

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
ERIC T. MILLER,	)	CASE NO. 13-76000 – MHM
	)	
Debtor.	)	

**ORDER DENYING MOTION TO RECONSIDER DISMISSAL**

This Chapter 13 case was dismissed by order entered November 20, 2014 because Debtor failed to make plan payments for October and November of 2014 during a period of strict compliance (Doc. No. 74). Debtor filed a *Motion to Reconsider and Vacate Order of Dismissal* November 26, 2014 (the “Motion”)(Doc. No. 76) because Debtor’s missed payments were a result of a decline in income, but Debtor is now capable of making plan payments. Also, Debtor asserts he could lose his vehicle and substantial equity in real property if the case is not reinstated. For the reasons set forth below, the Motion will be denied.

**FACTUAL BACKGROUND**

Debtor owned real property known as 3606 Bouldercrest Road, Ellenwood, GA (the “Property”). Due to unpaid property tax, the Property was sold at a tax sale October 2, 2012 to Oakmont Holdings, LLC (“Oakmont”) for \$6,100.00. The tax deed was recorded in DeKalb County Superior Court November 13, 2012.

Oakmont served a Notice of Foreclosure of Right to Redeem (the "Barment Notice") on Debtor October 27, 2013 by substitute service. The Barment Notice set a deadline to redeem the Property by "December 6, 2013 or 45 days after legal service of the notice..., whichever date is later." Debtor did not tender the redemption price, but instead filed Chapter 13 Case No. 13-76000 December 2, 2013, nine days prior to the expiration deadline to redeem the property. On that same day, Debtor filed a Chapter 13 plan proposing to pay Oakmont the full redemption amount over the 36-month applicable commitment period pursuant to 11 U.S.C. §1322. In response, Oakmont filed an *Objection to Confirmation* January 17, 2014 (Doc. No. 10), arguing that Debtor retained a bare right of redemption under state law that could be exercised only with a lump sum redemption pursuant to 11 U.S.C. §108. Over Oakmont's objection, Debtor's Chapter 13 plan was confirmed September 18, 2014 allowing Debtor to pay Oakmont the redemption price over a 60-month applicable commitment period (Doc. No. 61). The case was subsequently dismissed November 20, 2014.

Debtor filed the Motion November 26, 2014, six days after dismissal (Doc. No. 76). Debtor contends the Motion should be granted because Debtor's missed payments were a result of a decline in income, but Debtor is now capable of making plan payments. Also, Debtor asserts he could lose his vehicle and substantial equity in the Property if the case is not reinstated. Oakmont filed a *Response* to the Motion December 12, 2014 objecting based on the prejudicial effect it will have on Oakmont's interest in the

Property (Doc. No. 78). A hearing was held January 29, 2014, at which each party was asked to submit a brief. Debtor filed a *Brief in Support* of the Motion February 13, 2015 (Doc. No. 81) and Oakmont filed a *Response to Debtor's Brief in Support* February 23, 2015 (Doc. No. 82).

### DISCUSSION

Motions for post-judgment relief are permissible under either of the following rules: (1) Federal Rule of Bankruptcy Procedure 9023, which incorporates Federal Rule of Civil Procedure 59(e), Motion to Alter or Amend Judgment; or (2) Federal Rule of Bankruptcy Procedure 9024, which incorporates Federal Rule of Civil Procedure 60, Relief from Judgment or Order.

A motion filed pursuant to Rule 9023 must be filed "no later than 14 days after entry of judgment." Fed. R. Bankr. P. 9023. As Debtor's Motion was filed within that 14-day period it may be considered under Rule 9023. Although Federal Rule of Civil Procedure 59(e) provides no specific grounds for relief, the Eleventh Circuit Court of Appeals has held the only grounds for granting a motion for reconsideration "are newly-discovered evidence or manifest errors of law or fact." *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir.1999). Debtor has not presented any newly-discovered evidence or manifest error of law or fact warranting reconsideration of the dismissal order.

Pursuant to Rule 9024, a party may file a motion for relief from a judgment or order. Fed. R. Bankr. P. 9024. In order for relief to be granted, the movant must show:

- (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.

Federal Rule of Civil Procedure 60(b)(1)-(6). If the movant cannot establish one of the five specific grounds, then the movant may use the general provision of Rule 60(b)(6).

When pleading equity under clause (5) or “other reason” under clause 6, the movant must demonstrate that “absent such relief an ‘extreme’ and ‘unexpected’ hardship will result.”

*Galbert v. West Caribbean Airways*, 715 F.3d 1290, 1294 (11th Cir. 2013) (quoting *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932)). Furthermore, “whether to grant relief is a matter for the ... court’s sound discretion.” *Cano v. Baker*, 435 F.3d 1337, 1342 (11<sup>th</sup> Cir. 2006) (quoting *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1317 (11<sup>th</sup> Cir. 2000)).

Debtor's Motion fails to allege any ground for relief under Rule 60(b)(1)-(5). See *In re Trevino*, 2010 WL 1957206 \*2 (Bankr. N.D. Ala. 2010) (finding Debtor’s previous inability to make plan payments did not qualify as a ground for relief under 60(b)(1)-(5)). Thus, Debtor must rely on the catch-all provision under Rule 60(b)(6). It is undisputed

that Debtor failed to make plan payments for two months during a period of strict compliance, which resulted in the dismissal of his case. Debtor alleges that the case should be reinstated because he is able to resume payments, and he will lose his vehicle and substantial equity in the Property if the case is not reinstated.

Because the court has discretion, it is common practice in this district, as well as others, for courts to vacate a dismissal order in cases where a debtor's case was dismissed for a small number of missed plan payments when no party in interest files an objection. Cases are often reinstated to "spare debtors the burden of filing a new case." *In re Murphy*, 493 B.R. 576, 579 (Bankr. D. Colo. 2013). Furthermore, it is usually in the best interest of all parties for the case to continue.


In this case, Oakmont has filed an objection to Debtor's Motion. If Debtor's case were to be reinstated and Debtor allowed to resume redemption payments over time, Oakmont will receive the tax deed purchase price of the property plus any premiums and costs. Alternatively, if the case remains dismissed, Oakmont will receive the Property, which it is entitled to as a result of the dismissal and the expiration of the redemption period.

The circumstances in this case do not justify reconsideration of the dismissal. While Debtor may lose his vehicle and substantial equity in the Property, similar circumstances exist in many dismissed cases. And although Debtor experienced a decline in income, Debtor had other remedies available to prevent his case from being dismissed.

For example, Debtor could have filed a motion to suspend payments for cause to prevent his case from being dismissed, but he did not. Based on the foregoing, Debtor's unfortunate decline in income is not an unusual circumstance, and the resulting dismissal is not an "extreme" or "unexpected" result<sup>1</sup> that might justify reconsideration in the face of an objecting prejudiced creditor. Accordingly, it is hereby

**ORDERED** that Debtor's Motion is *denied*.

IT IS SO ORDERED, this the 10<sup>th</sup> day of April, 2015.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> Debtor is aware of bankruptcy procedure and the result of dismissal as Debtor's prior Chapter 13 Case No.11-78994 was also dismissed.