



SO ORDERED.

SIGNED this 17 day of October, 2008.

Janice Miller Karlin

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)
JUDY LEE CRAIG,)
)
)
)
Debtor.)
_____)

Case No. 02-42261
Chapter 7

DARCY D. WILLIAMSON, Trustee for)
the Bankruptcy Estate of Judy Lee Craig,)
)
)
Plaintiff,)

v.)
)
JUDY LEE CRAIG,)
)
)
Defendant.)
_____)

Adversary No. 07-7003

ORDER DENYING MOTION TO RECONSIDER

This matter is before the Court on Debtor's Motion to Set Aside Order of Default Judgment and Revocation of Discharge.¹ Debtor's current motion is seeking an order setting aside the Court's

¹Doc. 56.

Order of Default Judgment and Revocation of Discharge,² which was entered by the Court on September 12, 2008.

The Trustee initiated this adversary proceeding seeking turnover of a \$12,000 inheritance that Debtor failed to disclose in her schedules, seeking turnover of Debtor's 2005 income tax refund, and seeking revocation of her discharge.³ On August 13, 2007, the Court entered a partial consent order, approved by both Debtor and the Trustee. That order granted judgment to the Trustee in the compromised amount of \$9,500, plus post-judgment interest and \$250 in court costs. The agreed order also provided that the Trustee would not execute on that judgment so long as Debtor complied with an agreed repayment plan. That order also provided that if Debtor failed to comply with the agreed repayment plan, her discharge would "be automatically revoked upon the Trustee's filing of a Notice of Default . . . unless the debtor requests and notices a hearing within 15 days of filing of the Trustee's Notice of Default." The normal purpose of such a Notice of Default provision is to allow a debtor to prove that the agreed amount has, in fact, been paid.⁴

Although not directly relevant to that partial judgment, the Trustee moved for summary judgment on December 14, 2007, regarding the rest of the Complaint. On January 18, 2008, the Court granted the motion in part, and denied it in part.⁵ The Court entered judgment for the Trustee for turnover of the refund. Debtor did not appeal the judgment, but on February 11, 2008, Debtor

²Doc. 51.

³Doc. 1.

⁴As a practical matter, Trustees will often agree to withdraw their Notice of Default if a debtor commences repaying the judgment at this point, since revocations of discharge do not put money in creditors' pockets.

⁵Doc. 40.

filed a Motion to Correct Judgment Pursuant to Rule 60.⁶ That motion was denied on March 10, 2008. Debtor did not appeal that decision.

On August 12, 2008, the Trustee filed the Notice of Default⁷ contemplated by the agreed order, alleging that Debtor had failed to repay the judgment as agreed. The Trustee prayed for revocation of discharge if the default was not cured within fifteen days, pursuant to the parties' express agreement, and noted that \$4,775.50 remained unpaid.⁸ Those fifteen days expired on August 27, 2008, and neither party filed anything with the Court indicating that the default had been cured.

On September 12, 2008, the Court entered a default judgment, revoking Debtor's discharge.⁹ Also on September 12, 2008, the Court entered an Order for Debtor to appear at hearing in aid of execution on October 15, 2008.¹⁰ On September 17, 2008, Debtor timely filed a Motion to Set Aside Order of Default Judgment and Revocation of Discharge. Debtor admits that she failed to timely respond to the Notice of Default,¹¹ but then indicates that had she responded, she would have admitted that she was in default of the parties' repayment agreement, but would have argued that the default was caused by unemployment that has lasted in excess of one year. The Motion essentially asks the Court to set aside the order revoking discharge based on her promise that if she

⁶Doc. 44.

⁷Doc. 49.

⁸The Trustee does not indicate whether that amount constitutes principal and interest, or just principal.

⁹Doc. 51.

¹⁰Doc. 52.

¹¹Doc. 56. Counsel indicates that he thought he had filed a response to the Trustee's Notice of Default on or about August 26, 2008, and did not realize it was not filed until the Order revoking discharge was received on September 17, 2008.

should ever become re-employed, she would then repay this debt. The Trustee responded, requesting the Court “deny or exercise its best judgment” as to the Motion.¹²

I. STANDARD OF REVIEW FOR A MOTION

Debtor does not indicate the statutory basis for the motion, nor provide any citation to case law, so the Court is unsure under what provision she seeks to set aside the order. Because the order appealed from is a dispositive order, the Court assumes it was filed pursuant to Fed. R. Civ. P. 59(e) or 60.¹³ Rule 59(e) governs motions to alter or amend a judgment, and must be filed within ten days. Because this Motion was filed within ten days, and, secondarily, because Debtor’s counsel elected to docket it as a Motion to Reconsider, the Court will treat this as a motion for reconsideration under Fed. R. Civ. P. 59(e).¹⁴

Rule 9023 of the Federal Rules of Bankruptcy Procedure incorporates Rule 59 of the Federal Rules of Civil Procedure, and allows for alteration or amendment of judgments on the grounds for relief set forth in Rule 60(b) of the Federal Rules of Civil Procedure, as incorporated in Bankruptcy Rule 9024.¹⁵ Grounds for relief include mistake, inadvertence, surprise, excusable neglect, fraud or newly discovered evidence.

The legal standard for granting a motion for reconsideration is narrow. “A motion for reconsideration should be granted only to correct manifest errors of law or to present newly discovered evidence.”¹⁶ “Such motions are not appropriate if the movant only wants the Court to

¹²Doc. 61.

¹³See D. Kan. Rule 7.3, which indicates that “motions seeking reconsideration of dispositive orders or judgments must be filed pursuant to Fed. R. Civ. P. 59(e) or 60. Reconsideration of such an order or judgment will not be granted under this rule.” (Emphasis added)

¹⁴*In re American Freight System, Inc.*, 168 B.R. 245, 246 (D. Kan. 1994).

¹⁵See *In re Colley*, 814 F.2d 1008, 1010 (5th Cir. 1987).

¹⁶*Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, n.5 (10th Cir. 2000) (internal quotations omitted).

revisit issues already addressed or to hear new arguments or supporting facts that could have been presented originally.”¹⁷

II. APPLICATION OF LAW TO FACTS

Debtor previously entered into an agreement, which was sanctioned by Court order, unequivocally outlining the consequences if she failed to abide by the repayment agreement. Nothing in that agreement conditioned her repayment on continued employment. Accordingly, even if Debtor had filed her response timely—which essentially suggests that her discharge should not be revoked because she does not have the money to pay, it would not have changed the result. The case is now governed by the agreed court order dated August 13, 2007, calling for automatic revocation upon default. Debtor does not challenge the factual contention made by the Trustee that she is in default, which means the previously-agreed relief—revocation of discharge—is automatic.

Although for the reasons recently well-articulated by Chief Judge Nugent, it may not always be appropriate to reinstate a discharge after a Debtor does repay a judgment,¹⁸ this Court has frequently granted a debtor’s motion to reinstate a discharge when a money judgment is promptly paid, and when no party in interest objects to the reinstatement. Here, the money judgment has not been paid, and there is no representation that it will be paid soon, or ever. Accordingly, this is not the type of case where restoration of the discharge is warranted. Debtor expressly consented to revocation of her discharge if she failed to repay the debt as agreed, Debtor did not repay the debt as agreed and has still not repaid the debt, and the revocation of her discharge was proper.

¹⁷*Zhou v. Pittsburg State Univ.*, 252 F. Supp. 2d 1194, 1199 (D. Kan. 2003) (citing *Van Skiver v. U.S.*, 952 F.2d 1241, 1243 (10th Cir. 1991)).

¹⁸*In re Jacobs*, Case No. 05-19032 (September 22, 2008) (holding that Debtor who involuntarily repaid judgment granted to Trustee for turnover of estate property was not entitled, under Fed. R. Civ. P. 60(b)(5), for reinstatement of discharge).

Finally, the Trustee was apparently willing to compromise the amount of her original demand, and her request for a permanent revocation of discharge, in exchange for an agreed order with built-in sanctions for non-payment, one of which was revocation of discharge. Failing to disclose an asset of the estate, which was alleged and admitted¹⁹ by Debtor, is a serious matter. Debtors who fail to disclose assets should not receive the same benefits (e.g., a discharge) as debtors who follow the rules. Debtor did not follow the rules, she has not complied with her repayment agreement, and she has stated no good reason why her revocation should be reinstated in light of the agreed order calling for this very result.

IT IS, THEREFORE, ORDERED that Debtor's Motion to Reconsider is Denied.

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¹⁹See Doc. 21, Partial Agreed Journal Entry of Judgment at page 2 paragraph 1, which states "The allegations contained in plaintiff's Complaint for Turnover of Funds are true."