



SO ORDERED.

SIGNED this 15 day of March, 2010.

Janice Miller Karlin

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

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

In re:)
)
MICHAEL DALE REED and) **Case No. 09-40406**
VICKI ELAINE REED,) **Chapter 7**
)
Debtors.)
_____)

**ORDER DENYING MOTION TO RECONSIDER ORDER
GRANTING TRUSTEE'S MOTION FOR TURNOVER**

This matter is before the Court on Debtors' Motion To Reconsider¹ this Court's Order Granting Trustee's Motion for Turnover.² Because the motion was filed only 8 days after the Order was entered, it is thus timely.³ Although the Court's Order dealt with property in addition to a tax refund, Debtors seek reconsideration of only that part of the Order that grants the turnover of the tax refund to the estate.

¹Doc. 43.

²Doc. 40.

³The Court notes that Rule 9023 now allows such motions to be filed within 14 days after entry of an order.

I. STANDARD OF REVIEW

Debtors do not provide a statutory basis for their motion to reconsider, nor provide any citation to case law regarding reconsideration, so the Court is unsure what legal basis they contend exists to set aside the order. The Court will assume it was filed pursuant to Fed. R. Civ. P. 59(e) or 60.⁴ Because Debtor's counsel elected to docket it as a Motion to Reconsider, the Court will treat it as a motion for reconsideration under Fed. R. Civ. P. 59(e).⁵

Rule 9023 of the Federal Rules of Bankruptcy Procedure incorporates Rule 59 of the Federal Rules of Civil Procedure, with one exception,⁶ 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 9024.⁷ 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."⁸ "Such motions are not appropriate if the movant only wants the Court to revisit issues already addressed or to hear new arguments or supporting facts that could have been

⁴See 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."

⁵*In re American Freight System, Inc.*, 168 B.R. 245, 246 (D. Kan. 1994).

⁶This exception, contained in Rule 9023, as amended December 1, 2009, is that such motions be filed within 14 days.

⁷See *In re Colley*, 814 F.2d 1008, 1010 (5th Cir. 1987).

⁸*Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, n.5 (10th Cir. 2000) (internal quotations omitted).

presented originally.”⁹

II. FACTS AND APPLICATION OF LAW TO FACTS

The only part of the Trustee’s initial motion still at issue surrounds Debtors’ 2008 federal tax refund in the amount of \$948.47. As previously stated on the record when the decision was originally announced January 28, 2010, Debtors had checked the box on their return requesting the IRS apply this refund to any future (i.e., post-petition) tax liability they might incur, rather than refunding it to them. The import of that request would be to take what would otherwise be an estate asset, and allow Debtors to in effect pre-pay a potential, but unknown, future tax liability with that asset. On learning of this action, the Trustee made a request, by letter, to the IRS to turn over the funds to the bankruptcy estate, and the IRS complied with that informal request after having first refused to do the same when Debtors made a similar request.

Debtors essentially make three arguments in support of their motion to reconsider. They contend:

1. The \$948.47 was not “available to debtors” on the date of filing, but was instead in the hands of the IRS, and thus did not constitute property of the estate because it was a “contingent reversionary interest” not available to debtors until such time as they filed a 2009 tax return and it was determined they were entitled to a refund in excess of that \$948.47;
2. The \$948.47 was refunded to Debtors through “machinations of the Trustee,” and since Debtors could not have demanded the return of the refund, the Trustee could not, either, because he “stands in the shoes” of Debtors; and
3. It would not be equitable to reward the Trustee by sanctioning his “improper, inequitable and possibly illegal act” in requesting the IRS refund the prepaid amount.

⁹*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)).

As the Trustee succinctly notes in his response,¹⁰ Debtors previously raised each of these arguments,¹¹ and the Court rejected them. The Court incorporates herein its oral findings of fact and conclusions of law, as well as the contents of the order entered on this issue.

Furthermore, the Court does not believe that a Trustee's informal letter to the IRS requesting turnover of what he in good faith believes is estate property, under the facts of this case, is "improper, inequitable or illegal," or constitutes improper "machinations." A trustee in a Chapter 7 bankruptcy is charged with the statutory duty to gather the assets of the estate and manage those assets to maximize their value to the estate.¹² Specifically, § 704(a)(1) requires that the trustee "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest."

The Court found that Debtors had a contingent reversionary interest in the refund on the date they filed their bankruptcy petition, and that the facts of this case were distinguishable from those in *In re Graves*.¹³ Furthermore, there is nothing in the record demonstrating the Trustee acted with anything but good faith in attempting to obtain assets of the estate, and the facts surrounding the Trustee request were known to the Debtors prior to the issuance of the original decision. Debtors sought no evidentiary hearing to present evidence of bad faith. Furthermore, and as the Trustee noted, the IRS is well-equipped to say "no" to such requests when it deems them to be improper, or

¹⁰Doc. 40

¹¹*See* Doc. 33, Debtors' letter brief in opposition to the Motion for Turnover, noting that the "trustee somehow arrang[ed] a refund to us, without our agreement or request." Debtors provide no other "newly discovered facts" evidencing improper or illegal action by the trustee in their motion to reconsider.

¹²*In re Rubesh*, 2006 WL 1867678, 3 (10th Cir. BAP 2006).

¹³396 B.R. 70 (10th Cir. 2008).

somehow outside the law.

As the Court further noted in its oral decision, it recognizes that this case presents a very unusual set of facts that is unlikely to be repeated. Typically, when a taxpayer applies a tax refund to the following year's taxes, the IRS treats that as a tax payment for the following year and will not return it to the taxpayer or anyone else. Because IRS voluntarily returned the property to Debtors, Debtors' contingent reversionary interest in the property that they held on the date of filing was thus converted to actual possession of the property shortly after the bankruptcy was filed. Because the contingent reversionary interest in the tax refund was property of the estate, it only follows that money returned to Debtors as a result of that interest remains property of the estate, as well, and is subject to turnover to the Trustee.

III. CONCLUSION

Because Debtors only raise arguments in support of their Motion for Reconsideration that the Court has implicitly or actually considered, and rejected, and because they do not demonstrate the existence of any mistake, inadvertence, surprise, excusable neglect, fraud or newly discovered evidence (or suggest the existence of any intervening change in the law, the availability of new evidence, or clear error that the Court must correct), their Motion to Reconsideration is denied. The Court further finds that additional oral argument on this Motion will not materially assist the Court, and for that reason, the hearing Debtors scheduled for March 23, 2010 is canceled.

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