UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:06-bk-00620-KSJ
Chapter 13

SUSAN WACZEWSKI,

Debtor.
_____/

MEMORANDUM OPINION DENYING DEBTOR'S THIRD MOTION FOR RECUSAL

This case came on for consideration upon the debtor's Third Motion for Recusal[1] (Doc. No. 347), in which the debtor makes virtually identical arguments to those made in the two prior motions for recusal—that the Court has demonstrated bias or prejudice by failing to reconsider approval of a settlement agreement entered into by the debtor's former Chapter 7 trustee six years ago and affirmed twice by the Eleventh Circuit Court of Appeals.

The debtor initially sought recusal in a footnote contained in a motion for reconsideration filed on April 9, 2006 (the "Earlier Motion for Reconsideration") (Doc. No. 205). In this earlier motion, the debtor sought reconsideration of an order approving a compromise between the Chapter 7 trustee and the debtor's former employer entered on November 20, 2002 (the "Compromise Order") (Doc. No. 49). The debtor argued that reconsideration was appropriate under Rule 60 of the Federal Rules of Civil Procedure and Section 105 of the Bankruptcy Code.[2] The arguments are similar to those arguments recently raised by the debtor in her Motion for Relief from Judgment and for an Order Pursuant to Rule 60 and 11 U.S.C. Section 105 (Doc. No. 329), which the Court recently denied (the "Later Motion for Reconsideration") (Doc. 344). Although the arguments contained in the two motions for reconsideration differ in some facets, the essential argument is the same—the Court erred in entering the Compromise Order.

In denying the debtor's first recusal request, the Court issued a Memorandum Opinion Denying Debtor's Motion for Reconsideration (Doc. No. 219) that sets forth in length the standard for recusal, which the Court incorporates in toto in this opinion, as well as the basis for denying the request for recusal. In the prior order, the Court held that, although the debtor may be dissatisfied with the rulings in this case, the record does not support any indication of favoritism, antagonism, or a lack of impartiality. As such, the debtor had failed to establish any basis for recusal.

The debtor made a second request for recusal in a Motion for Recusal filed on December 28, 2006 (Doc. No. 293). The debtor, again dissatisfied with rulings of the Court, raised the same arguments that she believed that the Court held a negative bias to her and her claims. The Court, finding that no such bias existed or was demonstrated, summarily denied this motion on January 18, 2007 (Doc. No. 298).

Now, the debtor has filed a third motion to recuse, again arguing bias and prejudice in connection with a hearing on the debtor's Later Motion for Reconsideration held on December 4, 2007. In this motion, the debtor again asks this Court to undo the Compromise Order and raises arguments similar to those in the debtor's Earlier Motion for Reconsideration, which were rejected by this Court and later affirmed on appeal by the Eleventh Circuit Court of Appeals (Doc. No. 330).

As explained by the Eleventh Circuit Court of Appeals in its opinion, the Compromise Order is a final order not subject to further review, reconsideration, or appeal. Indeed, this Court lacks jurisdiction to alter or modify the Compromise Order at this point. The Eleventh Circuit Court of Appeals specifically held that "the propriety of approving the second compromise [the Compromise Order] became the 'law of the case' and was outside the scope of this Court's limited remand [on another issue]." Therefore, the appellate court clearly stated that this Court no longer had any power to modify, alter, or reconsider the Compromise Order. *The Compromise Order is final for all purposes.*

The debtor simply cannot accept this result. She continues to ask this, or by her preference, another court, to undo the Compromise Order, most recently in her Later Motion for Reconsideration. At the hearing on this motion, the Court, relying on the appellate mandate of the Eleventh Circuit Court of Appeals, orally ruled that the Compromise Order is final, that the appellate holding is the law of this case,

[1] The motion, titled Amended Debtor's Third Motion for Recusal – Limited to Resolution of Mrs. Waczewski's Motion for Relief from Judgment and Related Proceedings – and Amended Motion for Rehearing, also seeks reconsideration of the order entered by this Court on December 13, 2007 (Doc. No. 344).

[2] Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.

and that this Court lacked jurisdiction to reconsider the entry of the order.

The debtor, again dissatisfied with the result, asked to present evidence from attending witnesses to demonstrate "extraordinary circumstances" justifying reconsideration. Regardless of *any* testimony these witnesses could provide, it is simply too late. This Court, or any sister bankruptcy court, lacks the power to reconsider the entry of the Compromise Order for any reason.

The debtor now argues recusal is appropriate because the Court did not allow the debtor to present her witnesses, relying on the form notice setting the hearing on the debtor's Later Motion for Reconsideration. The notice was titled: "Notice of Evidentiary Hearing." (Doc. No. 334). This form notice is the standard, default notice used in the Orlando Division of the United States Bankruptcy Court to set hearings on any and all contested matters, such as the debtor's motion. Given the number of motions and matters set for hearing before this Court, the notices typically allow the parties to present evidence, when appropriate. The notice, however, in no way implies that evidence is required or even needed. Here, given the ruling of the Eleventh Circuit Court of Appeals, no evidence was needed or permitted because, once again, the Compromise Order is final for all purposes. Reconsideration is not possible.

As such, the debtor was not deprived of any entitlement to due process. The debtor has had years to present her position, has twice appealed the entry of the Compromise Order, and the Eleventh Circuit Court of Appeals now has mandated that the order is final. Simply because a party would like to present evidence does not require a court to allow the presentation if no valid purpose would be served. Here, the testimony of the proposed witnesses necessarily would have been a useless exercise, given the finality of the Compromise Order and this Court's inability to modify its terms.

The debtor again has failed to state any valid grounds to justify recusal or to reconsider the Court's ruling on the debtor's Later Motion for Reconsideration. The debtor is just not willing to accept that the Compromise Order is final. She would like another court to renew her claims with the hope that she would get a different result. This Court now has spent over seven years in this case and has made decisions based exclusively on the events that occurred on the record and in open court. The Court's views on the legal issues, reflected in numerous written memorandums, which undisputedly differ from those held by the debtor, cannot serve as a basis for disqualification where they would not lead a fully informed, objective, and disinterested third party to hold any significant doubt about the Court's impartiality. So, for the third time, the Court would hold that no basis for recusal was stated.

Nor will the Court reconsider its decision denying the debtor's Later Motion for Reconsideration to allow another sister bankruptcy court to rule on the motion. First, the Compromise Order is final, regardless of which court hears the motion. Second, and more importantly, reconsideration and transfer of this matter to another judge would be improper after the lengthy history of this Court with this case. The debtor is trying to get another judge simply to get a different result. Principles of judicial economy and finality preclude reassignment of matters simply because a litigant is upset with the ruling.

Accordingly, the debtor's Motion for Recusal (Doc. No. 343) is denied. The Court will not reconsider its ruling denying the debtor's Later Motion for Reconsideration (Doc. No. 344). A separate order consistent with this Memorandum Opinion shall be entered.

DONE AND ORDERED on January 17, 2008.

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

Copies provided to:

Debtor: Susan Waczewski, 4824 Pebble Beach Drive, Orlando, FL 32811

Debtor's Attorney: Frederic E. Waczewski, 4824 Pebble Beach Drive, Orlando, FL 32811

Trustee: Leigh Meininger, P.O. Box 1946, Orlando, FL 32802-1946

Ch 13 Trustee: Laurie K. Weatherford, P.O. Box 3450, Winter Park, FL 32790

United States Trustee, 135 W. Central Blvd., 6th Floor, Orlando, FL 32801