

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
Abraham Jacob Kokin) Case No. 6:19-bk-02413-KSJ
and Heather Denise Kokin,) Chapter 7
)
Debtor.)
)
_____)

**ORDER DENYING PARTIES' REQUESTS FOR RECONSIDERATION
OF ORDER PARTIALLY GRANTING
TRUSTEE'S MOTION FOR TURNOVER OF PROPERTY OF THE ESTATE**

Neither the Chapter 7 Trustee nor the Debtors are content with this Court's Order Partially Granting Trustee's Motion for Turnover of Property of the Estate (the "Order").¹ The Chapter 7 Trustee seeks reconsideration of the Court's ruling allowing the Debtors to exempt a federal Child Tax Credit of \$1,400 under Florida Statute Section 222.25(3).² Debtors argue the Court incorrectly valued a Vehicle as of the Petition Date.³ Both arguments fail; both requests seeking reconsideration are denied.

A motion for rehearing or reconsideration must demonstrate plausible grounds why the court should reexamine its prior decision, and the movant must set forth facts or law "of a strongly

¹ Doc. No. 33. All terms defined in the Order are similarly defined and capitalized in this order.

² Doc. No. 36.

³ Debtors filed a Response to Trustee's Amended Motion for Rehearing (Doc. No. 40). In this Response, Debtor's argue the Court incorrectly calculated the value of the Vehicle. Trustee filed a Reply in Support of Amended Motion for Rehearing of Order Partially Granting Trustee's Motion for Turnover of Property of the Estate (Doc. No. 41).

convincing nature” to reverse a prior decision.⁴ Reconsideration “is an extraordinary remedy to be employed sparingly” due to interests in finality and conservation of judicial resources.⁵ “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.’”⁶ Where courts have granted reconsideration, 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.⁷ In the Eleventh Circuit, the *only* grounds for granting this motion “are newly-discovered evidence or manifest errors of law or fact.”⁸

Turning first to the Trustee’s motion and whether the Debtor’s federal Child Tax Credit is exempt, both parties make valid arguments whether a Child Tax Credit under 26 U.S.C. §24 is (*or is not*) exempt under Florida Statute §222.25(3). The Court may have erred in its conclusion that the Child Tax Credit is exempt; however, the ruling was *dicta* and subsidiary to main ruling that no portion of the Debtors’ Tax Refund remained in the Custodial Account on the Petition Date. In the end, it does not matter because the only monies the Trustee was seeking was the Tax Refund, and the Debtors retained no portion of the Tax Refund to include in property of the estate when they filed this bankruptcy case.

Trustee does not seek reconsideration of this conclusion or the tracing issue in the Order. So, if I erred in finding the Child Tax Credit is exempt, it is irrelevant. Trustee does not explain how the “first in, first out” tracing analysis is affected by a change in the exemption status. Debtors

⁴ *In Re Environcon Intern. Corp.*, 218 B.R. 978, 979 (Bankr. M.D. Fla. 1998).

⁵ *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.

⁶ *D’Angelo v. Parker (In re Parker)*, 378 B.R. 365, 371 (Bankr. M.D. Fla. 2007) (quoting *In re The Loewen Grp. Inc. Sec. Litig.*, No. Civ. A. 98-6740, 2006 WL 27286, *1 (E.D. Pa. Jan. 5, 2006) (citing *Glendon Energy Co. v. Borough of Glendon*, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993))).

⁷ *In re Mathis*, 312 B.R. at 914 (citations omitted).

⁸ *Kellogg v. Schreiber (In re Kellogg)*, 197 F.3d 1116, 1119 (11th Cir. 1999) (citing *In re Inv’rs Fla. Aggressive Growth Fund Ltd.*, 168 B.R. 760, 768 (Bankr. N.D. Fla. 1994)).

were still not in possession of *any* portion of the 2018 Tax Refund—including the \$1,400 in Child Tax Credits—on the Petition Date.⁹ Nor could the Trustee have suffered any prejudice when the Debtors belatedly amended their Schedule C because either way the Trustee could trace no portion of the Tax Refund into the Custodial Account, exempt or not.

Debtor next argues the Court improperly calculated the depreciation and the value of the Vehicle.¹⁰ I find no error in the original calculation and will not reconsider the Order. Debtor did not timely turnover the Vehicle to the Trustee and rightfully should pay him for the decline in value.

Accordingly, it is

ORDERED:

1. The Trustee's Amended Motion for Rehearing of Order Partially Granting Trustee's Motion for Turnover of Property of the Estate (Doc. No. 36) is **DENIED**.
2. Debtor's request for reconsideration in its Response (Doc. No. 33) is **DENIED**.

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Trustee, Richard B. Webber II, is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.

⁹ See Doc. No. 37. Debtors amended their Schedule A/B to exempt the entire balance of the Custodial Account. On the petition date, the Custodial Account consisted entirely of exempt funds.

¹⁰ Doc. No. 41, pg. 9.