

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13756
Non-Argument Calendar

In re: JOHNSON & DIXIE, LLC,

Debtor.

JOHNSON & DIXIE, LLC,

Plaintiff-Appellant,

versus

OFFICE OF THE U.S. TRUSTEE,
CITY OF HOLLYWOOD, FLORIDA,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:24-cv-61719-AHS,
Bkcy No. 0:23-bk-12439-SMG

Before NEWSOM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Johnson & Dixie, LLC, a reorganized debtor that owns several parcels of property in Hollywood, Florida, appeals the dismissal of its post-confirmation chapter 11 bankruptcy proceedings, as well as the bankruptcy court's denial of its motion for rehearing. Because the bankruptcy court did not abuse its discretion in either instance, we affirm.

I

824 North Dixie, Inc. and 826 North Dixie, Inc. owned neighboring plots of land in Hollywood, Florida. Together, starting in 2013, they accumulated nearly \$900,000 of code-enforcement fines and penalties with the city. This pattern of nonpayment led the City of Hollywood to initiate foreclosure proceedings against both properties. In an attempt to forestall those proceedings while they reorganized, the companies filed separate voluntary chapter 11 proceedings in the Southern District of Florida.

As part of the companies' respective reorganizations, 824 North Dixie and 826 North Dixie transferred all of their assets into Johnson & Dixie, LLC, a newly created entity incorporated to serve as a reorganized debtor. Johnson & Dixie then entered into a reorganization plan that, pursuant to chapter 11, required it to file quarterly operating reports that track the company's ongoing liabilities. Debtors' Comb. Consol. Disc. Pl. at 25, Dkt. No. 8-6; *see* 11 U.S.C. §§ 704(a)(8); 1106(a)(7). These reports allow parties to "determine when a debtor is incurring additional losses, is rendered administratively insolvent, or is transferring assets without authorization."

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In re Andover Covered Bridge, LLC, 553 B.R. 162, 173 (1st Cir. BAP 2016). They also allow the United States Trustee to calculate the quarterly fees that chapter 11 debtors must pay as a condition of chapter 11’s favorable treatment. *See* 28 U.S.C. § 1930(a)(6)(A) (“[A] quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 . . . until the case is converted or dismissed.”).

Throughout 2023 and 2024, Johnson & Dixie consistently failed to timely file its operating reports—often filing months late—and was delinquent on the payment of its § 1930(a)(6) fees. The United States Trustee and the City of Hollywood moved to dismiss the bankruptcy case under 11 U.S.C. § 1112(b), arguing, among other things, that Johnson & Dixie had failed to file its quarterly reports, which warranted dismissing its case. *See id.* § 1112(b)(1); *see also id.* §§ 1112(b)(4)(F), (K). At a May 2024 hearing, the bankruptcy court gave Johnson & Dixie a warning, stating that if it didn’t “right the ship,” then the court would dismiss. May 22, 2024 Hr’g Trans. at 13–16, Dkt. No. 10. But Johnson & Dixie failed to correct course, again missing the filing deadline for a quarterly report and failing to pay a \$250.99 fee. The bankruptcy court therefore granted the Trustee’s motion to dismiss. In its oral order dismissing the case, the bankruptcy court relied primarily on “two clear examples of cause for dismissal”: unexcused failure to timely file operating reports and failure to pay statutory fees.

Following dismissal, Johnson & Dixie filed its outstanding operating report (again, after the deadline) and sought rehearing in

the bankruptcy court, but its motion was denied. Then, it appealed to the United States District Court for the Southern District of Florida, which affirmed. Now, Johnson & Dixie asks us to overturn the bankruptcy court's dismissal and/or its denial of Johnson & Dixie's motion for rehearing.

II

We have jurisdiction to decide this appeal under 28 U.S.C. § 158(d). “As the second court of review of a bankruptcy court's judgment, we independently examine the factual and legal determinations of the bankruptcy court and employ the same standards of review as the district court.” *In re Int’l Admin. Servs., Inc.*, 408 F.3d 689, 698 (11th Cir. 2005) (citation modified). That means we review both dismissals, *In re Piazza*, 719 F.3d 1253, 1271 (11th Cir. 2013), and denials of motions for rehearing for abuse of discretion, *Solutia, Inc. v. McWane, Inc.*, 672 F.3d 1230, 1238 (11th Cir. 2012). “A bankruptcy court abuses its discretion when it applies the wrong principle of law or makes clearly erroneous findings of fact.” *In re Kulakowski*, 735 F.3d 1296, 1299 (11th Cir. 2013) (citation modified).

III

A

We hold that the bankruptcy court did not abuse its discretion in dismissing Johnson & Dixie's bankruptcy case.

The statutory text is clear: Section 1112(b) provides that on the request of a party, after notice and a hearing, “the court shall

convert a case [under chapter 11] to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of the creditors and the estate, for cause.” 11 U.S.C. § 1112(b)(1). “[C]ause,” in turn, “includes” the list of considerations spelled out in §§ 1112(b)(4)(A)–(P). Relevant here, the Trustee argues, and the district court held, that § 1112(b)(4)(F), which provides that “unexcused failure to satisfy timely any filing or reporting requirement,” furnishes cause for dismissal of Johnson & Dixie’s case.

The bankruptcy court’s reliance on § 1112(b)(4)(F) was sound. Johnson & Dixie does not dispute that they failed to timely file operating reports under the terms of the bankruptcy plan. Indeed, as the Trustee points out, Johnson & Dixie “did not file a *single* report timely.” Br. of Appellee at 25. And despite the bankruptcy court’s warning to Johnson & Dixie that its persistent tardiness would result in dismissal, it failed to produce the very next report before the deadline. Johnson & Dixie offers no compelling “[e]xcuse[]” for its failure to file reports on time. 11 U.S.C. § 1112(b)(4)(F). Nor does it seriously assert any considerations that counsel against dismissal out of deference to “the best interest of creditors and the estate.” *Id.* § 1112(b)(1). As the district court noted, the only remaining dispute left in the bankruptcy case was the dispute between Johnson & Dixie and the city, and that dispute did not require any additional supervision by the bankruptcy court. Dist. Ct. Op. at 8, Dkt. No. 34. So dismissal was unlikely to harm Johnson & Dixie’s creditors. Accordingly, the bankruptcy court’s dismissal faithfully applied § 1112(b)’s plain text.

The bankruptcy court offered several other causes for dismissal that the parties contest, but we need not reach them. That’s because “[w]e need only agree with one of [§ 1112(b)(4)’s] causes” to conclude that the bankruptcy court did not abuse its discretion in dismissing the case. *See In re Cal. Palms Addiction Ctr. Recovery Campus, Inc.*, 87 F.4th 734, 740 (6th Cir. 2023). It therefore suffices for us to say that dismissal under § 1112(b)(4)(F) was a proper exercise of discretion.

Separate but relatedly, Johnson & Dixie argues that the bankruptcy court failed to comply with § 1112(b)(1)’s “notice and hearing” requirement—a failure that, in turn, constituted an abuse of discretion. We disagree. Johnson & Dixie had sufficient notice that its failure to timely file reports could result in dismissal. Both the Trustee’s motion to dismiss and the bankruptcy court’s warnings at the May 2024 hearing more than sufficed to notify Johnson & Dixie of its noncompliance and the concomitant consequences for continued failure to produce reports. Plus, the bankruptcy court held a hearing on the motion to dismiss before it issued its oral order. That satisfied the “hearing” requirement. Johnson & Dixie’s “notice and hearing” objection therefore fails.

B

The bankruptcy court’s denial of Johnson & Dixie’s motion for rehearing was not an abuse of discretion.

A motion for rehearing “is not a vehicle to re-argue issues resolved by the court’s decision or to make additional argument on matters not previously raised by counsel.” *In re Daughtrey*, 896 F.3d

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1255, 1280 (11th Cir. 2018). Motions for rehearing brought under Federal Rule of Civil Procedure 59(e) require the movant to advance newly discovered evidence or identify a manifest error of fact or law. *Id.* Similarly, motions brought under Federal Rule of Civil Procedure 60(b) require, as relevant here, a showing of “mistake, inadvertence, surprise, or excusable neglect”; “newly discovered evidence”; or “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(1), (2), (6).

Regardless of whether we construe Johnson & Dixie’s motion for rehearing as arising under Rule 59(e) or 60(b), the bankruptcy court did not err in rejecting it. Johnson & Dixie’s motion mostly rehashed arguments raised and rejected by the bankruptcy court at the motion-to-dismiss stage. And it continued to launder arguments about its purported “substantial consummation” of the bankruptcy plan, even though the bankruptcy court’s dismissal relied entirely on alternate and independently sufficient grounds. To the extent that Johnson & Dixie marshals new factual evidence at all, none of it was information that it could not have raised at the motion-to-dismiss stage. We therefore hold that the bankruptcy court did not abuse its discretion by denying Johnson & Dixie’s motion for rehearing.

IV

Because neither the bankruptcy court’s dismissal of Johnson & Dixie’s case nor its denial of Johnson & Dixie’s motion for rehearing constituted an abuse of discretion, we affirm.

AFFIRMED.