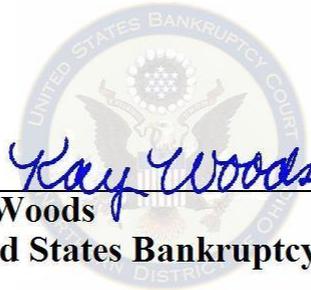


IT IS SO ORDERED.



**Dated: June 09, 2010
03:03:26 PM**

**Kay Woods
United States Bankruptcy Judge**

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

IN RE:

**EDWIN D. BAILEY and
JAMIE S. BAILEY,**

Debtors.

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* **CASE NUMBER 05-41609**
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* **CHAPTER 7**
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* **HONORABLE KAY WOODS**
*

**ORDER DENYING DEBTORS' PRO SE MOTION FOR RECONSIDERATION
OF ORDER SUSTAINING OBJECTION TO EXEMPTION**

This cause is before the Court on Debtors' Pro Se Motion for Reconsideration of Order Sustaining Objection to Exemption ("Motion for Reconsideration") (Doc. # 139) filed by Debtors Edwin D. Bailey and Jamie S. Bailey, *pro se*, on May 27, 2010. For the reasons set forth below, the Motion for Reconsideration is denied.

On May 18, 2010, this Court entered Memorandum Opinion Regarding Trustee's Objection to Exemption ("Exemption Opinion") (Doc. # 136) and Order Sustaining Trustee's Objection to Exemption

(Doc. # 137) (collectively, "Exemption Order"),¹ which sustained the objection of Andrew W. Suhar, Chapter 7 Trustee, to the Debtors' claimed exemption (pursuant to O.R.C. § 2329.66(A)(12)(d)) to a previously approved \$17,000.00 settlement ("Settlement").² Although the Debtors do not state the basis for their motion, because the Motion for Reconsideration was filed within 14 days after entry of the Exemption Order, the Court will consider the Motion for Reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure (incorporated by Rule 9023 of the Federal Rules of Bankruptcy Procedure). Rule 59 provides:

(e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

FED. R. CIV. P. 59 (West 2010). Rule 9023, however, shortens this time to 14 days.

A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment.

FED. R. BANKR. P. 9023 (West 2009).

Rule 59 does not contain express grounds for amending a judgment, but case law generally requires Rule 59 motions to

¹ The facts set forth in the Exemption Order are incorporated by reference herein and will not be restated.

² The Settlement was approved after an evidentiary hearing on November 24, 2009, at which the Debtors participated and gave evidence. In addition, at that hearing, the Debtors stipulated on the record concerning four essential facts - one of which was that the Debtors did not claim any exemption for the ODOT Claim listed as an asset on their Schedule B and that no exemption was available. On December 10, 2009, the Court entered Memorandum Opinion Regarding Trustee's Motion for Authority to Settle Controversy (Doc. # 95) and Order Granting Trustee's Motion for Authority to Settle Controversy (Doc. # 96) (collectively, "Settlement Order"), which found, *inter alia*, that the ODOT Claim was property of the bankruptcy estate and that the proposed Settlement of \$17,000.00, which included a compromise of certain state court litigation, was in the best interests of the bankruptcy estate.

establish one of the bases explicitly set forth in Rule 60(b) of the Federal Rules of Civil Procedure (incorporated by Rule 9024 of the Federal Rules of Bankruptcy Procedure). Rule 60(b) states:

(b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and 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 (West 2010).

For the convenience of parties who appear before the Court, the Court has posted its policies and procedures on its website, which includes information concerning motions for reconsideration, as follows:

Rules 59 and 60 do not provide a "second bite at the apple" or a "do-over." A motion for reconsideration is an extraordinary measure and should be brought to correct a manifest error of law or fact on the part of the Court. It is not a substitute for filing a notice of appeal.

Memorandum to All Attorneys Practicing in the Youngstown Bankruptcy Court, Re: Bankruptcy Court Policies and Procedures, at 5 (December 11, 2009), available at www.ohnb.uscourts.gov. The

Court's policy regarding motions for reconsideration incorporates and restates the law on this subject.

The grant or denial of a Rule 59(e) motion is within the informed discretion of the court. *Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982). Moreover, such a motion is an "extraordinary remedy and should be granted sparingly because of the interests in finality and conservation of scarce judicial resources." *American Textile Mfrs. Institute, Inc. v. The Limited, Inc.*, 179 F.R.D. 541, 547 (S.D. Ohio 1997). A court may reconsider a previous judgment: (1) to accommodate an intervening change in controlling law; (2) to account for newly discovered evidence; (3) to correct a clear error of law; or (4) to prevent manifest injustice. See *GenCorp, Inc. v. American Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). "A motion under Rule 59(e) is not intended to provide the parties an opportunity to relitigate previously-decided matters or present the case under new theories. Rather, such motions are intended to allow for the correction of manifest errors of fact or law, or for the presentation of newly-discovered evidence." *In re Nosker*, 267 B.R. 555, 564 (Bankr. S.D. Ohio 2001). "The burden of demonstrating the existence of a manifest error of fact or law rests with the party seeking reconsideration." *Id.* at 565.

Hamerly v. Fifth Third Mortgage Co. (In re Salupo Dev. Co.), 388 B.R. 795, 805 (B.A.P. 6th Cir. 2008); see also *Waller v. Frost*, 2006 U.S. Dist. LEXIS 19925, *2-3 (M.D. Ga. 2006) (internal citations omitted) ("Generally, a Rule 59(e) motion will only be granted on one of the following grounds: 'an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or to prevent manifest injustice.'")

In their Motion for Reconsideration, the Debtors do not set forth any valid reason for this Court to set aside the Exemption Order. Specifically, the Debtors do not present any law, issues or facts that the Court did not fully consider in its Exemption Order. Instead, the Debtors make the following two arguments, which they

expressly acknowledge they argued in their Reply to Trustee's Objection to Exemption (Doc. # 135), and which were previously considered by the Court: (i) the Trustee bears the burden of proving his objection to their exemption, which, according to the Debtors, he failed to do (See Mot. for Recon. at 1-3); (ii) the Debtors had the right to amend Schedule C to assert the claimed exemption because their bankruptcy case was still open (*id.* at 3-4). The Court took these arguments into consideration in entering the Exemption Order.

In addition, Debtors make three other arguments/statements, as follows: (iii) the Debtors did not conceal the lawsuit in their schedules (*id.* at 4-5); (iv) "no stipulation is cast in concrete" (*id.* at 5); and (v) the Debtors did not mean an "attack on this court or anyone, collateral or otherwise" (*id.* at 6). The Court will address each of the Debtors' newly raised arguments below.

First, because the Exemption Order is not based on alleged bad faith of the Debtors, the Debtors' argument that they did not conceal the ODOT Claim is not relevant. Second, the Debtors' belated attempt to not be bound by their evidentiary stipulation, upon which the Court relied in entering the Settlement Order, is unavailing. As the Court noted in the Exemption Opinion, the Debtors cannot attempt to change a stipulated fact after conclusion of the evidentiary hearing and entry of an order that incorporated such stipulation. (Exempt. Op. at 7.)³ As a consequence, the

³ The Court rendered the Settlement Order and the Debtors appealed such Settlement Order months before the Debtors attempted to amend their schedules in contravention of their stipulation that there was no exemption available for the

Debtors' stipulation regarding the unavailability of an exemption to the ODOT Claim is, in their words, "cast in concrete" because it is one of the factual bases for this Court's Settlement Order, which the Debtors have appealed. Finally, Debtors' argument that they did not mean to attack the Court collaterally or otherwise misconstrues the Court's observation to that effect. The Debtors explicitly stated at the hearing on the Trustee's Objection to Exemption that they asserted the exemption in an attempt to pursue the state court litigation that was compromised and settled by the Settlement Order. By appealing the Settlement Order, the Debtors have availed themselves of their only remedy regarding the state court litigation. Whether or not the Debtors understood the import of their actions as an attack of a prior order of the Court is not relevant.

Although it is obvious that the Debtors disagree with the Exemption Order, such disagreement does not support their Motion for Reconsideration. Because the Debtors fail to present or assert: (i) newly discovered facts; (ii) a change in controlling law; (iii) an error by this Court in applying the law; or (iv) any manifest injustice, Debtors have failed to meet their burden under Rule 59(e) for the Court to reconsider the Exemption Order. As a consequence, the Court finds the Motion for Reconsideration not to be well-taken. Accordingly, this Court will not modify or disregard the Exemption Order; the Debtors' Motion for Reconsideration is

ODOT Claim. Because the Settlement Order, which incorporates the stipulation in question, is on appeal, the Debtors cannot change their minds about the wisdom of having entered into such stipulation.

denied.

IT IS SO ORDERED.

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