U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **06-01888-hb**
Adversary Proceeding Number: **08-80034-hb**

DECISION AND ORDER

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby ORDERED.

FILED BY THE COURT
10/07/2010

Entered: 10/08/2010

US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

In re, Lee Holt Judd, Debtor(s).	C/A No. 06-01888-HB Adv. Pro. No. 08-80034-HB Chapter 7
Robert F. Anderson, Trustee, Plaintiff(s), v. Carol Simpson Lillian Maresch Van Wilson Serepta Wilson, Defendant(s).	**ORDER**

This matter comes before the court on the Motion to alter or amend this Court's Order and Judgment entered on July 27, 2010, filed by Defendants, Carol Simpson, Van Wilson and Serepta Wilson. Based upon the content of the Defendants' motion, their memorandum in support, the written arguments presented by the Plaintiff, Robert F. Anderson in response, and a review of the trial proceedings, the Court makes the following findings of fact and conclusions of law.

Defendants' Motion states that it is filed pursuant to Rule 59 of the Federal Rules of Civil Procedure, made applicable by Rule 9023 of the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 9023. Before the merits of the Defendants' motion are addressed, this Court must determine whether the motion is properly before the Court.

While Rule 59 is applicable to this matter pursuant to Rule 9023 of the Federal Rules of Bankruptcy Procedure, its application is qualified:

> Except as provided in this rule and Rule 3008, Rule 59 F. R. Civ. P. applies in cases under the Code. A **motion for a new trial or to alter or amend a judgment** shall be filed, and a court may on its own order a new trial, **no later than 14 days after entry of judgment**.

Fed. R. Bankr. P. 9023 (emphasis added).[1]

> Prior to its amendment in December 2009, Federal Rule of Bankruptcy Procedure 9023 required motions to alter or amend a judgment to be filed within ten days of entry of the judgment. However, Bankruptcy Rule 9023, as amended, now provides that a motion to "alter or amend a judgment shall be filed ... no later than 14 days after entry of judgment."

In re Solomon, 2010 WL 3369146, 2 (Bnkr.W.D. Mich. 2010).[2]

Furthermore, under Rule 9006(b)(2) "[t]he court may not enlarge the time for taking action under Rules . . . . 9023." Fed. R. Bankr. P. 9006(b)(2); *see also* 8A C.J.S. *Bankruptcy* § 308 (2010) ("The court may not enlarge the time for taking action under certain Federal Rules of Bankruptcy Procedure; these actions are: . . . . (4) moving to amend findings of fact; (5) moving for new trial or amendment of judgment; and (6) moving for relief from a judgment or order.") (internal citations omitted). Therefore, motions pursuant to Rule 59 are held to a strict deadline to be filed within 14 days.

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[1] Commentary on the amendment to Rule 9023 states that:

> The rule is amended to limit to 14 days the time for a party to file a post judgment motion for a new trial and for the court to order sua sponte a new trial. In 2009, Rule 59 F. R. Civ. P. was amended to extend the deadline for these actions to 28 days after the entry of judgment. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, however, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing a motion for a new trial or a motion to alter or amend a judgment would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment.

Advisory Committee Notes, Fed. R. Bankr. P. 9023 (2009).

[2] *See In re Lovell's American Car Care, LLC*, 2010 WL 2769056, 6 n.5 (B.A.P. 10th Cir. 2010):

> Later in 2009, the Rule 59 filing deadline was changed to 28 days, and Rule 9023 created its own deadline, in bankruptcy cases, to 14 days, with the difference in times necessitated by the different time periods for the filing of a notice of appeal in a bankruptcy case (Fed. R. Bankr. P. 8002(a); 14 days), as opposed to other civil cases (*e.g.*, Fed. R. App. P. 4(a)(1)(A); 30 days).

See also In re Olick v. Kearney, 2010 WL 2407891, 3 (E.D. Pa. 2010) ("Motions for reconsideration must be filed no later than 14 days after entry of judgment, a deadline that cannot be extended.") (citations omitted); *In re Hedrick*, 2010 WL 3271246, 2 n.4 (Bnkr. S.D. Ill. 2010) ("Rule 9023 provides that Rule 59 of the Federal Rules of Civil Procedure applies in bankruptcy cases, albeit decreasing the time period to bring a motion for new trial or to alter or amend a judgment from 28 to 14 days in bankruptcy.").

The Court entered its Order on this matter on July 27, 2010 (Docket # 81). However, Defendant did not file its motion until August 20, 2010 (Docket # 86), approximately 24 days after the Court's Order was entered. Therefore, Defendants' Motion is not timely and cannot be considered by the Court.

Assuming *arguendo* that the Defendants' Motion had been timely, this would not affect this Court's ruling for the following reasons. Rule 59(a) allows a court to grant a new trial of a nonjury action "for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court." Fed. R. Civ. P. 59(a)(2). Recognized grounds for granting such relief are: "1) the verdict is against the clear weight of the evidence; or 2) is based upon evidence which is false; or 3) will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict." *Land v. Wal-Mart Stores East, L.P.*, 2008 WL 3166048, 2 (D.S.C. 2008) (quoting *Tools USA v. Champ Frame Straightening Equip.*, 87 F.3d 654, 656-57 (4th Cir. 1996)). Furthermore, "[i]f reasonable minds could differ about the result of the case, the jury's verdict must stand." *Id.* (citing *Bryant v. Aiken Reg'l Med. Centers, Inc.*, 333 F.3d 536, 543 (4th Cir. 1996)).

"'The decision to grant or deny a motion for a new trial is within the sound discretion of the … court and will not be disturbed absent a clear showing of abuse of discretion.'" *King v. McMillan*, 594 F.3d 301, 314-15 (4th Cir. 2010) (quoting *Chesapeake Paper Prods. Co. v. Stone & Webster Eng'g Corp.*, 51 F.3d 1229, 1237 (4th Cir. 1995)). "On review of a motion for new trial, the court is permitted to weigh the evidence and consider the credibility of witnesses." *Kirby ex rel. Estate of Heard v. Nat'l Crane Corp.*, 2006 WL 5411689, 1 (D.S.C. 2006) (citing *Cline v. Wal-Mart Stores, Inc.*, 144 F. 3d 294, 301 (4th Cir. 1998)).

After reviewing the record, it is the view of this Court that the motion presents neither a judgment against the clear weight of the evidence, nor a judgment based on false evidence, nor asserts that the judgment would result in a miscarriage of justice. The Defendants merely assert that this Court should reconsider certain findings of fact without actually presenting any grounds for granting a new trial. Therefore, Defendants' motion for a new trial pursuant to Fed. R. Civ. P. 59(a) is denied.

The Fourth Circuit recognizes three grounds for reconsideration under Fed. R. Civ. P. 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton,* 994 F.2d 1076, 1081 (4th Cir.1993) (citations omitted). In considering this motion, the court views the evidence in the light most favorable to the prevailing party. *Gregg v. Ham,* 2010 WL 2232208, 1 (D.S.C. 2010).

It is well-established that motions to reconsider under Rule 59 are disfavored and should be used sparingly.

> "[R]econsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." 12 James Wm. Moore et al., Moore's Federal Practice ¶ 59.30[4] (3d ed.). "Rule 59(e) permits a court to alter or amend a judgment, but it may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker,* 554 U.S. 471, n. 5 (2008) (internal citation omitted).

Blakely v. Kershaw Cnty. Sheriff's Office, 2010 WL 3703309, 1 (D.S.C. 2010). "The Fourth Circuit has emphasized that mere disagreement with the court's ruling does not warrant a Rule 59(e) motion." *Crosby v. Alford*, 2003 WL 22880383, 4 (E.D.Va. 2003) (citing *Hutchinson v. Station*, 994 F.2d 1076, 1081 (4th Cir. 1993)).

Nothing in Defendant's Motion suggests that there has been any intervening change in controlling law, any new evidence for which to account, or any manifest injustice to prevent. Rather, Defendants ask the court to reconsider its factual findings from the discovery and trial.

It is within the Court's discretion, weighing the credibility of testimony and evidence presented, to determine the findings of fact on which it must base its decision. Defendants' motion appears to be an attempt to re-litigate issues already presented and decided on in trial. Furthermore, any additional arguments presented by Defendants in their motion have no bearing on the Court's decision. Defendants had the opportunity to present these arguments throughout the trial; thus, they cannot only be raised after an unfavorable decision from the court.

At trial Defendants presented a plethora of evidence, some relevant and some seemingly not so relevant, for the Court to consider. As a result, the Order in question is more voluminous than is necessary. The Order includes extraneous facts that the Court did not want to ignore, but that assist in recounting the story of this case. However, most of the factual findings questioned by Defendants in their Motion are not essential to the Court's decision and even if incorrect, reconsideration thereof or alteration to clarify or further explain would not change the Court's decision.

Defendant Simpson, who filed the Motion, represented herself and family members at trial, and testified as a witness. She lived through the factual scenario set forth in the transcript and, therefore, has far greater access to facts surrounding the events of this matter than those available to the Court at trial. However, the Court must limit itself to the evidence presented at trial. After a review of that evidence, the decision reached appears

sound. Defendants' motion is basically an attempt to again argue issues already fully briefed and decided by this Court. Therefore, Defendants' motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) is denied.

AND IT IS SO ORDERED.