his counsel of the time for filing a notice of

appeal and was “misrepresented” by counsel. Bankruptcy Rule 8002(c)(2) governs this issue, and it provides:

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 21 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 21 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 14 days from the date of entry of the order granting the motion, whichever is later.

The judgment was entered on November 6, 2009, and therefore the time for filing a timely appeal first expired on November 16, 2009 under Bankruptcy Rule 8002(a) as of those dates.

Defendant failed to file his motion for an extension of time until after the initial 10-day period expired. Therefore, the Court’s discretion in granting an extension depends upon whether Defendant has made a showing of excusable neglect. The question is whether Defendant’s counsel was guilty of excusable neglect in allegedly not informing Defendant of the time for filing a notice of appeal and for not properly representing Defendant.

Neither ground advanced by Defendant shows excusable neglect because Defendant has not shown why his counsel failed to notify him.

A second key factor in the calculus of “excusable neglect” looks to the nature of the oversight itself. Specifically, the more an act of neglect may be said to have arisen from circumstances beyond the litigant’s control, the closer it comes to the realm of excusability. *Pioneer*, 507 U.S. at 395, 113 S.Ct. at 1498; *Riney*, 77 F.3d at 1324-25; *Gottschalk*, 1996 WL 83877 at *2. Here, however, the Debtor’s failure to file a timely motion for leave to appeal owed itself solely to an error made by his counsel as a consequence of her burdensome workload.

Matter of Robinson, 194 B.R. 697, 701 (Bankr..N.D.Ga. 1996). *See In re Mowers*, 160 B.R. 720, 725 (Bankr. N.D.N.Y.,1993) (“... the failure of counsel to notify the Debtor of the adverse judgment in time to timely file a notice of appeal, or to move to extend the time for filing such notice, simply does not constitute ‘excusable neglect.’”)

Mr. Ibeh has not shown the circumstances surrounding the alleged failure to inform Defendant of the deadline; mere negligence is not by itself excusable, assuming that Defendant's was negligent. The contention that counsel "misrepresented" Defendant, which the Court construes as an allegation that counsel committed malpractice in the conduct of the trial or in failing to file a notice of appeal, is nothing more than a claim that his counsel made an error. Even if counsel had been negligent, the neglect is not excusable in the absence of a showing that there was a very good reason for the error, such as having been caused by circumstances beyond the attorney's control.

Accordingly, Defendant's motion for an extension of time to appeal is DENIED.

END OF ORDER