

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 05-19361
)
ARTHUR BOYD, JR.,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

Five alleged creditors of Arthur Boyd filed an involuntary petition against him under chapter 7 of the bankruptcy code. On August 4, 2005, following notice and an evidentiary hearing, the court entered an order for relief against Mr. Boyd.¹ On August 5, 2005, the United States trustee appointed Mary Ann Rabin as the chapter 7 trustee to administer the estate.² On August 30, 2005, the debtor filed these motions:

- (1) Request for rehearing of answer and counterclaim and dismissal of case;
- (2) Motion to impeach Larry Jones for perjury;
- (3) Motion to disqualify as a creditor Lamar Frost for perjury; and
- (4) Motion to disqualify as a creditor Chester Wilson, D.D.S. for perjury and request the entire involuntary petition be dismissed based on perjured testimony.³

¹ Docket 14, 15.

² Docket 17.

³ Docket 28, 29, 30, 32. The debtor filed these motions before he retained counsel.

The petitioning creditors oppose the motions, contending that they are all attempts to question the order entering relief, do not state grounds to reconsider, and do not state grounds for relief from that judgment.⁴ The debtor then filed a document titled “Alleged debtor motion to deny petitioning creditors response based on inadequate filing,”⁵ which the court will treat as a reply.

The debtor did not identify a procedural basis for his motions. The court will, therefore, review them under federal rules of bankruptcy procedure 9023 and 9024, which are the most likely bases for such motions.

Bankruptcy rule 9023 provides that a party may move for a new trial or to alter or amend a judgment. FED. R. BANKR. P. 9023 (incorporating by reference FED. R. CIV. P. 59). Such a motion must be filed no later than 10 days after entry of judgment. FED. R. CIV. P. 59(B), (E). In this case, the court entered the order for relief on August 4, 2005 and the debtor did not file his motions until August 30, 2005, well beyond the 10 day deadline. The deadline is jurisdictional and the motions are accordingly denied as untimely. *See* FED. R. BANKR. P. 9006(b)(2).

Alternatively, the debtor may intend his motions to be motions for relief from judgment under bankruptcy rule 9024, which incorporates federal rule of civil procedure 60(b). That rule states that a court may:

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,

⁴ Docket 43.

⁵ Docket 53.

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.

The debtor has not identified a specific subsection on which he relies or otherwise made a factual argument and record that would support a ruling in his favor on this issue. Although he uses the language of fraud and perjury, he does not state a factual or legal basis sufficient to warrant relief under rule 60(b)(3). What he really argues is that he disagrees with the witnesses' testimony. This is a matter of credibility that the court already considered in making the original decision and is not grounds to set aside the judgment. The motions are denied for this second, alternative, reason.

CONCLUSION

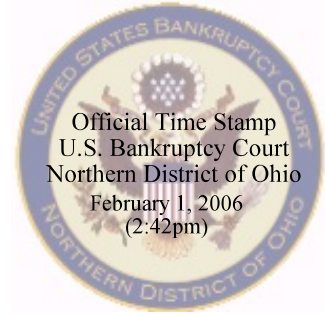
For the reasons stated, the debtor's motions are denied. The court will enter a separate order reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

THIS OPINION NOT INTENDED FOR PUBLICATION

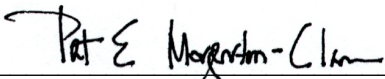
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ARTHUR BOYD, JR.,) Chapter 7
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Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the debtor's motions to impeach Larry Jones for perjury, to disqualify creditor Lamar Frost for perjury, to disqualify creditor Chester Wilson, D.D.S. for perjury and to dismiss the involuntary petition and the debtor's request for rehearing of the answer and counterclaim and for dismissal of the case are denied. (Docket 28, 29, 30, 32).

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge