

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:17-cv-00661-FDW
[BR Case No. 16-30960]

ELIZABETH COLE,)
)
 Appellant,)
)
 vs.)
)
 MECKLENBURG COUNTY TAX)
 COLLECTOR and WARREN L.)
 TADLOCK,)
)
 Appellees.)
 _____)

ORDER

THIS MATTER is before the Court on Appellant Elizabeth Cole’s “Motion for Reconsideration of Order Dismissing Appeal Without Prejudice for Failing to Pay Filing Fee” (Doc. No. 7). Appellant requests the Court reconsider the Order of Dismissal of the Bankruptcy Appeal (Doc. No. 5) and review de novo Appellant’s Motion for Leave to Appeal in Forma Pauperis” (Doc. No. 2).

Review of the court’s docket reveals that appellant took no action to pay the required fee after her “Motion for Leave to Appeal in Forma Pauperis”, 28 U.S.C. § 1930(f)(1), was denied on December 5, 2017 by the Bankruptcy Judge. (Doc. No. 4). As a result, on January 11, 2018, this Court dismissed without prejudice the appeal for failing to pay the required filing fee (Doc. No. 5) after finding further notice was not likely to gain compliance. Appellant filed her motion for reconsideration on February 12, 2018. Appellee Mecklenburg County Tax Collector filed a response in opposition to Appellant’s motion for reconsideration (Doc. No. 9). Appellant did not file a reply. This matter is ripe for the Court’s determination.

The Court finds that Appellant has not made a showing sufficient under Rule 60 to support reconsideration of the Court's January 11, 2018 Order. Appellant argues the Bankruptcy Judge lacked authority to deny her "Motion for Leave to Appeal in Forma Pauperis" and only had the authority to issue recommendations to the district court. However, Plaintiff relies on 28 U.S.C. § 636(b), which applies to magistrate judges, when the matter before this Court is the bankruptcy judge's authority to deny a waiver of filing fees required under 28 U.S.C. § 1930. Even assuming a bankruptcy judge is only authorized to issue recommendations to the district court, appellant did not file any written objections to the findings and conclusions of the bankruptcy judge "Order Denying Motion for Leave to Appeal In Forma Pauperis" for over three months, until after the appeals were dismissed. Even considering Appellant's objections, the Court, upon review de novo of Appellant's "Motion for Leave to Appeal in Forma Pauperis," would accept in whole the findings in the "Order Denying Motion for Leave to Appeal In Forma Pauperis."

THEREFORE, the Court hereby DENIES Appellant's "Motion for Reconsideration of Order Dismissing Appeal Without Prejudice for Failing to Pay Filing Fee" (Doc. No. 7).

IT IS SO ORDERED.

Signed: March 6, 2018



Frank D. Whitney
Chief United States District Judge

