

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 12-19096
)
MICHELLE PARHAM,) Chapter 13
)
Debtor.) Chief Judge Pat E. Morgenstern-Clarren
)
) **ORDER GRANTING IN PART AND**
) **DENYING IN PART THE MOTION**
) **TO RECONSIDER**

Chapter 13 debtors must agree to make regular payments to the chapter 13 trustee who, in turn, distributes the money to creditors and administrative claimants. In this case, the debtor agreed via a wage order¹ to have her employer withhold money from her paycheck and turn it over to the trustee to fund her repayment plan, an approach that is widely viewed as increasing a plan's chance for success. The exact opposite occurred in this case when Greene Arches, Inc. and Forever Young Enterprises, Inc. withheld the debtor's money, but failed to send it to the trustee as required by the wage order. By doing so, they used the debtor's money for their own benefit for some period of time and caused the debtor to default on her plan.²

The debtor filed her motion for sanctions against her employers on October 29, 2014.³ After notice and hearings, the court held Greene Arches and Forever Young in contempt for violating the wage order on February 11, 2015 (the contempt order), followed by these two additional orders: the February 20, 2015 order imposing a daily fine and the March 25, 2015

¹ Docket 12.

² Docket 34, 36.

³ Docket 37.

order awarding attorney fees as a sanction against the contemnors. (Docket 43, 48, 52). The contemnors now move to reconsider the February 20, 2015 and March 25, 2015 orders, or for other relief. (Docket 58). Although the motion to reconsider is denied, the court will grant the request for alternative relief and reduce the amount of the fine owed by the contemnors.⁴

FACTS

The underlying facts are stated in the contempt order and will be repeated here only insofar as necessary to address the motion to reconsider. (Docket 43).⁵ The contempt order instructed Greene Arches and Forever Young to account in writing by February 18, 2015 for amounts they withheld from the debtor's wages and to promptly forward the funds to the chapter 13 trustee. The order (1) warned them that a daily fine of \$100.00 would be imposed if they failed to do so; and (2) awarded the debtor attorney fees as a sanction, in an amount to be determined.

Pat Nally, a non-lawyer employee of the contemnors, filed an unsigned document on February 18, 2015 bearing the typed name "Greene Arches 16491, Inc."⁶ (The court warned Mr. Nally at an earlier hearing that he could not represent either corporation and they needed to retain counsel. The corporations chose not to do so, for reasons that are not in the record.) The

⁴ A hearing on the motion is unnecessary as motions of this nature are generally decided on the papers filed.

⁵ Greene Arches and Forever Young had ample notice and the opportunity to be heard on the contempt issue. Their office manager appeared at the initial show cause hearing and acknowledged the employers failed to comply with the wage order on more than one occasion. Additionally, the court entered the contempt order only after adjourning the matter for discussion several times. The parties did not reach agreement and Greene Arches and Forever Young failed to appear at the final hearing.

⁶ Docket 47.

filing showed a history of repeated failures to comply with the wage order. It also included a statement that most recently the contemnors had withheld money on February 11, 2015, but did not intend to pay it to the trustee until the end of the month. Because the contemnors did not promptly pay over the amounts withheld, the court entered a second order on February 20, 2015 imposing a fine of \$200.00 (\$100.00 per day for the two days that the money had not been sent to the trustee). (Docket 48). And in light of the fact that the earlier orders did not cause the contemnors to comply with the court's orders, the court increased the amount of the fine to \$200.00 a day for every day thereafter until the court determined that the contemnors had complied.

A third order entered on March 25, 2015 quantified the amount of the attorney fee sanction as \$3,487.50. (Docket 52). In a footnote, the court noted that the daily fine of \$200.00 would continue to accrue until the contemnors fully complied with the court's orders. This seems to have gotten the contemnors' attention at last because on April 9, 2015 they filed a motion to reconsider the second and third orders, the first time the corporations entered an appearance in the five months since the debtor filed her motion for sanctions. (Docket 56).

DISCUSSION

The motion does not state a procedural basis for the relief requested which in itself supports denying it. The court will nevertheless consider the issue under Bankruptcy Rules 9023 and 9024, which are the most likely bases. *See* FED. R. BANKR. P. 9023 (incorporating FED. R. CIV. P. 59 with some changes) and FED. R. BANKR. P. 9024 (incorporating FED. R. CIV. P. 60 with some changes).

Bankruptcy Rule 9023

Bankruptcy Rule 9023 as it incorporates Federal Civil Rule 59 provides that a party may move for rehearing or to alter or amend a judgment. Such a motion must be filed no later than 14 days after the judgment is entered, a deadline that cannot be extended. FED. R. BANKR. P. 9023; *see* FED. R. BANKR. P. 9006(b)(2) (stating that enlargement of the time to file a motion under Rule 9023 is not permitted). Rule 9023 does not help the contemnors because they filed their motion 48 days after entry of the February 20, 2015 order and 15 days after entry of the March 25, 2015 order.

Bankruptcy Rule 9024

Bankruptcy Rule 9024 incorporates Federal Civil Rule 60(b), which provides that:

On motion and upon just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). The movant must prove by clear and convincing evidence that grounds for relief exist under this rule. *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 455 (6th Cir. 2008).

The contemnors' motion does not identify a subsection of Rule 60(b) that applies, nor does it make any factual or legal argument that would support a ruling in their favor under this rule. The motion is denied insofar as it requests relief under Rule 60(b) due to these failures.

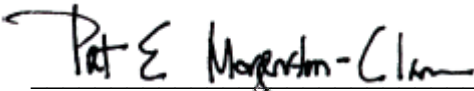
Alternative Request for Relief

Alternatively, the contemnors request that the daily fine end as of February 27, 2015, the date on which they paid the withheld wages to the trustee. The court will grant this request, although the use of a later date to calculate the fine would be justified because the contemnors clearly delayed in seeking a determination as to their compliance. An \$1,800.00 fine is, therefore, imposed on Greene Arches, Inc. and Forever Young Enterprises, Inc. jointly and individually. The amount is calculated as follows: \$200.00 for their failure to forward the funds to the trustee as of February 18 and 19 as provided in the February 20, 2015 order; and \$1,600.00 for their failure to forward the funds from February 20 through February 27 (8 days times \$200.00). The \$1,800.00 fine is to be paid to the Clerk of the United States Bankruptcy Court, N.D. of Ohio by certified check or money order at Cleveland within four business days after the date on which this order is entered.

CONCLUSION

The motion to reconsider is granted in part for the reasons stated.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge