IT IS ORDERED as set forth below:

Date: July 12, 2016

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: RONALD EDWARD SCIORTINO, Debtor.	CASE NO. 14-71765-BEM CHAPTER 7
RONALD EDWARD SCIORTINO, Plaintiff, v. NEIL C. GORDON, CHAPTER 7 TRUSTEE; et. al., Defendants.	ADVERSARY PROCEEDING NO. 15-5356-BEM

ORDER

This matter is before the Court on Plaintiff *pro se's* Motion for Reconsideration of February 12, 2016 Order (the "Motion") filed March 2, 2016. [Doc. 73] In the Motion, Plaintiff

asks the Court to reconsider its Order Denying Request for Emergency Hearing and Regarding Jurisdiction entered February 12, 2016 (the "Order"). [Doc. 57] In the Order, the Court held that it did not have subject matter jurisdiction over the majority of the claims Plaintiff sought to raise in this proceeding and that there was no basis to support holding an emergency hearing on Plaintiff's request for relief. *Id.*

In the Motion, Plaintiff contends that the Court has jurisdiction because "Plaintiff has made filings in this case wherefore it is believed allows this court individual jurisdiction over each Defendants, and therefore all Defendants are subject to individual jurisdiction of this court…." [Doc. 73 p. 5] Plaintiff also "notices the court of enunciation of the Maxims in Equity" including that "[w]hen Equity has jurisdiction for one purpose, it will take jurisdiction for all purposes . . . Equity will take jurisdiction to avoid a multiplicity of suits[.]" [*Id.* p. 2] In addition, Plaintiff objects to Defendants'[1] Response in Opposition to Plaintiff's Motion for Hearing, which was filed in opposition to Plaintiff's Request for Hearing filed on February 2, 2016 (the "Hearing Request"). [Docs. 59, 52] The Hearing Request was denied by order entered February 22, 2016 (the "February 22 Order"). In the February 22 Order, the Court adopted and relied on the reasons set forth in the Order. [Doc. 69] Thus, it appears Plaintiff also seeks reconsideration of the February 22 Order.

Plaintiff filed a "Motion to Deny Defendants Response in Opposition to Plaintiff's Motion for Reconsideration of February 12, 2016 Order & Judgment/Amended Judgment; Objection to Defendants' Response in Opposition to Plaintiffs Motion for Reconsideration of February 12, 2016 Order" (the "Reply"). [Doc. 84] In the Reply, Plaintiff again argues that this Court has jurisdiction under a number of statutes other than 28 U.S.C.

[1] Certain of these Defendants have now been dismissed. [Docs. 79, 80].

§1334[2] and further that the Court has jurisdiction because he contends that he falls under the protections of the Americans with Disabilities Act. Plaintiff also asserts that the Motion was timely filed and that Fed. R. Civ. P. 54(b) ("Rule 54") provides a liberal standard, that any order which does not address all the claims brought is subject to revision at any time before the entry of judgment, and that Fed. R. Civ. P. 59 or 60 ("Rule 59" and "Rule 60", respectively) do not apply in the pre-trial stage of litigation. [*Id.* ¶ 3].

Defendants Charlotte Nash, Jace Brooks, Lynette Howard, Tommy Hunter, John Heard, Ron Seibenhener, Forrest Fields, Murray J. Weed, Maria Woods, Gwinnett County Department of Water Resources, and Gwinnett County (collectively, the "County Defendants[3]") filed a Response in Opposition to Plaintiff's Motion to Reconsider (the "Response"). [Doc. 75]. The County Defendants argue first that the Motion fails to raise any grounds under Rule 59 or Rule 60, as made applicable to this proceeding by Fed. R. Bankr. P. 9023 and 9024 ("Rule 9023" and "Rule 9024") in that the Motion fails to support reconsideration of the Order or relief from the Order and Amended Judgment because Plaintiff raises no new material in the Motion. The County Defendants also argue that Plaintiff substitutes the Motion for an appeal since Plaintiff seeks to correct a perceived error by the Court and that the Motion is not timely under Rule 9023.

Defendants filed a Motion For Leave To File Sur-Reply To Plaintiff's Objection To Defendants' Opposition to Motion For Re-Consideration Of February 12, 2016 Order [Doc.

[2] Plaintiff lists the American with Disabilities Act, U.S. Const. Amend. XIV, 42 U.S.C. § 12101-12213, 42 U.S.C. § 12202, 42 U.S. C. §2000d-7, 42 U.S.C. § 12203, Civil Rights Act of 1964, Rehabilitation Act of 1973 § 504, 29 U.S.C. § 701, Civil Rights Restoration Act of 1987, 28 U.S.C. § 1331, 28 U.S.C. § 1343, 28 U.S.C. § 1367, 42 U.S.C. § 1983, 18 U.S.C. § 242, 18 U.S.C. § 241, 42 U.S.C. § 1986, 42 U.S.C. § 1988, U.S. Const. Art. III, § 2, U.S. Const. Art. VI, § 2, 42 U.S.C. § 1981 and 18 U.S.C. § 245. Plaintiff also references U.S. Const. Art. VIII, which does not exist and thus appears to be a typographical error. [Doc. 84, p. 3-4]

[3] Defendants Charlotte Nash, Jace Brooks, Lynette Howard, Tommy Hunter, John Heard, Ron Seibenhener, Forrest Fields, Murray J. Weed, and Maria Woods were dismissed by Order entered on March 18, 2016 and Judgment entered March 18, 2016. [Docs. 79, 80].

89] which was granted by Order entered April 20, 2016. [Doc. 93] In the sur-reply brief Defendants argue that even if the standard for reconsideration under Rule 54 is lesser than that under Rules 59 and 60, Plaintiff is merely rehashing previous arguments which is not sufficient to satisfy the standard for reconsideration and further that the Motion was not timely filed. [Doc. 94]

The Federal Rules of Civil Procedure do not expressly provide for motions for reconsideration, however, Rule 9023, which makes Rule 59 applicable in bankruptcy, states, in part, "[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." Similarly, relief from a final judgment may be available under Rule 9024 which makes Rule 60 applicable in bankruptcy. Finally, the Court may modify or vacate non-final orders at any point prior to final judgment under Fed. R. Bankr. P. 7054 ("Rule 7054") which incorporates Rule 54 in adversary proceedings. Fed. R. Bankr. P. 7054(b); *see also Brogdon v. National Healthcare Corp.*, 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000) (citing *Bon Air Hotel Inc. v. Time, Inc.*, 426 F.2d 858, 862 (5th Cir. 1970) *abrogated on other grounds*.[4, 5]

A motion for reconsideration seeks to invoke a court's authority to modify or vacate its prior orders and as such "shall not be filed as a matter of routine practice." BLR 9023-1. "Indeed, even in the case of a non-final order, the Court must balance its duty to render just decisions with the need for finality." *Brogdon*, 103 F. Supp. 2d at 1338 (citing *McCoy v. Macon Water Auth.*, 966 F. Supp. 1209, 1222 (S.D. Ga. 1997)). Thus, motions for reconsideration

[4] Opinions of the Fifth Circuit issued prior to October 1, 1981, the date marking the creation of the Eleventh Circuit, are binding precedent on this Court. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209-11 (11th Cir. 1981) (en banc).

[5] The Court entered a Judgment as amended February 18, 2016 with respect to the determinations made in the Order. Clearly, the Amended Judgment is not final as no determination was made that there was no just reason for delay. See Fed. R .Civ. P. 54(b); Fed. R. Bankr. P. 7054(a). When the remaining issues in the proceeding are determined at trial and a judgment entered adjudicating all remaining claims the Amended Judgment will be final and appealable.

cannot be used to relitigate issues already decided, to pad the record for an appeal, or to substitute for an appeal. *Kellogg v. Schreiber (In re Kellogg)*, 197 F.3d 1116, 1120 (11th Cir. 1999); *In re McDaniel*, 217 B.R. 348, 350–51 (Bankr. N.D. Ga. 1998) (Drake, J.); *In re Oak Brook Apartments of Henrico Cnty., Ltd.*, 126 B.R. 535, 536 (Bankr. S.D. Ohio 1991). Further, motions to alter or amend should not be used to raise arguments which were or could have been raised before judgment was issued. *O'Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir. 1992). Nor should such motions be used "to test whether the Court will change its mind." *Brogdon*, 103 F.Supp. 2d at 1338 (citing *McCoy*, 966 F. Supp. at 1223; *Paper Recycling v. Amoco Oil Co*., 856 F. Supp. 671, 678 (N.D. Ga. 1993)).

Rule 54 authorizes the Court to "revise [ ]" an interlocutory order at any time before it becomes final. Fed. R. Civ. P. 54(b); *Bon Air*, 426 F.2d at 862. The standard to be applied in deciding whether to revise an order is, however, less clear. *Herman v. Hartford Life and Accident Ins. Co.*, 508 Fed. Appx. 923, 927 n. 1 (11th Cir. 2013) (noting that "[a]lthough Rule 54(b) does not delineate the parameters of a district court's discretion to reconsider interlocutory orders, we have at least indicated that Rule 54(b) takes after Rule 60(b)."") (citing *Fernandez v. Bankers Nat'l Life Ins. Co.*, 906 F.2d 559, 569 (11th Cir. 1990)). Logic dictates that, although consideration of a Rule 54 motion for reconsideration may take after Rule 60, it is more akin to the consideration dictated by Rule 59. This is true because, like Rule 54 a motion to alter or amend under Rule 59 seeks to change an order that is not yet final whereas the Rule 60 standard is applicable to final orders. Thus, the Court will first consider the Motion under the standards established for motions under Rule 59.

Initially, Defendants argue that the Motion was not timely because it was filed more than 14 days after the Order was entered. In response Plaintiff argues that Rule 54(b)

provides a "seemingly liberal standard" for reconsideration of non-final orders. [Doc. 84 p. 6]. With respect to a motion filed under Rule 59 it is clear that the Motion was untimely. It is less clear whether a Rule 54 motion for reconsideration is subject to the time constraints contained in Fed. R. Bankr. P. 9023 and BLR-1 9023-1 as argued by Defendants. The Court need not resolve this issue however, because regardless of its timeliness, the Motion fails to satisfy the standards for modifying or vacating an order under either Rule 59 or 60.

In the Motion, Plaintiff argues that the Court has jurisdiction based on pleadings and equitable maxims, however, the Court addressed these arguments in the Order. In the Reply, Plaintiff reasserts that the Court has jurisdiction under a number of statutes and because Plaintiff asserts that he is within the protections of the Americans with Disabilities Act. The Court likewise addressed these arguments in the Order. The Motion cannot be used to relitigate issues already decided and thus, Plaintiff has raised no basis for the Court to reconsider the Order under the standard for a Rule 59 motion. *Kellogg*, 197 F.3d at 1120.

Similarly, the Motion fails to satisfy the standards for relief under Rule 60. Rule 60 provides as follows:

> 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(b). The Motion does not advance any grounds for relief from the Order under subparagraphs (2) to (5). Therefore, the Court may only grant the Motion if Plaintiff shows "mistake, inadvertence, surprise, or excusable neglect" or "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (6). With respect to Rule 60(b)(1), a mistake occurs when an order is entered under a "'misapprehension as to the facts of the case,'" and had "'the court been apprised of the actual facts, it would never have entered the order.'" *Midkiff v. Stewart (In re Midkiff)*, 342 F.3d 1194, 1200 (10th Cir. 2003) (quoting *In re Cisneros*, 994 F.2d 1462, 1467 (9th Cir. 1993)). With respect to Rule 60(b)(6), the catch-all provision is "'an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances.'" *Cavaliere v. Allstate Ins. Co*., 996 F.2d 1111, 1115 (11th Cir. 1993) (quoting *Griffin v. Swim-Tech Corp*., 722 F.2d 677, 680 (11th Cir. 1984)).

Here, Plaintiff does not assert that this Court misapprehended the facts. The Court was aware that "Plaintiff has made filings in this case." Although Plaintiff believes this gives the Court "individual jurisdiction over each Defendant" no factual error appears which would provide grounds for the Court to vacate the Order under Rule 60(b)(1).

Nor does Plaintiff make any showing of exceptional circumstances which make vacating the Order appropriate under Rule 60(b)(6). Rather, Plaintiff's argument appears to conflate personal jurisdiction with subject matter jurisdiction. "Personal jurisdiction refers to [a] court's ability to assert judicial authority over particular parties and bind them by its adjudication." 1-6 Moore's Manual--Federal Practice and Procedure § 6.01 (2015). "[S]ubject matter jurisdiction refers to a court's power to hear and determine cases of the general class or category to which the proceedings in question belong; it constitutes the power to deal with the general subject involved in the action." *Id.* at § 5.01. "[N]o action of the parties can confer

subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S. Ct. 2099, 2104 (1982). Indeed, Fed. R. Civ. P. 12(h)(3) made applicable in bankruptcy by Fed. R. Bankr. P. 7012(b) provides that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

The fact that Plaintiff named the Defendants as defendants does not grant jurisdiction to the Court. For the reasons stated in the Order, this Court does not have subject matter jurisdiction. [Doc. 57] This issue was fully addressed in the Order and there is no basis to reconsider the Court's conclusion.[6]

Plaintiff also "notices the court of enunciation of the maxims of equity" including that "[w]hen Equity has jurisdiction for one purpose, it will take jurisdiction for all purposes . . . Equity will take jurisdiction to avoid a multiplicity of suits[.]" [Doc. 73 p. 2]. The Court addressed this argument in the Order and in addition, notes that "'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code." *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014) (citation omitted). The implementation of the Code is limited by the Court's jurisdiction as set forth in 28 U.S.C. § 1334 and the maxims of equity do not alter the scope of the Court's jurisdiction.

Finally, with respect to the February 22 Order, Plaintiff raises no new ground for reconsidering such order which followed the rationale set forth in the Order. Motions to reconsider should not be used to raise arguments which were or could have been raised before

[6] Plaintiff appears to argue that the Court should reconsider the Order because all Defendants are subject to a claim under 11 U.S.C. § 525 [Doc. 73 ¶ 3 n.7]. As stated in the Order Plaintiff did not plead a claim under § 525 of the Bankruptcy Code. Thus, there is no basis for reconsideration of a claim that was not raised and therefore not considered. [Doc. 57 p. 10 n. 5].

judgment was issued. *O'Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir.1992). Accordingly, it is

ORDERED that the Motion is DENIED.

END OF ORDER

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