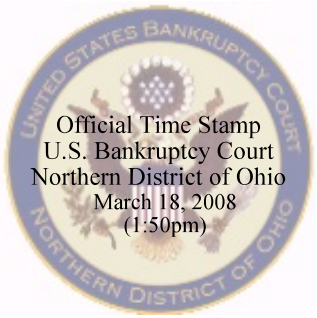
NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:	)	Case No. 05-28376
	)	
DAYNA L. CHRISTIAN,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**MEMORANDUM OF OPINION AND**
	)	**ORDER**

This is the debtor Dayna Christian's second motion to vacate an order revoking her discharge. (Docket 38). She relies on federal rule of civil procedure 60(b)(5) (made applicable by FED. R. BANKR. P. 9024). For the reasons stated below, the motion is denied.[1]

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

DISCUSSION

I.

The debtor filed her chapter 7 case on October 7, 2005. She received a discharge on February 1, 2006. (Docket 9). On September 21, 2006, the trustee filed a motion to require the debtor to turn over property of the estate (cash). The motion was resolved by an agreed order providing that the debtor would pay a total of $4,442.10 to the trustee, with an initial payment of

[1] In the court's view, the value of this opinion is to decide the issue presented, rather than to add anything to the general bankruptcy jurisprudence. For that reason, the opinion is not intended for commercial publication.

$1,000.00 due on or before September 21, 2006 and $150.00 a month thereafter. The order also provided that if the debtor failed to comply, the trustee was to submit an affidavit of non-compliance and the debtor's discharge would be revoked. (Docket 16, 17). The trustee submitted an affidavit of non-compliance on October 4, 2007 stating that the debtor had not submitted any funds since January 2007, some nine months. An order revoking the debtor's discharge was entered on October 5, 2007. (Docket 20, 21). The debtor did not appeal from that order.

II.

On February 1, 2008, the debtor filed a motion to vacate the order revoking her discharge. (Docket 31). The motion stated that the debtor had now paid the trustee in full, but did not identify a procedural basis for reconsideration. The court reviewed the request under federal rules of bankruptcy procedure 9023 (incorporating FED. R. CIV. P. 59) and 9024 (incorporating FED. R. CIV. P. 60(b)), and denied it. (Docket 33). The debtor did not appeal from that order.

The debtor filed a second motion to vacate the order on February 25, 2008.[2] A party who disagrees with a decision may file an appeal from it. The debtor does not cite any legal authority to support the procedure employed; i.e., that a party who does not agree with a decision may file a motion seeking the same relief, raising additional arguments. The motion is denied for that reason.

Alternatively and additionally, the court will address the motion under rule 60(b)(5), the specific argument now made. "'The general purpose of Rule 60(b) . . . is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that

[2] Counsel set the motion on the oral argument docket, but motions to reconsider are generally submitted for decision on the papers.

justice must be done.'" *Charter Twp. of Muskegon v. City of Muskegon*, 303 F.3d 755, 760 (6th Cir. 2002) (quoting *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 271 (3d Cir. 2002)) (alteration in original). The rule states in relevant part that:

> On motion and upon just terms, the court may relieve a party . . . from a final judgment . . . for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or otherwise vacated; or applying it prospectively is no longer equitable[.]

FED. R. CIV. P. 60(b)(5). Any such motion must be filed within a reasonable time. FED. R. CIV. P. 60(c)(1).[3]

A. ". . . applying [the judgment] prospectively is no longer equitable"

The debtor states that she has now paid the trustee the money owed to the chapter 7 estate under the first judgment, which makes it no longer equitable that the second judgment revoking her discharge should remain in effect. The part of 60(b)(5) relied on by the debtor provides that a judgment may be modified as inequitable only if it has prospective application. A judgment that has prospective application is one that is executory or that involves judicial supervision of changing conditions or circumstances. *Kalamazoo River Study Group v. Rockwell Int'l Corp.*, 355 F.3d 574, 587-88 (6th Cir. 2004). Generally, these are judgments involving an injunction or a consent decree, as well as some declaratory judgments. *Id.; see also Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990). A judgment revoking a debtor's discharge is not executory because it does not order the debtor to act or refrain from doing an act. Neither does it contemplate judicial supervision. Rather, the judgment is entered, the discharge revoked, and

[3] The court assumes without deciding that this motion was filed within a reasonable time.

nothing remains to be done. The debtor is not, therefore, entitled to relief under the part of rule 60(b)(5) that she cites.

Moreover, even if 60(b)(5) did apply, the facts do not show that it would be inequitable for the judgment to have prospective application. The bankruptcy code requires all chapter 7 debtors to cooperate with the trustee, including promptly handing over property of the estate for distribution to creditors. *See* 11 U.S.C. § 521(a)(3) and (4) (requiring the debtor to cooperate with the trustee and to surrender property of the estate to the trustee); *see also* FED. R. BANKR. P. 4002. Once the debtor chooses to invoke the protections of the bankruptcy code, the system relies on the fact that the debtor will carry out her end of the bargain without the trustee having to chase the debtor down. Despite this expectation, there are times when a debtor needs additional time or encouragement to meet her obligations, and that is generally accommodated–as it was in this case. The undisputed facts show that the debtor had multiple opportunities over a long period of time to comply with her obligations: the trustee made a demand for the estate funds through the turnover motion filed September 21, 2006; the debtor entered into an agreement that gave her additional time to pay the monies owed; the debtor failed to comply with that agreement; after waiting several months for compliance, the trustee filed his affidavit certifying the failure to pay as previously agreed to by the debtor; the court entered the agreed order revoking the discharge on October 5, 2007; and the debtor did not appeal. The debtor had a full and fair opportunity to pay the money owed before the court entered the order revoking her discharge. The debtor did not, therefore, prove that it would be inequitable for the judgment to remain in effect.

B. ". . . the judgment has been satisfied"

Rule 60(b)(5) also provides that a judgment may be vacated if it has been "satisfied." Although the debtor does not argue explicitly that either judgment has been "satisfied," the concept warrants a brief discussion. There are few reported cases interpreting this part of the rule, and even fewer that address situations where a challenged judgment is for money only, as is true of the first judgment entered here. Logic suggests that "satisfying" a monetary judgment under 60(b)(5) must mean something more than the original obligor paying the amount due under the judgment. Otherwise, every judgment debtor who paid a judgment would be entitled to have the underlying judgment *vacated*, a very significant legal event.[4] Some courts have interpreted this part of 60(b)(5) to apply where, post-judgment, a defendant finds evidence that the judgment amount had actually been paid before the matter went to litigation. *See, for example, Johnson Waste Materials v. Marshall*, 611 F.2d 593, 599 (5th Cir. 1980) (in an independent action, case remanded to trial court under 60(b)(5) where it appeared that newly found evidence showed that amount due had been paid). Under this analysis, the judgment is "satisfied" within the meaning of the rule because it was actually paid in full before it was entered. The idea of a judgment being satisfied before it is entered seems a bit backwards, but it does give some additional meaning to the provision. In any event, this case does not fall within that scenario because the debtor did not pay the money owed before the court entered the first judgment, nor had she paid the money before the court entered the second judgment.

Here, there are two judgments that were entered against the debtor. The September 25, 2006 first judgment ordered her to turnover funds. The October 5, 2007 second judgment

[4] In practice, a judgment debtor who pays a judgment in full is generally entitled to have a certificate of satisfaction of judgment filed *with* the judgment, not instead of it.

revoked her discharge for failing to do so. The debtor represents that by February 2008 she had paid the amount due under the first judgment. (Docket 31). Even assuming that the debtor satisfied the first judgment (through some theory not articulated by the debtor), the payment does not establish satisfaction of the second judgment. The second judgment revoked her discharge, leaving nothing for her to satisfy. *See Gibbs v. Maxwell House*, 738 F.2d 1153, 1155 (11th Cir. 1984) (where a court dismissed a case for failure to pay a monetary sanction, paying the sanction did not result in the judgment of dismissal being satisfied within the meaning of 60(b)(5)).

CONCLUSION

For the reasons stated, the debtor's second motion to vacate the order revoking her discharge is denied.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge