UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:04-bk-09253-KSJ
Chapter 7

LINDA J. NOFZIGER,

Debtor.
_____/

ORDER DENYING MOTION FOR RECONSIDERATION OF (1) MOTION FOR CONTEMPT, (2) MEMORANDUM OPINION PARTIALLY GRANTING DEBTOR'S MOTION FOR CONTEMPT, AND (3) ORDER PARTIALLY GRANTING MOTION FOR CONTEMPT

This case came on for hearing on June 15, 2006, on Mitchell Kalmanson's Motion seeking Reconsideration (the "Motion for Reconsideration") (Doc. No. 285) of a Motion for Contempt (Doc. No. 186), this Court's Memorandum Opinion Partially Granting Debtor's Motion for Contempt (Doc. No. 272), and the related Order. (Doc. No. 273). After reviewing the pleadings and considering the position of interested parties, the Court denies the Motion for Reconsideration.

In addressing requests to reconsider orders, made pursuant to Federal Rule of Civil Procedure 60, courts construe such requests as motions to alter or amend a judgment pursuant to Rule 59(e)[1] if the motions are filed within ten days of the trial court's entry of judgment. Here, this Motion for Reconsideration was filed within this 10-day period and shall be treated as a Motion to Alter or Amend Judgment pursuant to Rule 59(e). In re Mathis, 312 B.R. 912, 914 (Bankr.S.D.Fla.2004) (citing Hatfield v. Board of County Commissioners, 52 F.3d 858 (10th Cir.1995); accord Mendenhall v. Goldsmith, 59 F.3d 685 (7th Cir.1995); Goodman v. Lee, 988 F.2d 619 (5th Cir.1993)).

Reconsideration of an order under Rule 59(e) 'is an extraordinary remedy to be employed sparingly' due to interests in finality and conservation of judicial resources. Mathis, 312 B.R. 912, 914 (citing Sussman v. Salem, Saxon & Nielsen, P.A., 153 F.R.D. 689, 694 (M.D.Fla.1994); accord Taylor Woodrow Construction Corp. v. Sarasota/Manatee Airport Authority, 814 F. Supp. 1072, 1073 (M.D.Fla.1993)). "The function of a motion to alter or amend a judgment is not to serve as a vehicle to relitigate old matters or present the case under a new legal theory...[or] to give the moving party another 'bite at the apple' by permitting the arguing of issues and procedures that could and should have been raised prior to judgment." Mathis, 312 B.R. 912, 914 (citing Mincey v. Head, 206 F.3d 1106 (11th Cir.2000) (quoting In re Halko, 203 B.R. 668, 671-672 (Bankr.N.D.Ill.1996)). Rather, the movant must prove 'manifest' errors of law or fact or new evidence. In re Loewen Group Inc. Securities Litigation, 2006 WL 27286, *1 (E.D. Pa. 2006) (citing Egervary v. Rooney, 80 F.Supp.2d 491, 506 (E.D.Pa.2000) (citation omitted). "A motion for reconsideration 'addresses only factual and legal matters that the Court may have overlooked. It is improper on a motion for reconsideration to ask the Court to rethink what it had already thought through-rightly or wrongly.'" Loewen, 2006 WL 27286, *1 (citing Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D.Pa.1993)) (quotations omitted). 'Mere dissatisfaction with the court's ruling is not a proper basis for reconsideration.' Loewen, 2006 WL 27286, *1 (citation omitted). "A trial court's determination as to whether grounds exist for the granting of a Rule 59(e) motion is held to an 'abuse of discretion' standard." Mathis, 312 B.R. 912, 914 (citing American Home Assurance Co. v. Glenn Estess & Associates, 763 F.2d 1237, 1238-1239 (11th Cir.1985); accord McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir.1983); Weems v. McCloud, 619 F.2d 1081, 1098 (5th Cir.1980).

Where Courts have granted relief under Rule 59(e), they have generally done so in order to: (1) account for an intervening change in controlling law, (2) consider newly available evidence, or (3) correct clear error or prevent manifest injustice. Mathis, 312 B.R. 912 at 914 (citations omitted). Clearly, Mr. Kalmanson is dissatisfied with this Court's rulings in connection with the Memorandum Opinion Partially Granting Debtor's Motion for Contempt and the related Order.

Nevertheless, this is not sufficient to warrant reconsideration. There has been no change in the law, and no new evidence, clear error, or any manifest injustice. Rather, Kalmanson argues only that: (i) the Seal Order (Doc. No. 31) is overly broad; (ii) the Court has no evidence to support any finding that he violated the Seal Order (Doc. No. 31) in a manner warranting contempt because the Court was not privy to the exact discussion or information revealed at the debtor's 341 meeting; and (3) filing public records in

[1] Federal Rule of Civil Procedure 59(e) provides as follows:

> **(e) Motion to Alter or Amend Judgment.** Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

a pending appeal cannot form the basis of a finding of contempt.

Regarding Kalmanson's first contention, the Seal Order is not overly broad; it simply and specifically provides that the debtor "does not have to answer any question or inquiry, nor provide any information of any kind concerning herself, her family or her finances prior to September 1999" and directs any party in interest "to refrain from exposing any information divulged at the 341 proceeding September 20, 2004, as well as to refrain from disclosing the nature of, or actual information sought. Any party in interest attending the 341 proceeding including but not limited to the Debtor's attorney, the Chapter 13 Trustee, Mitchell Kalmanson and/or his counsel (or their agents) are directed not to divulge the information sought or obtained at the 341 meeting to any other party, person or entity whatsoever, nor shall they cause that to be done through any other means such as a third party." (Doc. No. 31, p 2). The only line of inquiry restricted by the Seal Order is that which pertains to the life of the debtor and her family dating back now almost seven years; relevant information subsequent to September, 1999 is fair game. Most importantly, the Court provided that the restrictions of the Seal Order were subject to the right of a party in interest to request such information, if needed, and explicitly detailed the procedures for doing so. On at least one occasion, Kalmanson filed and then later withdrew a request for relief from the Seal Order to obtain a copy of the debtor's 341 meeting, so the Court has not had the opportunity to rule on such a request. Recently, however, on June 19, 2006, Kalmanson filed another Motion for Relief from Seal Order to Obtain Transcript of 341 Meeting (Doc. No. 304), which shall be granted by separate order.

Mr. Kalmanson's second argument, that the Court had no evidence supporting its findings that Kalmanson violated the Seal Order (Doc. No. 31) and was therefore subject to contempt, has no merit. The details of the 341 transcript are simply not the basis for the Court's finding that Kalmanson violated the Seal Order. The fact that the Court was not privy to the exact discussion or information revealed at the debtor's meeting of creditors is irrelevant; no party disputes that the debtor's protected former identity was disclosed and discussed, that the Court explicitly ordered parties in interest to refrain from exposing this information, and that the Court reserved the right to award sanctions against any party violating the order. Kalmanson ignored the Court's directives in connection with an appeal he filed in the United States District Court for the Middle District of Florida (See Doc. Nos. 69, 70, 100, 108, 114, 120) by attaching an appendix to his Initial Brief on Appeal (Doc. No. 127) which contained specific references to the sealed information and, later, a Notice (Doc. No. 165) with an attached exhibit containing a state court order addressing visitation, support, and contempt issues involving the debtor in a domestic case when she was using her prior identity, and these actions/disclosures were the basis of the Court's finding that Kalmanson violated the Seal Order and would be subject to contempt.[2]

Finally, Kalmanson argues that filing public records in a pending appeal cannot form the basis of a finding of contempt. Kalmanson raised this exact same argument as a defense to the debtor's Motion for Contempt (Doc. No. 186). The Court in explicit detail rejected this argument in its Memorandum Opinion Partially Granting Debtor's Motion for Contempt (Doc. No. 272, pp 6-13), and will not repeat its analysis and conclusions here. Mr. Kalmanson has demonstrated no reason this Court should reconsider the debtor's Motion for Contempt (Doc. No. 186) or its Memorandum Opinion Partially Granting Debtor's Motion for Contempt (Doc. No. 272), and related Order. (Doc. No. 273). Accordingly, the Motion for Reconsideration is denied.

DONE AND ORDERED in Orlando, Florida, on the 29th day of June, 2006.

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

[2] Because Kalmanson questioned the propriety of this Court's decision to seal the records of the debtor's 341 meeting in an appeal to the United States District Court for the Middle District of Florida, the Court declined to enter an award of damages in connection with the contempt finding until after the District Court considered the matter. On May 18, 2006, the District Court affirmed this Court's decision to seal the records of the debtor's 341 meeting. Kalmanson has now appealed the District Court's decision to the United States Court of Appeals for the Eleventh Circuit.