

ORDERED.

Dated: March 15, 2017



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
JULIE BAKER ZALLOUM,)	Case No. 6:13-bk-04030-KSJ
)	Chapter 13
Debtor.)	
_____)	

ORDER DENYING DEBTOR’S MOTION FOR RECONSIDERATION

This case came before the Court on the Debtor’s Motion for Reconsideration of Dismissal and Motion to Reinstate Case.¹ The District Court remanded this case to the Bankruptcy Court to rule on the Debtor’s Motion for Reconsideration.² The Motion for Reconsideration is denied.

Since the Debtor filed this Chapter 13 case on April 3, 2013,³ she has failed to timely comply with bankruptcy rules and procedures resulting in the dismissal of this case several times. When the Debtor failed to pay her filing fees, the Court dismissed the case.⁴ Debtor then

¹ Doc. No. 250.

² Doc. No. 291.

³ Doc. No. 1. The Honorable Cynthia C. Jackson originally presided over this case till a Notice of Reassignment was entered on March 11, 2014. Doc. No. 92.

⁴ Doc. No. 28.

sought to reinstate her case,⁵ paid the required fees,⁶ and the Court granted her request to reinstate the case.⁷ Next, the Chapter 13 Trustee sought to dismiss the Debtor's case for failure to provide required information to its office.⁸ Debtor objected to the Chapter 13 Trustee's Motion,⁹ and this Motion to Dismiss eventually was withdrawn after the Debtor belatedly supplied the needed information.¹⁰ The Chapter 13 Trustee again moved for dismissal when the Debtor failed to provide copies of certain tax returns¹¹ but withdrew that motion when the Debtor again presumably and belatedly complied.¹²

On November 19, 2014, the Court entered an Order that disposed of several pending motions.¹³ Importantly, the Court ordered the Debtor to file and to properly serve¹⁴ an amended Chapter 13 Plan by December 5, 2014.¹⁵ If the Debtor did not comply, the Court ordered the case would be dismissed without further notice or hearing.¹⁶

Several months again passed. Debtor filed no Amended Chapter 13 Plan. So the Court dismissed the case on March 6, 2015, months after the deadline.¹⁷ Debtor sought reconsideration

⁵ Doc. No. 30.

⁶ See Docket Entries on July 29, 2013 (showing fees were paid).

⁷ Doc. No. 36.

⁸ Doc. No. 58.

⁹ Doc. No. 67.

¹⁰ Doc. No. 72. A creditor also sought dismissal of the case. Doc. No. 90. Debtor again objected to dismissal. Doc. Nos. 119, 120. The creditor eventually withdrew this Motion to Dismiss. Doc. No. 162.

¹¹ Doc. No. 161.

¹² Doc. No. 169.

¹³ The order was entered after a hearing held on November 18, 2014. Doc. No. 238. The Court allowed Debtor's Counsel to withdraw; ordered discovery deadlines; set a further hearing on Debtor's objections to claim and a Creditor's Motion for Relief from Stay; and specifically ordered the Debtor to file and properly serve an amended Chapter 13 Plan no later than December 5, 2014. Doc. No. 234.

¹⁴ Debtor had filed an Amended Chapter 13 Plan on November 14, 2014 (Doc. No. 222) that was stricken for improper service on November 18, 2014 (Doc. No. 224), before the order (dated November 19, 2014) was entered directing the Debtor to file a new Chapter 13 Plan. As of November 18, 2014, Debtor, therefore, had no valid Chapter 13 Plan after her last Plan was stricken, which was why she needed relatively quickly to file a new Plan by December 5, 2014.

¹⁵ Doc. No. 234, ¶ 7.

¹⁶ *Id.*

¹⁷ Doc. No. 249 ("Dismissal Order").

of the Dismissal Order belatedly,¹⁸ filing her Amended Chapter 13 Plan on March 9, 2015.¹⁹ The next day, the Debtor also appealed the Dismissal Order.²⁰

On April 7, 2015, the Court held a hearing on the Debtor's Motion for Reconsideration.²¹ Debtor did not attend this hearing. I orally denied the motion for lack of prosecution.²² However, upon learning of the pending appeal and out of deference to jurisdiction of the appellate courts, I amended the ruling to state that no action would be taken on the Motion for Reconsideration because of the Debtor's pending appeal.²³ I intended to give the appellate courts time to rule but now, with hindsight, I realize that a prompt denial of the Debtor's Motion for Reconsideration would have expedited the resolution.

The District Court affirmed the Dismissal Order.²⁴ Debtor then appealed the District Court's Order to the Eleventh Circuit Court of Appeals. The Eleventh Circuit vacated the District Court's Order Affirming the Dismissal Order finding the appeal premature because the Bankruptcy Court had not ruled on the Debtor's Motion for Reconsideration.²⁵ The Circuit Court remanded the case to the District Court that, in turn, remanded the case to the Bankruptcy Court to rule on the Motion for Reconsideration.²⁶

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.²⁷ "The

¹⁸ Doc. No. 250.

¹⁹ Doc. No. 252.

²⁰ Doc. No. 254.

²¹ Doc. No. 271.

²² *Id.*

²³ Doc. No. 272.

²⁴ The case number before the United States District Court for the Middle District of Florida is 6:15-cv-00404-PGB. The District Court affirmed the Dismissal Order on January 28, 2016.

²⁵ The case number before the Eleventh Circuit Court of Appeals was 16-10761. The Eleventh Circuit entered its order on October 4, 2016.

²⁶ Doc. No. 291. The Remand Order is dated February 9, 2017.

²⁷ *Mathis v. United States (In re Mathis)*, 312 B.R. 912, 914 (Bankr. S.D. Fla. 2004) (quoting *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)) (internal quotation marks omitted). Federal Rule of Civil Procedure 59 is incorporated into the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 9023.

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."²⁸ "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."²⁹ Where Courts have granted relief under Rule 59(e), they act to: (1) account for an intervening change in controlling law, (2) consider newly available evidence, or (3) correct clear error or prevent manifest injustice.³⁰

In her Motion for Reconsideration, the Debtor argues she inadvertently failed to comply with the Court's Order directing the Debtor to timely file her Amended Chapter 13 Plan by December 5, 2014.³¹ Debtor states she thought her attorney filed the required Amended Chapter 13 Plan, and she was unaware she had to file yet another Amended Plan.³² Debtor states this failure was due to a mistake and was not willful or malicious.³³ Debtor argued she acted diligently once she discovered her case had been dismissed.³⁴

The Court held a hearing on the Debtor's Motion for Reconsideration on April 7, 2015. Debtor did not attend the hearing. She simply failed to prosecute her motion. Nor do the Debtor's arguments for reconsideration have merit. She knew the last revision of her Chapter 13 Plan³⁵

²⁸ *In re Mathis*, 312 B.R. at 914 (quoting *In re Halko*, 203 B.R. 668, 671-72 (Bankr. N.D. Ill. 1996)) (citations omitted).

²⁹ *In re Mathis*, 312 B.R. at 914 (citing *Am. Home Assurance Co. v. Glenn Estess & Assocs.*, 763 F.2d 1237, 1238-39 (11th Cir. 1985) ("The decision to alter or amend judgment is committed to the sound discretion of the [trial] judge and will not be overturned on appeal absent an abuse of discretion.")).

³⁰ *In re Mathis*, 312 B.R. at 914 (citations omitted).

³¹ Doc. No. 250, ¶ 2.

³² Doc. No. 250, ¶¶ 3, 5.

³³ Doc. No. 250, ¶ 6.

³⁴ Doc. No. 250, ¶ 7.

³⁵ Filed November 14, 2014. Doc. No. 222.

was stricken for improper service.³⁶ So, no reasonable confusion is credible when she clearly was ordered to file an Amended Chapter 13 Plan no later than December 5, 2014.³⁷ Debtor ignored her responsibility to timely file an Amended Chapter 13 Plan. Even though the Court gave her several additional months before dismissing the case, Debtor delayed filing a new Plan without justification or credible explanation.

None of the Debtor's arguments raise an intervening change in controlling law, newly available evidence, clear error, or manifest injustice. Debtor failed to comply with the Court's Order that directed her to properly file and serve an Amended Chapter 13 Plan by December 5, 2014. Debtor failed to prosecute her motion at the scheduled hearing or to raise any valid basis for reconsideration of the dismissal of this case.

Accordingly, it is

ORDERED:

1. The Motion for Reconsideration (Doc. No. 250) is **DENIED**.

³⁶ On November 18, 2014. Doc. No. 224.

³⁷ On November 19, 2014. Doc. No. 234, ¶ 7.