UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**JUDGE RICHARD L. SPEER**
Renee Stupka	)	
	)	Case No. 02-3446
Debtor(s)	)	
	)	(Related Case: 02-36514)
Renee Stupka	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
Great Lakes Ed., et al.	)	
	)	
Defendant(s)	)	

DECISION AND ORDER

This cause comes before the Court after a Hearing on the Plaintiff/Debtor's Motion for Reconsideration of this Court's Memorandum Opinion and Decision dated July 25, 2003. In her Motion, it is the Debtor's position that the Court erred when, although granting her a partial discharge under 11 U.S.C. § 105(a), the Court denied the Debtor a full discharge of her student-loan obligations for failing to meet the "undue hardship" standard of 11 U.S.C. § 523(a)(8). In attendance at the Hearing was the Debtor, Joseph Westmeyer, Jr. as counsel for the Debtor, and Matthew Thompson, as counsel for the Defendant, Educational Credit Management Corporation.

It is well-established that a "motion for reconsideration," not being expressly recognized by either the Federal Rules of Procedure or the Bankruptcy Rules of Procedure, is treated as either a Motion to Alter or Amend under Rule 59, or a Motion for Relief from Judgment under Rule

60(b). *Melton v. Melton (In re Melton)* 238 B.R. 686, 694 (Bankr. N.D.Ohio 1999). Under which Rule the motion falls turns on the time at which the motion is filed: If the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59; if it is served after that time, it falls under Rule 60(b). In this case, the Debtor's Motion for Reconsideration was filed seven days after the entry of this Court's Memorandum Opinion and Decision. Accordingly, the Debtor's Motion will be addressed under the standard set forth in Rule 59 of the Federal Rules of Civil Procedure, which is made applicable to this proceeding by Bankruptcy Rule 9023.

In order to sustain a Rule 59 Motion, it must be shown that the court made a mistake, either factually or legally. *Innovative Home Health Care. Inc. v. P.T.-O.T. Associates of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir.1998). As it relates thereto, the Debtor called this Court's attention to what she perceived as two points of misunderstanding. First, the Debtor pointed out that contrary to a statement made in this Court's Memorandum Opinion and Decision, she did not actually default on her student-loan obligations, but had instead obtained deferments. Second, in addressing this Court's concern that she never attempted to participate in what is known as the Income Contingent Repayment Program, the Debtor set forth that "she was never made aware of its existence." (Doc. 19, at pg. 2).

From a technical standpoint, the first point raised by the Debtor is correct: the Debtor, contrary to what was stated in this Court's Opinion, did not actually default on her student-loan debts, but instead had obtained deferments. Nevertheless, not all factual mistakes require the alteration or amendment of a court order; rather, before the mischaracterization of a factual matter will sustain a Motion made under Rule 59, it must be shown that the error materially affected the correctness of the judgment. *Matter of Prince*, 85 F.3d 314, 324 (7th Cir. 1996) (motion to alter or amend requires that there exist a manifest error of law or fact). In this case, however, this standard has not been met as it is clear from its context that this Court's decision did not hinge, much less seriously consider the distinction between "default" and "deferment." In fact, the issue of "default"

is only raised one time in this Court's Opinion, and then only in passing. Instead, this Court's use of the word "default" was simply meant to signify that regardless of the particular circumstances, the Debtor had, for a period of time, failed to make payments on her student-loan debt.

Similarly, the Debtor's second point, concerning her lack of knowledge of the Income Contingent Repayment Program, is deficient, both legally and factually. First, from a legal perspective, the Debtor's lack of knowledge of the Income Contingent Repayment Program is being raised for the first time; a motion to alter or amend, however, does not permit a party to advance an argument that could have been presented prior to the rendition of the judgment. *Popovits v. Circuit City Stores, Inc.*, 185 F.3d 726 (7th Cir.1999). Regardless, from a factual viewpoint, the standard of "undue hardship" under § 523(a)(8) contemplates that a debtor will at least explore alternate payment options for his or her student-loan debt. Thus, a debtor's ignorance of alternate payment options is anything but a positive factor. *See Alderete v. Colo. Student Loan Program for the State of Colo. (In re Alderete)*, 289 B.R. 410, 419-20 (Bankr. D.N.M. 2002) (debtor's failure, until after commencement of case, to investigate payment plan that would significantly reduce payments, factored into issue of good faith). This is especially true in this case considering that the Debtor is an attorney, and thus was thoroughly competent to investigate alternate payment options. *See Grine v. Texas Guaranteed Student Loan Corp. (In re Grine)*, 254 B.R. 191, 198 (Bankr. N.D.Ohio 2000) (a sophisticated debtor's failure to explore all avenues available for financial help may be considered in a good faith analysis).

In addition to the above, the Debtor, at the hearing held in this matter, sought to explain a couple of other matters which the Court had previously found reflected negatively on her "good faith" effort to repay her student-loan obligations. Namely, the Debtor explained that she did not give up her law license because of the time she had invested in the profession, and the Debtor related to the Court that she has maintained an interest in a timeshare because taking a trip thereto

allowed her quality time with her child. Both of these statements, however, lack sufficient persuasive force to change this Court's prior decision.

First, the Debtor's former statement does not change the fact that, as set forth in this Court's Memorandum Opinion and Decision, the Debtor has still retained a tangible benefit from her student-loan obligations. Secondly, the latter point made by the Debtor lacks persuasive strength as many people, in order to pay their student-loan obligations, forego activities that they would otherwise like to undertake. In fact, one of the foundations of the "undue hardship" standard of § 523(a)(8) is that a debtor, despite having made major sacrifices in their lifestyle, is still unable to pay their student loans. In this regard, while the Court can appreciate the Debtor wanting to spend quality time with her child, there are surely other ways this can be accomplished – e.g., trips to the park, activities around the home.

Also at the hearing held in this matter, the Debtor reiterated and expanded upon a number of factual items originally brought forth at the Trial held in this case. In this regard, the Debtor emphasized four particular points: (1) her mental illness has not improved; (2) she now has custody of her child, for whom she receives minimal support; (3) she has come close to losing her part-time job; and (4) due to a confluence of circumstances, her personal, out-of-pocket expenses will increase for the drugs she takes on account of her mental illness.

Although not questioning the veracity of the above statements, such statements clearly only relate to the first and second prongs of the Brunner Test – that is, whether the circumstances surrounding a debtor's inability to pay a student loan will likely persist for a significant period of time The Court, however, has already held that the Debtor met her burden under prongs one and two of the Brunner Test. Instead, solely at issue in the Debtor's Motion to Reconsider was whether this Court should revise its holding so as to find that the Debtor acted in "good faith" vis-a-vis her

student-loan obligations as is required under the third and final prong of the Brunner Test. As such, the above points, not directly relating to the issue of "good faith," must be discounted.

Based therefore on the reasons set forth above, the Court declines to alter its prior decision rendered in this matter. However, before concluding, the Court would like to address one issue which was not previously discussed in this Court's prior Memorandum Opinion and Decision.

The Debtor's underlying basis for seeking an "undue hardship" discharge of her student-loan debts rests entirely upon her contention that her mental illness is severely debilitating. In this respect, the Court's acceptance of the debilitating nature of the Debtor's illness was crucial in this Court's decision to exercise its equitable powers under § 105(a) so as to effectuate a partial discharge of the Debtor's student-loan obligations. However, as pointed out in this Court's prior Memorandum Opinion and Decision, very little collaborating evidence was offered concerning the debilitating nature of the Debtor's mental illness. Furthermore, and although not actually addressed in this Court prior discussion on the matter, this lack of corroborating evidence becomes especially problematic given that the Debtor also contends that she is completely competent to care for her minor child, for whom she now has complete legal custody. Thus, what the Debtor has, in essence, proposed is this: her mental illness, while not so severe so as to render her unfit to be a custodial parent, is of sufficient severity so as to prevent her from obtaining any sort of employment which would enable her to pay a relatively low student-loan debt (i.e., $7,500.00 at no interest at the monthly rate of just $45.00). These two positions, while not necessarily opposed to one another, do have a large degree of incongruity. Nevertheless, the Court, like those other matters discussed above, will not secondguess its prior decision concerning the severity of the Debtor's mental illness.

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

ORDERED that the Motion of the Plaintiff/Debtor, Renee Stupka, for Reconsideration of this Court's Memorandum Opinion and Decision dated July 25, 2003, be, and is hereby, DENIED.

Dated:

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Richard L. Speer
United States
Bankruptcy Judge