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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: ) CASE NO. 03-56778  
)  
)  
JOHN L. MACKEY, IV, and TONI L. ) CHAPTER 7  
MACKEY, )  
)  
)  
DEBTOR(S) )  
) **ADVERSARY NO. 04-5079**  
ROBIN J. MACKEY, )  
) **JUDGE MARILYN SHEA-STONUM**  
)  
PLAINTIFF(S), )  
)  
)  
vs. )  
) **ORDER DENYING MOTION FOR**  
) **RECONSIDERATION [DOCKET #**  
) **29]**  
)  
DEFENDANT(S).

The Court conducted a trial in this proceeding on June 13, 2005. Pursuant to that trial the Court, on August 26, 2005, issued a Memorandum Opinion Re: Dischargeability (the "Memorandum Opinion") [docket #25] and entered judgment (the "Judgment") [docket #26] partially in favor of plaintiff and against defendant-debtor.

On September 9, 2005, Plaintiff filed a "Motion for Reconsideration" [docket #29] (the "Motion for Reconsideration"). The Motion for Reconsideration makes three requests of the Court. Those requests are for the Court: 1) to amend or add to the Judgment language memorializing the stipulation of counsel with respect to Count II, which stipulation was filed with the Court on October 3, 2004 [docket #13]; (2) to amend or add to the Judgment language memorializing the stipulation of counsel with respect to Count I, which stipulation

was reached during the trial of this adversary proceeding and is referenced in the Memorandum Opinion; and (3) “to reconsider its decision that the attorney’s fees awarded as part of the parties’ divorce were not in the nature of spousal support, and thus were dischargeable.” No response has been filed to the Motion for Reconsideration.

A motion for reconsideration is not recognized under the Federal Rules of Civil Procedure, *see Inge v. Rock Fin. Corp.*, 281 F.3d 613, 617 (6th Cir.2002); *In re Long*, 255 B.R. 241, 244 (10th Cir. BAP 2000), and Plaintiff did not indicate whether she is relying upon Fed. R. Civ. P. 59 or 60. Presumably, Plaintiff intended her Motion for Reconsideration to be treated as a motion to alter or amend judgment pursuant to Fed.R.Civ.P. 59, made applicable to bankruptcy cases pursuant to Fed. R. Bankr. P. 9023 or, in the alternative, as a motion for relief from judgment pursuant to Fed.R.Civ.P. 60., made applicable to bankruptcy cases pursuant to Fed. R. Bankr. P. 9024.

#### **Rule 59**

Plaintiff’s first two requests in her Motion for Reconsideration appear to request relief under FED R. CIV. P. 59. To the extent Plaintiff sought to obtain relief pursuant to FED. R. CIV. P. 59(e), the Motion for Reconsideration is not timely filed. Motions made pursuant to FED. R. CIV. P. 59 must be filed no later than 10 days after the entry of the judgment. In this case, the judgment was entered on August 26, 2005 and Plaintiff did not file her motion until September 9, 2005, more than ten days after the entry of the judgment. Therefore, to the extent the Plaintiff’s Motion for Reconsideration was filed pursuant to FED. R. CIV. P 59, it is denied as untimely.

#### **Rule 60**

FED. R. CIV. P. 60 allows for relief from a judgment or order in certain limited

circumstances, such as to correct manifest errors of fact or law or to present newly discovered evidence. In pertinent part, FED. R. CIV. P. 60 provides,

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

In its third request, Plaintiff's Motion for Reconsideration renews and reiterates the legal arguments which the Court disposed of in its Memorandum Opinion, essentially arguing that the Court committed legal error.

a claim of legal error [is] subsumed in the category of mistake under Rule 60(b)(1). A 60(b)(1) motion based on legal error must be brought within the normal time for taking an appeal.

*Pierce v. United Mine Workers of America Welfare and Retirement Fund for 1950 and 1974*, 770 F.2d 449, 451 (6th Cir.1985); accord *In re White Motor Corp.*, 65 B.R. 383 (Bankr. N.D. Ohio 1986).

It is settled that a 60(b) motion "cannot be used to avoid the consequences of a party's decision ... to forego an appeal from an adverse ruling." This admonition applies with particular force to a motion based on legal error. The interests of finality of judgments and judicial economy outweigh the value of giving a party a second bite of the apple by allowing a 60(b) motion, after the appeal period has run, on the same legal theory that would have been asserted on appeal.

*Pierce*, 770 F.2d at 451-52 (citation omitted). Based on this controlling precedent, the Court finds that to the extent the Plaintiff's Motion for Reconsideration was intended to sound under

the provisions of FED. R. CIV. P. 60(b)(1), it is denied as untimely.

Plaintiff has not suggested that there is any newly discovered evidence, fraud, or any other reason justifying relief from the operation of the Judgment. Therefore, Plaintiff's Motion for Reconsideration is not well taken.

Based upon the Court's review of the Plaintiff's Motion for Reconsideration and for the reasons set forth above, that motion is hereby DENIED.

IT IS SO ORDERED.

  
Marilyn Shea-Stonum  
United States Bankruptcy Judge

cc: (via electronic mail) Heidi M. Cisan  
Terrence G.P. Kane