United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy No. 99 B 02199

Adversary Caption: The People of the State of Illinois v. Joseph P. Monahan, II

Adversary No. 99 A 00602

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Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: JOSEPH P. MONAHAN, II, Debtor.	)	Chapter 7 Bankruptcy No. 99 B 02199 Judge John H. Squires
THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of Illinois, Plaintiff, v. JOSEPH P. MONAHAN, II, Defendant.	)	Adversary No. 99 A 00602

MEMORANDUM OPINION

This matter comes before the Court on the motion of The People of the State of Illinois (the "State") to reconsider a ruling by this Court on March 6, 2000 whereby this adversary proceeding was dismissed without prejudice. For the reasons set forth herein, the Court denies the motion.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(I).

II. FACTS AND BACKGROUND

The State filed this adversary proceeding against Joseph P. Monahan, II (the "Debtor") on April 30, 1999, alleging that the debt owed it by the Debtor was non-dischargeable under 11 U.S.C. § 523(a)(4). The State is a creditor of the Debtor as the result of a judgment entered by the Circuit Court of Cook County, Illinois on August 12, 1998 in the sum of $44,372.00. That court issued a detailed Memorandum Opinion, Findings of Fact, Conclusions of Law and Judgment (the "State Court Opinion").

On November 19, 1999, the Court entered a Final Pretrial Order setting the matter for trial on March 6, 2000. That Final Pretrial Order required the parties to perform the following requirements at least fourteen days prior to the trial date: (1) file with the Court copies of all exhibits they intend to introduce into evidence; (2) file with the Court the names of all witnesses they intend to present at trial, together with a brief summary of the area of testimony each witness will present; and (3) complete discovery. In addition, both parties were required to file proposed findings of fact and conclusions of law seven days prior to the trial date. The Final Pretrial Order also provided for sanctions for failure to comply with the terms thereof. Several possible sanctions including barring exhibits and witnesses were enumerated, but were not inclusive.

On January 11, 2000, the State filed a motion for summary judgment. As a part of that motion, the State attached the State Court Opinion and contended that document, from its four corners, established that the debt thereunder was non-dischargeable under § 523(a)(4). Subsequently, the Debtor filed a motion for summary judgment on February 2, 2000. On February 4, 2000, the Court entered an order granting the State until February 15,

2000 to respond to the Debtor's motion. The Court afforded the Debtor until February 22, 2000 to file a reply thereto. The Court also entered an order treating the Debtor's motion for summary judgment as a response to the State's motion.

After the parties complied with the briefing schedule set by the Court, the Court took the cross motions under advisement. Shortly thereafter, on February 24, 2000, the Court denied both motions in a written Memorandum Opinion. See The People of the State of Illinois v. Monahan (In re Monahan), Ch. 7 Case No. 99 B 02199, Adv. No. 99 A 00602, 2000 WL 225893 (Bankr. N.D. Ill. Feb. 24, 2000). The Court denied the State's motion because it did not file a statement of material facts pursuant to Local Bankruptcy Rule 402.M. Id. at *4. In addition, the Court denied the Debtor's motion because a genuine issue of material fact existed regarding whether the Debtor committed fraud or defalcation under § 523(a)(4). Id. at *8.

On March 6, 2000, both parties appeared before the Court for the scheduled trial. Neither party had complied with any of the terms of the Final Pretrial Order. As a result of their non-compliance and as a sanction therefor, the Court barred each party from introducing witnesses or exhibits, struck all pleadings and dismissed the adversary proceeding without prejudice. The Court entered an order on that date (the "Sanctions Order"). It is this ruling that the State seeks the Court to reconsider.

On March 16, 2000, the State filed the instant motion to reconsider. The State contends that its intent from the commencement of the adversary proceeding was to introduce only a certified copy of the State Court Opinion because it believed that based on the facts within the four corners of that document, a finding of non-dischargeability would

be made. The State further maintains that it believed that it had complied with the Court's Final Pretrial Order by its submission of the motion for summary judgment because the State Court Opinion was attached to that motion and relied on by the State in support of its motion. The State contends that after it reviewed the Court's denial of its motion for summary judgment, it came to the conclusion that testimony and other exhibits would be necessary at trial to address the concerns stated by the Court in its Opinion. The State maintains that it reached this decision five days prior to the trial date and noticed the Debtor as a witness.

III. APPLICABLE STANDARDS

The State seeks to vacate the Sanctions Order pursuant to Federal Rule of Bankruptcy Procedure 9024, which incorporates by reference Federal Rule of Bankruptcy Procedure 60. Procedurally, the State has erred in its citation to the inappropriate rule. The Seventh Circuit has made it clear that under the former version of Rule 59, the time of a motion's service controlled whether it was treated as a Rule 59(e) motion. See Helm v. Resolution Trust Corp., 43 F.3d 1163, 1166 (7th Cir. 1995). If such a motion was served within ten days of a final judgment, it was considered a Rule 59(e) motion. United States v. Deutsch, 981 F.2d 299, 301 (7th Cir. 1992); Charles v. Daley, 799 F.2d 343, 347 (7th Cir. 1986). Effective December 1, 1995, Rule 59(e) was amended to require that "[a]ny motion to alter or amend a judgment shall be *filed* no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e) (emphasis supplied). The State's motion was filed on March 16, 2000, which is within ten days of the entry of the Sanctions Order on the docket. Hence, Rule 59(e) governs this matter.

Rule 59(e) motions serve a narrow purpose and must clearly establish either a manifest error of law or fact or must present newly discovered evidence. Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir. 1996); Federal Deposit Ins. Corp. v. Meyer, 781 F.2d 1260, 1268 (7th Cir. 1986); Publishers Resource, Inc. v. Walker-Davis Publications, Inc., 762 F.2d 557, 561 (7th Cir. 1985). "The rule essentially enables a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." Russell v. Delco Remy Div. of General Motors Corp., 51 F.3d 746, 749 (7th Cir. 1995) (citation omitted). The function of a motion to alter or amend a judgment is not to serve as a vehicle to relitigate old matters or present the case under a new legal theory. Moro, 91 F.3d at 876 (citation omitted); King v. Cooke, 26 F.3d 720, 726 (7th Cir. 1994), cert. denied, 514 U.S. 1023 (1995). Moreover, the purpose of such a motion "is not to give the moving party another 'bite of the apple' by permitting the arguing of issues and procedures that could and should have been raised prior to judgment." Yorke v. Citibank, N.A. (In re BNT Terminals, Inc.), 125 B.R. 963, 977 (Bankr. N.D. Ill. 1990) (citations omitted). The rulings of a bankruptcy court "are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure." See Quaker Alloy Casting Co. v. Gulfco Indus., Inc., 123 F.R.D. 282, 288 (N.D. Ill. 1988). "A motion brought under Rule 59(e) is not a procedural folly to be filed by a losing party who simply disagrees with the decision; otherwise, the Court would be inundated with motions from dissatisfied litigants." BNT Terminals, 125 B.R. at 977. The decision to grant or deny a Rule 59(e) motion is within the Court's discretion. See LB Credit Corp. v. Resolution Trust Corp., 49 F.3d 1263, 1267 (7th Cir. 1995).

IV. DISCUSSION

The Court finds that the State has failed to present any newly discovered evidence or made a showing that the Court committed a manifest error in the Sanctions Order. The State had the State Court Opinion available to it, and in fact, relied on that Opinion in support of its motion for summary judgment, which the Court considered. Further, the State had other documents contained in the state court proceeding available to it as well. In addition, the State was aware of the existence of the Debtor and his ability to testify as to the matters surrounding the judgment debt. Neither the State Court Opinion, any documents in the state court file, nor the Debtor's testimony about the matter at bar constitutes newly discovered evidence.

Further, the State has failed to demonstrate that the Court made a manifest error of law or fact. The State argues that its failure to comply with the Final Pretrial Order should somehow be excused because it filed the motion for summary judgment shortly before the trial date, and the Court issued a written ruling only ten days prior to the scheduled trial date. The State contends that by the time the Court issued its ruling, there was not sufficient time to meet the pretrial order schedule as to witnesses, exhibits and proposed findings of fact and conclusions of law. The Court rejects this disingenuous attempt by the State to excuse or overlook its total noncompliance with the Final Pretrial Order with which its attorneys were served with and aware of four months prior to the scheduled trial. The State's delay in waiting until less than two months before trial to file its procedurally flawed summary judgment motion produced the resultant order denying same the following month.

The imposition of sanctions for the failure to comply with a pretrial order has been upheld by the Seventh Circuit Court of Appeals. See In re Maurice, 21 F.3d 767 (7th Cir. 1994). Specifically, that court noted "[w]hen one party fails to comply with a court's pre-hearing order without justifiable excuse, thus frustrating the purposes of the pre-hearing order, the court is certainly within its authority to prohibit that party from introducing witnesses or evidence as a sanction." Id. at 773. The excuse offered here by the State is not justifiable, and, if accepted, would virtually eviscerate the purposes for which final pretrial orders are entered.

The Court has the inherent and statutory power to sanction parties or attorneys for failure to follow orders of the Court. Federal Rule of Bankruptcy Procedure 7016, which adopts Rule 16 of the Federal Rules of Civil Procedure for application in adversary proceedings, states in relevant part:

> (f) Sanctions. If a party or party's attorney fails to obey a ... pretrial order, ... the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D).

Fed. R. Bankr. P. 7016(f). Rule 37 provides the Court with a wide range of sanctions to draw upon in the event of a party's noncompliance. They include, among other sanctions, prohibiting the introduction of evidence, dismissing the action, entering a judgment against the disobedient party, and treating the noncompliance as contempt. See Fed. R. Civ. P. 37.

The pretrial order is a valuable tool for "identifying witnesses and resolving evidentiary disputes in advance of trial, thus narrowing the issues and expediting the trial." Maurice, 21 F.3d at 773. As one court noted, "[i]f the Court's Pre-trial Orders were not

enforced with sanctions, they might routinely be ignored and, consequently, trials would become riddled with unfair surprises that would impede and hamper the judicial process." Schilling v. O'Bryan (In re O'Bryan), Nos. 98-30660, 98-3207, 1999 WL 1577951 at *7 (Bankr. W.D. Ky. Jan. 29, 1999).

Hence, the Court finds that it was well within its discretion and did not abuse it to bar the parties from submitting any exhibits or witnesses, striking the pleadings and dismissing the adversary proceeding without prejudice for their mutual and complete failure to comply with the Final Pretrial Order.

Even if the Court would have allowed the State to proceed at trial, it would not have met its burden of proof under § 523(a)(4). The State contends in the motion to reconsider that if the Court were to allow it to proceed to trial, it would present only the State Court Opinion and would not introduce any other exhibits or witnesses. The State maintains that based on the facts within the four corners of the State Court Opinion, a finding that the debt owed it by the Debtor was non-dischargeable was warranted.

Based upon the State Court Opinion, the Court finds that the State would not have met its burden of proof under § 523(a)(4) and In re Marchiando, 13 F.3d 1111 (7th Cir.), cert. denied, 512 U.S. 1205 (1994). As the Court noted in its prior Opinion, it is not clear, based on the State Court Opinion, whether the Debtor had a position of ascendancy over either the ticket purchasers who entrusted their money to him, or the intended beneficiaries of the raffle, the winner and the charity, as required by Marchiando. Monahan, 2000 WL 225893 at *8. Also, as the Court previously noted, there is an issue as to whether the Debtor had a similar position over Maryville Academy. Id. The requisite degree and control and

ascendancy required by Marchiando is not expressly stated or found by the State Court Opinion, which does not, ipso facto, meet the State's burden of proof. More was required to be shown in light of the Debtor's assertions that Maryville Academy had access to the bank account and that there were other agents involved in the ticket sales.

Consequently, the Court finds that even if it would have allowed the State to proceed to trial and introduce only the State Court Opinion into evidence, it would not have met its burden of proof under § 523(a)(4) per Marchiando. Thus, the Court would have found the debt owed by the Debtor to the State dischargeable.

V. CONCLUSION

For the foregoing reasons, the Court denies the State's motion to reconsider.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____

_____
John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: JOSEPH P. MONAHAN, II, Debtor.	)	Chapter 7 Bankruptcy No. 99 B 02199 Judge John H. Squires
THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of Illinois, Plaintiff, v. JOSEPH P. MONAHAN, II, Defendant.	)	Adversary No. 99 A 00602

O R D E R

For the reasons set forth in a Memorandum Opinion dated the 1st day of May, 2000, the Court hereby denies the motion of The People of the State of Illinois to reconsider a ruling made on March 6, 2000, whereby the Court dismissed this adversary proceeding without prejudice.

ENTERED:

DATE: _____

_____
John H. Squires
United States Bankruptcy Judge

cc: See attached Service List