

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 2:20-bk-07973-FMD
Chapter 13

Cecil Daughtrey, Jr. and
Patricia Anne Daughtrey,

Debtors.

**ORDER DENYING DEBTORS' MOTION
FOR REHEARING OF COURT ORDER
DISMISSING CASE**

THIS CASE came before the Court without a hearing to consider *Debtors' Motion for Rehearing of Court Order Dismissing Case* (the "Rehearing Motion").¹ On March 15, 2021, the Court entered an *Order Dismissing Chapter 13 Case with Prejudice* (the "Dismissal Order").² In the Rehearing Motion, Debtors ask the Court to reconsider the Dismissal Order and reinstate their case. For the reasons stated in this Order, the Rehearing Motion is denied.

On November 7, 2013, Debtors filed a Chapter 7 petition (the "Chapter 7 Case"),³ and Luis Rivera was appointed as the Chapter 7 Trustee. In the Chapter 7 Case, the Court entered an order approving a compromise between the Chapter 7 Trustee and 72 Partners, LLC ("72 Partners"), the holder of a mortgage on Debtors' real property (the "Real Property") (the "Compromise Order").⁴ Among other terms, the Compromise Order provided for 72 Partners to release its lien on 160 acres of the Real Property constituting Debtors' exempt homestead (the "Homestead Property") (specifically stating that the Homestead Property included a well that the Southwest Florida Water Management District identified as "DID #2" (the

"Well")), and for the Chapter 7 Trustee to convey the balance of the Real Property (the "Remaining Real Property") to 72 Partners. Debtors appealed the Compromise Order and it was affirmed by the United States District Court and then by the Eleventh Circuit Court of Appeals.⁵

On October 27, 2020, while the Chapter 7 Case remained open, Debtors filed a Chapter 13 case, Case No. 2:20-bk-07973-FMD (the "Chapter 13 Case"). Jon Waage serves as the Chapter 13 Trustee. In the Chapter 13 Case, Debtors filed bankruptcy schedules in which they did not list any creditors⁶ and a Chapter 13 plan in which they proposed to make payments to the Chapter 13 Trustee of \$200.00 per month,⁷ but did not propose how the Chapter 13 Trustee should disburse those payments.

Papers filed in the Chapter 7 Case reflect several lawsuits filed by Joseph Gilberti (identified by Debtors in the Rehearing Motion as their "Engineer") in state and federal courts against numerous state and federal governmental entities and officials (the "Lawsuits").⁸ The Lawsuits appear to relate to the Homestead Property, the Remaining Real Property, and the Well.

On December 17, 2020, the Chapter 13 Trustee filed an amended motion to dismiss the Chapter 13 Case with prejudice, alleging that Debtors (a) had not provided required information; (b) had not filed a Chapter 13 plan using the correct form; and (c) had received a discharge in the Chapter 7 Case on November 30, 2020, and did not appear to have any creditors in the Chapter 13 Case.⁹

On January 28, 2021, the Court conducted a hearing on the motion to dismiss.¹⁰ At that hearing, Debtors requested additional time to retain an attorney, and the Court advised Debtors that a Chapter 13 case is not the appropriate vehicle in which to address the issues that are the subject of

¹ Doc. No. 60.

² Doc. No. 58.

³ Case No. 2:13-bk-14831-FMD.

⁴ Case No. 2:13-bk-14831-FMD, Doc. No. 97.

⁵ Case No. 2:13-bk-14831-FMD, Doc. Nos. 162, 163, 174, 175.

⁶ Doc. Nos. 8 and 15.

⁷ Doc. No. 9.

⁸ See Doc. Nos. 56 and 60.

⁹ Doc. No. 45.

¹⁰ Doc. No. 53, 57.

the Lawsuits. As Debtors had requested, the Court continued the hearing to February 25, 2021.

Debtors appeared by telephone at the February 25, 2021 hearing; they advised the Court that they had not been able to retain counsel. The Court advised Debtors that it would dismiss the case with prejudice and bar them from refiling another bankruptcy case for 12 months, but if they had a legitimate need to file a bankruptcy case, they could seek reconsideration from the dismissal order. The Court told Debtors that, in considering such a motion, it would consider whether Debtors have retained an attorney and proposed a Chapter 13 plan.

On March 15, 2021, the Court entered the Dismissal Order. In the Dismissal Order, the Court found that the Chapter 13 Case had been pending since October 27, 2020, that Debtors had not filed a Chapter 13 plan that provided for payments to creditors or that meets the confirmation requirements of 11 U.S.C. § 1325, and that dismissal of the case is in the best interest of creditors and the estate. The Dismissal Order stated:

The case is dismissed with prejudice; Debtors are barred from refiling another bankruptcy case for 12 months from the date of this Order, unless they have first filed a motion in this case seeking relief from this Order. In considering a motion for relief from this Order, the Court will consider whether Debtors have retained an attorney and whether they have submitted a proposed Chapter 13 plan.¹¹

On March 28, 2021, Debtors filed the Rehearing Motion. In the Rehearing Motion, Debtors appear to allege that 72 Partners is attempting to “steal” a portion of their Homestead Property and the Well; that 72 Partners is acting in a fraudulent conspiracy with attorneys, courts, and

other public officials; and that the Chapter 7 Trustee failed to investigate fraudulent liens on the Real Property. In other words, it appears that Debtors are seeking to continue to relitigate issues that were resolved in the Compromise Order and the related appeals and to litigate the issues in the Lawsuits. Debtors ask this Court to maintain a stay on the Homestead Property and to stay the Chapter 13 Case until an appeal in Florida’s Second District Court of Appeals is resolved. Debtors represent that they have been unable to find an attorney and they request a change of venue.

A motion for reconsideration filed within 28 days after entry of the order or judgment is generally treated as a motion for relief under Federal Rule of Civil Procedure 59(e).¹² Reconsideration of an order under Rule 59(e) is an extraordinary remedy to be granted sparingly because of the interest in the finality of orders and the conservation of judicial resources. In the Eleventh Circuit, the only grounds for granting a motion for reconsideration under Rule 59(e) are newly discovered evidence or manifest errors of law or fact.¹³

Here, the Rehearing Motion does not state any grounds to reconsider the Dismissal Order under Rule 59(e). For example, Debtors do not assert that they have provided all required information in the Chapter 13 Case, that they have filed or are capable of filing a confirmable Chapter 13 plan, or that they have creditors that can be addressed through a Chapter 13 plan. Instead, Debtors seem to want the protection of the automatic stay imposed by 11 U.S.C. § 362 while they (or Mr. Gilberti) continue to litigate issues relating to the Real Property. This is not the purpose of a Chapter 13 case. “In the normal course of a case under Chapter 13 of the Bankruptcy Code, a debtor obtains confirmation of, and then follows through on, a plan under which he or she makes payments over three to five years from disposable income on his or her prepetition debts.”¹⁴

¹¹ Doc. No. 58, ¶ 1.

¹² Fed. R. Civ. P. 59, as made applicable to bankruptcy cases by Fed. R. Bankr. P. 9023. *In re John Q. Hammons Fall 2006, LLC*, 614 B.R. 371, 376 (Bankr. D. Kan. 2020)(citations omitted); *In re Smith*, 541 B.R. 914, 915, n. 11 (Bankr. M.D. Fla. 2015).

¹³ *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007)(quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)).

¹⁴ *In re Bentley*, 266 B.R. 229, 235 (B.A.P. 1st Cir. 2001).

Consequently, the Court finds that Debtors have not shown either the existence of any newly discovered evidence or that the Dismissal Order was based on any manifest error of law or fact.

Accordingly, it is

ORDERED that *Debtors' Motion for Rehearing of Court Order Dismissing Case* (Doc. No. 60) is **DENIED**.

DATED: March 30, 2021.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge