IT IS SO ORDERED.

Dated: February 28, 2025

Guy R. Humphrey
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
MARGUERITE LATETE KILPATRICK,	:	Case No. 24-32461
	:	Chapter 13
	:	Judge Humphrey
Debtor.	:	

MEMORANDUM ORDER DENYING DEBTOR'S MOTION FOR RECONSIDERATION AND MOTION TO SEAL (DOC. 24)

I. Procedural Background

This matter is before the court on the Debtor's pro se filing captioned *Motion and Brief for Reconsideration Due to Willful Violation of Appellant's Due Process Rights and Motion to File Documents Under Seal* (Doc. 24), which the court construes as a two-part motion: 1) a motion to vacate the court's Pre-Confirmation Dismissal Order entered on January 29, 2025 (Doc. 16) pursuant to Federal Rule of Civil Procedure 60(b) (applicable by Federal Rule of Bankruptcy Procedure 9024) (the "Motion to Vacate"); and 2) motion to seal various papers included in the Debtor's prior filing with the court (the "Motion to Seal") (Doc. 21) pursuant to

11 U.S.C. § 107 and Federal Rule of Bankruptcy Procedure 9018. The United States Trustee filed an Objection to the Motion to Seal. Doc. 27.

The court scheduled an in-person hearing on the Debtor's Motions (Doc. 25), but, upon the Debtor's request (Doc. 29), subsequently canceled the hearing and took the matters under advisement. See Doc. 30.

The road to dismissal began when the Debtor failed to timely file a Chapter 13 plan. A proposed Chapter 13 plan is required to be filed within 14 days of the petition date unless the time is extended for cause. Fed. R. Bankr. P. 3015(b). As the Debtor's voluntary petition was filed on December 17, 2024, the Chapter 13 plan was due on December 31, 2024. The Debtor did not file a plan by that date nor did she seek an extension to do so. The Chapter 13 Trustee, John Jansing, moved to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c) on January 3, 2025 (Doc. 16). The Debtor failed to timely respond to the motion, and therefore it was granted without a hearing on January 29, 2025. Doc. 17.

Post-dismissal, on January 31, 2025, the Debtor filed a proposed Chapter 13 plan. Doc. 18. Also, on January 31, 2025, the Debtor filed a 7-page document titled "Legal Notice." Doc. 21. This court denied any relief sought in those documents, none of which addressed the dismissal of the Debtor's bankruptcy case in any way. Doc. 22.

Next, on February 7, 2025, the Debtor filed a document titled "Motion and Brief for Reconsideration Due to Willful Violation of Appellant's Due Process Rights and Motion to File Documents Under Seal." Doc. 24. Although this document did not comply with the Local Bankruptcy Rules of this District, the court nevertheless scheduled a hearing and construed the filing as seeking to vacate the order dismissing the Chapter 13 case and to seal the various papers included within Document 21. The hearing was scheduled for March 6, 2025.

The United States Trustee ("UST") objected to the relief sought by the Debtor in the motion to seal. Doc. 27.

On February 27, 2025, the Debtor moved to waive the scheduled hearing. Doc. 29. The court granted that request by a separate order and took the pending matters under advisement. Doc. 30.

II. Motion to Vacate

The Debtor argues that this court dismissed the Chapter 13 case without affording the Debtor a meaningful opportunity to be heard in violation of the Fifth Amendment to the United States Constitution. The Debtor also states that she mistakenly believed that she had until January 31, 2025 to file a Chapter 13 plan. The Debtor further asserts that she was similarly denied due process of law in a prior case, No. 24-31598. The Debtor also accuses the court of "judicial misconduct." For all these reasons, the Debtor seeks to vacate a void judgment pursuant to Federal Rule of Civil Procedure 60(b)(4).

A motion to dismiss a Chapter 13 case cannot be granted without a "notice and a hearing" 11 U.S.C. § 1307(c). Notice and a hearing "means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances[.]" 11 U.S.C. § 102(1)(A). Further, an actual hearing is not required if it is not timely requested by a party. 11 U.S.C. § 102(1)(B)(i).

In common parlance, the Debtor was not entitled to a hearing in court unless a timely response was filed with the Clerk. Consistent with Local Bankruptcy Rule 9013-1, the Debtor was noticed that she had 21 days to respond. The Debtor, due to being served the motion by U.S. mail, was entitled to an additional three days or 24 days in total. Fed. R. Bankr. P. 9006(f). The

response date was thus January 27, 2025. The Debtor indicates that she mistakenly believed that the response date was January 31, 2025.

The motion, as it was required to do, provided notice to the Debtor of the need to respond and the possible consequences of the failure to do so: "If you or your attorney do not take these steps [i.e. to respond], the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further notice or hearing." Doc. 16 at 2. This procedure is used for thousands of motions filed in the Bankruptcy Court for the Southern District of Ohio each year. The Debtor should have been aware of this procedure, because her prior case from 2024 was also dismissed after the Debtor failed to timely respond. Docs. 16 and 23 (No. 24-31598). The court even instructed the Debtor of the need to respond in that prior case, and determined a filing of the Debtor did not constitute an opposition to the motion to dismiss. See Docs. 19 and 20 (No. 24-31598). The court's order indicated that "**the failure to timely file an appropriate response to the Chapter 13 Trustee's Motion to Dismiss . . . may result in the court granting all relief requested, without further notice or hearing, by separate order.**" (emphasis in original). Doc. 20 at 2.

Still, the Debtor argues that this process is insufficient because these procedures violate the Fifth Amendment to the U.S. Constitution. As every law student learns, the due process clause of the Fifth Amendment requires a party to receive notice of a proceeding and the opportunity for a hearing before being deprived of life, liberty, or property. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). As the Supreme Court explained: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise

interested parties of the pendency of the action and afford them **an opportunity to present their objections**." (emphasis added).

The Debtor suggests that the dismissal order should be vacated as "void" pursuant to Federal Rule of Civil Procedure 60(b)(4), made applicable by Federal Rule of Bankruptcy Procedure 9024. The Supreme Court has stated that a judgment can be found "void" "in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010).

But here, the Debtor was afforded a full and fair opportunity to present an objection to the Chapter 13 Trustee's motion to dismiss. Had the Debtor responded timely, the court would have conducted a hearing in which the Debtor could have presented evidence and argument in opposition to the dismissal motion. The Chapter 13 Trustee may even have agreed to consider the Debtor's untimely plan and resolved the motion to dismiss in some amicable manner. But the Debtor did not take the opportunity to timely file a written response. Although the Debtor is entitled to a certain latitude in construing her filings (as this court has tried to do throughout this case), the Debtor is still responsible for following this court's rules and procedures. *See In re Flynn*, 582 B.R. 25, 31 (B.A.P. 1st Cir. 2018) (explaining pro se filers are entitled to latitude in construing pleadings, but must comply with the court's procedural rules). *See also In re Nat'l Century Fin. Enters., Inc.*, No 2:06-cv-883, 2007 WL 912216, at *5, 2007 U.S. Dist. LEXIS 29925, at *14 (S.D. Ohio Mar. 23, 2007) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 398 (1993) (determining that mistakes or ignorance of rules do not "usually constitute excusable neglect.")).

The Debtor suggests that due process cannot be waived by a failure to timely respond according to this court's rules and procedures. The Debtor's argument is premised on constitutional due process requiring the court to delay ruling on motions even if a party does not timely respond to demonstrate their opposition to the relief. In support of this extraordinarily broad vision of due process, the Debtor cites *Peralta v. Heights Medical Center*, 485 U.S. 80 (1988), but that decision is based on fundamentally different facts than this case. In *Peralta*, the issue before the Court was the appellant lacked any opportunity to respond due to a failure of service of process and notice. *Id.* at 83-87. Nothing in that decision suggests a party is entitled to a hearing whether it responds or not. The Debtor also looks to *Jalapeno Prop. Mgmt., LLC v. Dukas*, 265 F.3d 506 (6th Cir. 2001) for support. But *Jalapeno* stands for the proposition that Rule 60(b) can vacate a dismissal when a district court miscalculates the statute of limitation. No such legal error occurred here.

For all these reasons, the Motion to Vacate is denied.

III. Motion to Seal

In the Debtor's other motion, she seeks to seal various documents collectively assigned number 21 by the Clerk. The Debtor asserts that she attempted to submit documents directly to chambers, but "was deterred by a clerk who proceeded to open the confidential envelope labeled "[i]ntended for judges' chambers", "No man can serve two masters", and a citation to the Bible. Doc. 24 at 7. However, the Clerk generally does not accept ex parte filings related to a case. Fed. R. Bankr. P. 9003(a). Further, to the extent a party attempts such ex parte contact and it relates to a case or proceeding, the court typically instructs the Clerk to docket such items. In any event, the Debtor now states that these documents contain private details related to a "private trust." *Id.*

A strong public policy favors open access to court records:

> The right of public access is rooted in the public's First Amendment right to know about the administration of justice. The public interest in openness of court proceedings is at its zenith when issues concerning the integrity and transparency of bankruptcy court proceedings are involved . . . .

Stone v. Kettering Adventist Healthcare (*In re Stone*), 587 B.R. 678, 681 (Bankr. S.D. Ohio 2018) (quoting *Motors Liquidation Co. Avoidance Action Trust v. JP Morgan Chase Bank, N.A.* (*In re Motors Liquidation Co.*), 561 B.R. 36, 41 (Bankr. S.D.N.Y. 2016)). "In bankruptcy matters, Congress has codified a strong presumption in favor of public access to all papers filed therein[.]" *In re Thomas*, 583 B.R. 385, 390 (Bankr. E.D. Ky. 2018). In general, 11 U.S.C. § 107(a) provides that "a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a). However, § 107(b) carves out two exceptions to the general rule:

> On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—
>
> > (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
> > (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b)(1). Section 107(c)(1) provides a third exception, under which the bankruptcy court may restrict public access to filings containing personal identifiers and other such information "to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property." 11 U.S.C. § 107(c)(1). The court has already addressed this exception and returned an attachment with personal data and other private information. Doc. 22 at 1.

Federal Rule of Bankruptcy Procedure 9018 operates in conjunction with § 107 and provides:

> (a) . . . On motion or on its own, the court may, with or without notice, issue any order that justice requires to:
>
> (1) protect the estate or any entity regarding a trade secret or other confidential research, development, or commercial information;
>
> (2) protect an entity from scandalous or defamatory matter contained in any document filed in a bankruptcy case; or
>
> (3) protect governmental matters made confidential by statute or regulation.
>
> (b) . . . An entity affected by an order issued under (a) without notice may move to vacate or modify it. After notice and a hearing, the court must rule on the motion.

Fed. R. Bankr. P. 9018(a) and (b).

The court has carefully reviewed the "private trust" documents and find that these filings do not meet either of the exceptions of § 107(b) and shall remain on the public docket. *See* summary by the UST. Doc. 27 at 2. The Debtor has not articulated how either of the exceptions of § 107(b) apply and, therefore, the Debtor has not overcome the strong presumption that these items remain on the public docket.

Therefore, the Motion to Seal is denied.

IT IS SO ORDERED.

Copies to:

Default List

Edward H. Cahill, Office of the US Trustee, 170 North High Street, Suite 200, Columbus, Ohio 43215-2417 (Assistant United States Trustee)

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