UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 11-11549
	)	
WILLIE J. MORRIS,	)	Chapter 13
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER**

On April 12, 2011, the court dismissed this case because the debtor failed to file required documents, failed to pay the filing fee for his previous case, and failed to appear at the hearing to address those issues. (Docket 20). On April 19, 2011, the debtor filed a document which the court will treat as a motion to reconsider that decision. (Docket 22). For the reasons stated below, the debtor's motion is denied.[1]

DISCUSSION

Bankruptcy Rule 9023

The debtor's motion does not identify a procedural basis. The most likely basis is Federal Rule of Bankruptcy Procedure 9023, which provides that a party may move for rehearing or to alter or amend a judgment within 14 days after entry of the judgment. FED. R. BANKR. P. 9023. Bankruptcy Rule 9023 incorporates Federal Rule of Civil Procedure 59 which provides in relevant part that:

> (a) In General.
>
> > (1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues – and to any party – as follows:

[1] Although the debtor's motion refers to a hearing, a hearing is unnecessary as motions of this nature are generally decided on the papers filed.

* * *

> (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.
>
> (2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

FED. R. CIV. P. 59(a)(1)(B), (a)(2). Additionally, Rule 59(e) provides that a party may move to alter or amend a judgment. FED. R. CIV. P. 59(e).

"'A motion for a new trial in a nonjury case or petition for rehearing should be based upon manifest error of law or mistake of fact, and a judgment should not be set aside except for substantial reasons.'" *Hager v. Paul Revere Life Ins. Co.*, 489 F. Supp. 317, 321 (E.D. Tenn. 1977) (quoting 11 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL 37, § 2804), *aff'd*, 615 F.2d 1360 (6th Cir. 1980). "'[A] trial court should not grant a new trial merely because the losing party can probably present a better case on another trial.'" *Ball v. Interoceanica Corp.*, 71 F.3d 73, 76 (2d Cir. 1995) (per curiam) (quoting 6A JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 59.08[2] (2d ed. 1989)). The decision to grant a request for rehearing rests within the discretion of the trial court. *Walker v. Bain*, 257 F.3d 660, 670 (6th Cir. 2001).

A motion under Rule 59(e) to alter or amend a judgment "is not an opportunity to re-argue a case." *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998). Such motions "may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice." *GenCorp, Inc. v. Am.*

Int'l Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) (internal citations omitted). Relief under rule 59(e) is an "extraordinary remedy and should be granted sparingly because of the interests in finality and conservation of scarce judicial resources." *Hamerly v. Fifth Third Mortgage Co. (In re J&M Salupo Dev. Co.)*, 388 B.R. 795, 805 (B.A.P. 6th Cir. 2008).

The debtor's case was dismissed based on his failure to pay the filing fee for a previous case, his failure to file required documents including a chapter 13 plan, schedules and statements, and means test, and his failure to appear and explain those failures at a hearing held on April 12, 2011. The debtor requests relief because: (1) he was injured in a February 4, 2011 accident; (2) he intends to retain counsel; and (3) his income has changed. However, the debtor's previous case was filed on November 1, 2010 and was also dismissed for his failure to file a plan and other required documents and because he failed to appear at a show cause hearing. *See In re Willie Morris*, case no. 10-20823, docket 23. The debtor's motion also states that he is making arrangements to pay the filing fee for his previous case, but fails to state what those arrangements might be.

Based on these circumstances, the debtor's motion does not meet the standards for relief under Rule 59. The motion does not identify any manifest error of law, mistake of fact, or other material reason which would merit rehearing under Rule 59(a). Additionally, the motion does not identify any clear error of law, newly discovered evidence, intervening change in the law, or any other reason which would merit relief from judgment under Rule 59(e). The debtor's motion is, therefore, denied insofar as it requests relief under Rule 59.

Bankruptcy Rule 9024

The debtor's motion can alternatively be viewed as a request for relief from judgment under Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil

Procedure 60(b). That rule states that a court may:

> 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) (made applicable by FED. R. BANKR. P. 9024).

The debtor's motion does not identify a specific subsection of Rule 60(b) and it does not make any factual or legal argument which would support a ruling in his favor under this rule. The debtor's motion is, therefore, denied insofar as it requests relief under Rule 60(b).

CONCLUSION

For the reasons stated, the debtor's motion to reconsider is denied.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge