

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re

Case No. 6:99-bk-08433-KSJ
Chapter 7

JOSE L. WACZEWSKI,
SUSAN WACZEWSKI,

Debtors.

**ORDER DENYING DEBTORS' MOTION FOR
REHEARING OR RECONSIDERATION**

This case came on for consideration on the Debtors' Motion for Rehearing or Reconsideration (the "Motion") (Doc. No. 160) of the Court's Memorandum Opinion and Order (Doc. Nos. 156 and 157). After reviewing the pleadings and considering the position of interested parties, the Court denies the Motion.

This most recent Motion is a link in a complex chain of various motions and appeals the debtors, Jose and Susan Waczewski, have filed to preserve their interest in a lawsuit settled years ago by the Chapter 7 trustee, Leigh Meininger. In summary, the lawsuit, which is described in numerous prior orders of this Court, the District Court, and the Eleventh Circuit Court of Appeals, involves claims brought by the debtors against Mrs. Waczewski's former employer, Central Florida Investments Sales and Marketing, Ltd., and Westgate Vacation Villas ("CFI/Westgate"), among others. After the trustee's settlement, the debtors filed various appeals as well as their Amended Schedule C asserting that their interest in the lawsuit is exempt from the claims of their creditors (Doc. No. 137).

The trustee then timely filed his objection to the debtors' newly filed claim of exemptions (Doc. No. 142). As the appeals progressed, this Court sustained the trustee's objection to the exemptions claimed by the debtors (Doc. Nos. 156 and 157). Similarly, the Eleventh Circuit Court of Appeals issued its Final Order in the pending appeals holding, in part, that the trustee both had the authority to settle the claims asserted in the lawsuit and acted reasonably in endorsing the settlement (the "Appellate Order") (Doc. No. 173). Therefore, the

Eleventh Circuit now has approved the settlement of the lawsuit finally and completely. The only remaining issue is whether the debtors can claim any portion of the settlement proceeds paid by CFI/Westgate, a total sum of \$10,800, as exempt.

This Court held that the debtors have no basis to exempt any portion of the settlement proceeds. Now, the debtors argue that this Court erred in denying the debtors' exemptions and should reconsider its prior opinion. They assert no grounds for reconsideration other than the Court simply got it wrong.

Parties seeking reconsideration of a prior order are held to a high standard. Disappointed parties simply cannot relitigate decided issues to raise new theories or advance additional arguments. In re Tarrer, 273 B.R. 724, 736 (Bankr. N.D. Ga. 2001); In re Investors Florida Aggressive Growth Fund, Ltd., 168 B.R. 760, 768 (Bankr. N.D.Fla. 1994) ("A motion for reconsideration 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."). A motion for reconsideration will be granted "only under extraordinary circumstances." In re Homestead Partners, Ltd., 201 B.R. 1014, 1017 (Bankr. N.D. Ga. 1996).

Generally, a party must demonstrate one of three primary reasons to justify reconsideration: (1) the controlling law has changed; (2) newly discovered evidence would merit a different result; or (3) reconsideration is needed to correct a clear error of law or fact or to prevent manifest injustice. In re Kellogg, 197 F.3d 1116 (11th Cir. 1999); In re Barber, 318 B.R. 921, 924 (Bankr. M.D. Ga. 2004); In re Investors Florida, 168 B.R. 760, 768. Here, the debtors do not assert the law has changed since this Court entered its original order. Nor do they point to any newly discovered evidence. Rather, they argue that this Court made errors of fact and law that justify modification of the prior ruling, raising three separate theories.

First, the debtors again argue, relying on essentially the same cases previously presented, that the Court erred in holding that the trustee timely objected to their claim of exemptions. The Court finds no error was made and reiterates its prior holding, for the same reasons, that the objection was timely filed. Indeed, in extensive dicta, the Eleventh Circuit in the Appellate Order also opined that the trustee's objection was timely. (Appellate Order, pages 25-27).

Debtors who seek to protect property from distribution to their creditors must file a Claim of Exemption styled as Schedule C so that the creditors and trustee then can decide whether or not to object within the brief 30-day objection period. Here, the debtors filed their Amended Schedule C, asserting their right to a portion of the settlement proceeds, on January 24, 2004. The trustee timely filed his objection thirteen days later, on February 5, 2004. The objection was timely.

Second, the debtors argue that the trustee had no authority to “assign” the claims asserted by the debtors in the lawsuit because the claims are personal torts or causes of action. Without making any further ruling on whether the trustee could or could not have assigned the claims asserted in the debtors’ lawsuit, the Court notes that the trustee here never attempted to assign the claims. He *settled* the claims with the opposing litigants in exchange for the payment of money. Pursuant to the Appellate Order, the settlement is final. No assignment occurred. The debtors have failed to demonstrate any error.

The third and last argument for reconsideration asserted by the debtors is a little more complicated. In the debtors’ Amended Schedule C (Doc. No. 137), the debtors claimed an exemption in the “[p]ortion of award or settlement that correspond to recovery of wages lost by plaintiff after the filing of this Chapter 7 case.” Although the debtors did not list the specific statutory reference for this exemption in their Amended Schedule C, the debtors clearly claimed the exemption. The trustee then specifically challenged this exemption in his objection (Doc. No. 142, ¶ 4). Later, in the Debtors’ Motion to Strike Portions of Trustee’s Objection (Doc. No. 146), they provided the previously unstated statutory reference for the earlier claim of exemptions for lost wages, Florida Statute 222.11, stating: “It should be noted that no statute was cited in the claim for exemption on wages, but that exemption is under Section 222.11, Florida Statutes.” Of course, by this time, the trustee already had objected to the claim of exemption.

The debtors assert that the trustee failed to timely object to their claim of exemption under Florida Statute 222.11 because the statutory reference was contained in the later Motion to Strike and for some unexplained reason started a new objection period. Obviously, the debtors previously had claimed the exemption for lost wages in their Amended Schedule C. The trustee already had timely objected. The Motion to Strike merely provided a missing statutory reference to the

previously claimed exemption. The debtors certainly were not making a *new* claim of exemption. Because no new exemption was claimed, no new time period for objection started to run. The debtors’ argument that the trustee failed to timely object to the debtors’ claim for lost wages is misplaced.

In conclusion, the debtors have failed to demonstrate any factual or legal error that would justify reconsideration of this Court’s prior ruling sustaining the trustee’s objection to their claim of exemptions. Accordingly, the debtors’ Motion for Rehearing or Reconsideration (Doc. No. 160) is denied.

DONE AND ORDERED in Orlando, Florida, this 1st day of June, 2005.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies provided to:

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