

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

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|----------------|---|------------------|
| IN RE: |) | |
| |) | |
| ATHEAL PIERCE |) | |
| |) | |
| Debtor. |) | |
| |) | |
| ATHEAL PIERCE, |) | CIVIL ACTION NO. |
| |) | 2:05cv1014-MHT |
| Appellant, |) | (WO) |
| |) | |
| v. |) | |
| |) | |
| CURTIS REDING, |) | |
| |) | |
| Appellee. |) | |

ORDER

In an order dated December 28, 2005, this court dismissed appellant Atheal Pierce's appeal of the bankruptcy court's dismissal of his Chapter 13 bankruptcy case. The court concluded that Pierce's notice of appeal had been untimely filed because it had been date-stamped for September 28, 2005, by the clerk of the bankruptcy court. The deadline for filing the notice was September 26, 2005.

On January 6, 2006, Pierce, who is proceeding pro se, filed a motion styled "Emergency Motion for Relief from Opinion and Judgment." Pierce contends that he filed the notice by placing it in the court's drop box on September 26, 2005. In support of this contention, Pierce attached another copy of the notice of appeal, date-stamped September 26, 2005, which he had retained for his records. After consulting with the clerk's office regarding procedures for the court's drop box and confirming that Pierce's date-stamp notice is authentic, the court concludes that Pierce did in fact file his notice of appeal on September 26, 2005. Accordingly, his notice of appeal was timely filed, and this court has jurisdiction over his appeal.

The court will construe Pierce's pro se motion as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) or for rehearing under Federal Rule of Bankruptcy Procedure 8015. Because this court's judgment was based on a mistake of fact and because

Pierce filed this motion within 10 days of the entry of judgment, see Fed. R. Civ. P. 59(b); Fed. R. Bankr. P. 8015, Pierce's motion is due to be granted.

Accordingly, it is ORDERED as follows:

- (1) Appellant Atheal Pierce's "Emergency Motion for Relief from Opinion and Judgment" (Doc. No. 19) is treated as a motion to alter or amend or for rehearing (Doc. No. 19).
- (2) Appellant Pierce's motion to alter or amend or for rehearing (Doc. No. 19) is granted.
- (3) The judgment and opinion dated December 28, 2005 (Doc. Nos. 17 & 18) are vacated, and the appeal in this case is reinstated.

It is further ORDERED that appellee Curtis Reding's motion to dismiss (Doc. No. 5) is denied to the extent appellee Reding contends that appellant Pierce's appeal was untimely filed.

DONE, this the 15th day of February, 2006.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE