

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 15-50172
	)	Chapter 7
JOCELYN FAYE PRANG	)	
aka Jo Prang	)	DECISION RE: TRUSTEE'S
SSN/ITIN xxx-xx-8874	)	MOTION FOR RECONSIDERATION
	)	
Debtor.	)	

The matter before the Court is Trustee Forrest C. Allred's Motion for Reconsideration regarding the order granting in part and denying in part Trustee Allred's Motion for Turnover. This is a core proceeding under 28 U.S.C. § 157(b)(2). The Court enters these findings and conclusions pursuant to Fed.Rs.Bankr.P. 7052 and 9014(c). For the reasons discussed below, the Court will deny the motion.

I.

Trustee Forrest C. Allred filed a Motion for Turnover (doc. 21). Therein, he asked the Court to order Debtor to turn over an IRA, a 401(k) account, and certain real property, all of which Debtor had claimed exempt. Trustee Allred argued Debtor was required to surrender this property pursuant to 11 U.S.C. § 521(a)(4) because the property remained liable for certain taxes described in 11 U.S.C. § 507(a)(8)(C), and upon turnover, Trustee Allred would liquidate the items. Debtor objected, saying the trustee did not have statutory authority to pursue these exempt assets (doc. 25).

A hearing was held November 19, 2015. The parties offered only their written submissions. The Court, noting no facts were in dispute, issued an oral ruling, granting the motion in part and denying the motion in part. A docket text entry order memorializing the oral ruling was entered following the hearing (doc. 33):

DISPOSITION: In recognition of and compliance with the findings and conclusions entered on the record; now, therefore, IT IS HEREBY ORDERED Trustee Allred's motion is denied as to the subject IRA and 401k account and granted as to the subject real property, which Trustee Allred may proceed to liquidate under the applicable code provisions to realize the estate's share of the nonexempt equity therein. SO ORDERED: /s/ Charles L. Nail, Jr., Bankruptcy Judge. (nsar) (Entered:

11/19/2015)[.]

On December 4, 2015, Trustee Allred filed a Motion for Reconsideration (doc. 36). He asked the Court to reconsider that portion of its order that denied the turnover motion as to the IRA and the homestead. Relying on dictionary definitions for "exempt," he argued property could not be both exempt and liable at the same time and so the subject items remained property of the estate subject to turnover. He also argued if he liquidated the subject property, he could marshal the assets to pay the large Internal Revenue Service priority claim while preserving some of the equity in the homestead to pay unsecured creditors.

II.

In his Motion for Reconsideration, Trustee Allred did not identify any statutory provision or any federal rule of bankruptcy procedure or federal rule of civil procedure under which he seeks relief. Because he did not specify the grounds for the relief sought, the Court needs to examine both Fed.Rs.Civ.P. 59(e) and 60(b). *Sanders v. Clemco Indus.*, 862 F.2d 161, 168 (8th Cir. 1988). Rules 59(e) and 60(b) are made applicable to contested matters in bankruptcy cases pursuant to Fed.Rs.Bankr.P. 9023 and 9024.

A motion filed under Fed.R.Civ.P. 59(e) and Fed.R.Bankr.P. 9023 must be filed within 14 days after entry of the judgment or order. Since Trustee Allred's motion was filed outside that 14 days, it cannot be considered further under Rule 59(e).

Rule 60(b) sets forth several grounds for relief from a final judgment or order.

Rule 60(b) is to be given a liberal construction so as to do substantial justice and to prevent the judgment from becoming a vehicle of injustice. The motion is derived from equity and exists to preserve the delicate balance between the sanctity of final judgments and the incessant command of a court's conscience that justice be done in light of all the facts. Although Rule 60(b) motions are disfavored, the Eighth Circuit has also recognized that they serve a useful, proper and necessary purpose in maintaining the integrity of the trial process[.]

*O'Daniel v. Stroud NA*, No. CIV. 05-5089-KES, 2008 WL 5192457, at \*1 (D.S.D.

Dec. 9, 2008) (internal citations and quotations omitted). A motion for relief from a judgment or order filed under Fed.R.Civ.P. 60(b) must be filed within a reasonable time and, if relief is sought under subsections (b)(1), (2), or (3), no more than one year after the judgment or order is entered. Fed.R.Civ.P. 60(c)(1).

III.

There is nothing to indicate Trustee Allred's motion was not filed timely under Rule 60(b). The merits of the motion under Rule 60(b) are, however, found lacking.

Trustee Allred has not identified any mistake, inadvertence, surprise, or excusable neglect. Fed.R.Civ.P. 60(b)(1). He has not claimed he has newly discovered evidence. Fed.R.Civ.P. 60(b)(2). Trustee Allred has not claimed anyone defrauded the Court. Fed.R.Civ.P. 60(b)(3). He has made no showing the order is void or has been satisfied. Fed.R.Civ.P. 60(b)(4) and (5). Thus, we are left with the catchall provision under Fed.R.Civ.P. 60(b)(6).

Rule 60(b)(6) authorizes relief from final judgments in extraordinary circumstances. *Watkins v. Lundell*, 169 F.3d 540, 544 (8th Cir. 1999). Relief under this rule is exceedingly rare as relief requires an "intrusion into the sanctity of a final judgment." *Id.* "Exceptional circumstances are not present every time a party is subject to potentially unfavorable consequences as a result of an adverse judgment properly arrived at. Rather, exceptional circumstances are relevant only where they bar adequate redress." *Atkinson v. Prudential Prop. Co., Inc.*, 43 F.3d 367, 373 (8th Cir. 1994) (internal quotations omitted).

*In re Guidant Corp. Implantable Defibrillators Products Liability Litigation*, 496 F.3d 863, 868 (8th Cir. 2007). Under this provision, the movant must show exceptional circumstances have denied that party a full and fair opportunity to litigate the matter at hand and have prevented the party from receiving adequate redress. *Ingram v. Cole County*, No. 2:15-cv-04156-NKL, 2015 WL 7738371, at \*4 (W.D. Mo. Nov. 30, 2015).

Trustee Allred has not identified what extraordinary circumstance is present or what exceptional circumstance denied him a full and fair opportunity to litigate his

Motion for Turnover. Thus, his Motion for Reconsideration must be denied.

Trustee Allred's concern the Internal Revenue Service's priority claim will gobble up all the equity in the real property before any funds go to unsecured creditors is legitimate. In light thereof, Trustee Allred may want to determine whether any statutory provisions regarding claim subordination or asset marshaling can aid him. He has not, however, shown a possible unfavorable consequence resulting from the Internal Revenue Service's large priority claim and the bankruptcy code provisions governing it, property of the estate, and exempt property constitute an exceptional circumstance warranting an alteration of the Court's earlier order. *Atkinson*, 43 F.3d at 373.

Finally, to alleviate any misconstruing of the Court's oral ruling, it will be reiterated here: Trustee Allred's Motion for Turnover (doc. 21) was denied for two reasons. Under § 542(a), a trustee is entitled to the turnover of property the trustee may use, sell, or lease under 11 U.S.C. § 363. Only property of the estate is subject to § 363. Because the IRA and the 401(k) account were properly claimed exempt, they are no longer property of the estate subject to § 363 and thus they are not subject to turnover. 11 U.S.C. § 522(b)(1); *Benn v. Cole (In re Benn)*, 491 F.3d 811, 813 (8th Cir. 2007). Second, under § 542(a), Trustee Allred is not entitled to the turnover of property that has an inconsequential value or benefit to the estate. The record does not show the IRA and the 401(k) account have a value or benefit to the bankruptcy estate; the IRA and the 401(k) account may benefit the Internal Revenue Service, which may, outside bankruptcy, seek recovery of its claims against this property. 11 U.S.C. § 522(c).

Trustee Allred's Motion for Turnover was granted as to the bankruptcy estate's interest in the real property Debtor claimed partially exempt as her homestead. The record shows there is nonexempt equity above Debtor's claimed homestead exemption, which the bankruptcy estate may share with the nondebtor co-owner. Trustee Allred may seek the Court's authority to liquidate this real property to recover the estate's interest therein, while paying Debtor her claimed homestead exemption

and paying the nondebtor co-owner the co-owner's share. Trustee Allred, however, may need to file an adversary proceeding to obtain the necessary authority for the sale under 11 U.S.C. § 363(h) and Fed.R.Bankr.P. 7001(3) *if* the co-owner of the real property does not consent to the sale. If the co-owner consents to the sale, Trustee Allred's motion for authority to sell will fall under § 363(f).

An appropriate order will be entered.

Dated: December 11, 2015.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Charles L. Nail, Jr.", is written over a faint, illegible printed name.

Charles L. Nail, Jr.  
Bankruptcy Judge

**NOTICE OF ENTRY**  
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered  
on the date shown above.

Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 15-50172
	)	Chapter 7
JOCELYN FAYE PRANG	)	
aka Jo Prang	)	ORDER DENYING TRUSTEE'S
SSN/ITIN xxx-xx-8874	)	MOTION FOR RECONSIDERATION
	)	
Debtor.	)	

In recognition of and compliance with the decision entered this day; and for cause shown; now, therefore,

IT IS HEREBY ORDERED Trustee Forrest C. Allred's Motion for Reconsideration (doc. 36) is denied.

So ordered: December 11, 2015.

BY THE COURT:



Charles L. Nail, Jr.  
Bankruptcy Judge

NOTICE OF ENTRY  
Under Fed.R.Bankr.P. 9022(a)

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