IT IS ORDERED as set forth below:

Date: January 6, 2015

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBER**
	:	
RONALD WAYNE HOUCHINS,	:	14-11928-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

O R D E R

Before the Court is the Motion to Reconsider, filed by Ronald Houchins (hereinafter the "Debtor"). Debtor seeks reconsideration of the Court's Order, entered December 5, 2014 (Dkt. No. 44), denying Debtor's Motion to Reconsider Order of Dismissal, which also sought reconsideration of an order, entered October 20, 2014 (Dkt. No. 33), dismissing the above-captioned Chapter 13 case for failure to pay the filing fee. Accordingly, this matter constitutes a core proceeding, over which this Court has subject

matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(A); § 1334.

PROCEDURAL HISTORY

On August 29, 2014, Debtor filed *pro se* a voluntary petition under Chapter 13 of the Bankruptcy Code (hereinafter the "Petition"). In the Petition, Debtor disclosed having filed Case Number 13-76236-JRS on December 3, 2013 (hereinafter the "Prior Case"). According to this Court's records, the Prior Case was dismissed on April 14, 2014 for failure to obtain confirmation of a plan. *See* Case No. 13-76236-JRS (Dkt. No. 28). Following the dismissal of the Prior Case, Debtor sought reconsideration of the dismissal order, which Judge Sacca denied. *See id.* (Dkt. No. 34).[1]

When denying Debtor's motion to reconsider the dismissal, Judge Sacca had the following to say about Debtor's case and his proposed Chapter 13 plan:

> This is one of those cases where the Debtor appears to think he should get to keep a house while he is in bankruptcy without paying for it . . . . Wells Fargo Bank, the entity that asserts that it is the mortgage holder on the property, claims the pre-petition arrearage is more than $97,000. Debtor's proposed plan lists the arrearage at $54,000, but he disputes the claim . . . . Debtor contends he can confirm a plan because he does not think Wells Fargo is the holder of the mortgage, but he does not realize or refuses to realize that if Wells Fargo does not hold the mortgage, somebody else does and the law is clear that he has to pay the holder of the mortgage, whoever that may be, current payments as well as pay the arrearage over the maximum 60 month life of the plan if he is going to be able to confirm a plan. [The Court dismissed the case after finding that it] serve[d] no bankruptcy

[1] The Court's records also indicate prior filings by Debtor as follows: (1) Case No. 13-11279-WHD, a Chapter 13 case filed on May 16, 2013, and dismissed June 26, 2013, for failure to file Statement of Financial Affairs and Schedules, in which Debtor failed to appear for the meeting of creditors (*see* Dkt. Nos. 13 & 15); and (2) Case No. 07-12610-WHD, a Chapter 7 case filed October 29, 2007, in which Debtor received a discharge on March 21, 2008.

> purpose because it seemed pretty clear to the Court that what Debtor really wants to do is litigate with Wells Fargo, which he can do in state court. . . . [Debtor failed to] propose a plan that maintains the current mortgage payments (and show the Court that he is current on them) and . . . to pay the arrearage (and show that he can fund the arrearage). . . . This Court cannot also hold a case in abeyance for years while the Debtor litigates with his lender if no payments are being made into a plan to fund the mortgage and the arrearage in the event the Debtor loses the litigation.

Case No. 13-76236-JRS (Dkt. No. 34). Soon after the dismissal of the Prior Case, Judge Sacca dismissed without prejudice the adversary proceeding Debtor had filed to attack the validity of a lien allegedly held by Wells Fargo Bank, N.A. (hereinafter "Wells Fargo"). *See* Case No. 14-5116 (Dkt. No. 7).

In the instant case, Debtor filed Schedules (Dkt. No. 12), which disclosed the following: (1) Debtor continues to own the real property discussed by Judge Sacca above—104 Jasmin Lane, Lagrange, GA (hereinafter the "Property"), which he values at $150,000; (2) the Property is subject to a claim (albeit one disputed by Debtor) of $185,000; (3) Debtor has no other secured debt; (4) Debtor owes approximately $18,000 in non-mortgage related unsecured debt;[2] and (5) Debtor has monthly net income of approximately $2,780 and monthly expenses of approximately $2,200, leaving Debtor $580 per month with which to fund a Chapter 13 plan. Debtor also filed a proposed Chapter 13 plan (hereinafter the "Plan") (Dkt. No. 14), which provides for payments to the

[2] Although Debtor checked the box on Schedule E indicating that he owed priority unsecured claims, he failed to schedule any such debts, and Debtor's proposed Chapter 13 plan does not provide for any priority claims. *See* Dkt. No. 14, § 5(B). The Internal Revenue Service filed a proof of claim evidencing a claim of $3,479.53, $555.19 of which is entitled to priority treatment.

Trustee of $152 per month for 36 months, but provides no dividend to general unsecured creditors (*see* § 7) and no treatment for any priority or secured claims (*see* §§ 5(B) & 6).

On October 20, 2014, the Court dismissed the above-captioned case for failure to pay the filing fee. *See id.* (Dkt. No. 33) (hereinafter the "Dismissal Order"). On October 29, 2014, Debtor filed a motion to reconsider the Dismissal Order (hereinafter the "First Reconsideration Motion"), which the Court scheduled for hearing on December 4, 2014. At the hearing, Debtor stated that he had failed to pay the final installment of his filing fee because, when he appeared at the Courthouse on September 19, 2014, the Clerk's Office was unexplainably closed[3] and the next day he had to leave the state to care for an elderly relative, not returning until October 20, 2014, the date the Court dismissed the case. Adam M. Goodman, the Chapter 13 trustee (hereinafter the "Trustee"), opposed reinstatement of the case on the basis that confirmation of Debtor's plan appeared infeasible under any circumstance and that reinstating the case, therefore, would be futile and a waste of the resources of the Court and the Trustee. For that reason, the Court denied the First Reconsideration Motion by way of an order entered on December 5, 2014 (hereinafter the "Denial Order"). Debtor now seeks reconsideration of the Denial Order.

CONCLUSIONS OF LAW

A motion to reconsider an order is not expressly recognized by either the Federal

[3] In fact, the Clerk's Office was closed for a district-wide award's ceremony.

Rules of Bankruptcy Procedure or the Federal Rules of Civil Procedure.[4] Such motions, "however, so denominated are traditionally treated in one of two way[s]: (1) as a Motion to Alter or Amend under Bankruptcy Rule 9023 if the motion is filed within 14 days of the rendition of the court's decision; or (2) if filed after 14 days, as a motion for Relief from Judgment under Bankruptcy Rule 9024." *In re Duran*, 2012 WL 272736, at *3 (Bankr. N.D. Ohio Jan. 27, 2012). Here, Debtor filed both the First Reconsideration Motion and the instant motion within fourteen days of their entry. Accordingly, the Court will treat the instant motion as a Motion to Alter or Amend under Bankruptcy Rule 9023, which incorporates Rule 59 of the Federal Rules of Civil Procedure.

Rule 59 of the Federal Rules of Civil Procedure grants bankruptcy courts discretionary license to alter or amend an order or a judgment after its entry. *See* Fed. R. Civ. P. 59; *see also* Fed. R. Bankr. P. 9002 (references, like that of Rule 59 of the Federal Rules of Civil Procedure, to the alteration or amendment of a "judgment" shall be read to include reconsideration of any order appealable to an appellate court); *see also Duran*, 2012 WL 272736, at *4 ("The decision whether to grant or deny a Rule 59(e) motion is entrusted to the sound judgment of the trial court.") (citing *In re Prince*, 85 F.3d 314, 324 (7th Cir. 1996), *cert. denied*, 519 U.S. 1040 (1996)). The party seeking reconsideration bears the burden of establishing that grounds exist to reconsider the order. *Duran*, 2012

[4] This Court's local rules, however, do provide for motions for reconsideration. *See* BLR 9023-1 (Bankr. N.D. Ga.). Local Rule 9023-1 cautions that "[m]otions for reconsideration should not be filed as a matter of routine practice," but rather, only when a party "believes it is absolutely necessary." *Id*. Notably, the rule specifically forbids the filing of a motion to reconsider "the Bankruptcy Court's denial of a prior motion for reconsideration." *Id*. Accordingly, Local Rule 9023-1 provides an additional basis for the Court's denial of the instant motion.

WL 272736, at *4. In exercising the discretion provided by Rule 59, courts generally consider: (1) whether reconsideration is necessary to correct manifest errors of law or fact upon which the order is based; (2) whether newly discovered or previously unavailable evidence exists; (3) whether the outcome has been impacted by an intervening change in the controlling law; and (4) whether reconsideration is necessary to prevent manifest injustice. *Id.* (citing *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir.1999)).

As Debtor has not attempted to present any newly discovered evidence and cites to no change in the controlling law, the Court presumes that Debtor bases his request upon either a manifest error of law or fact or the assertion that the failure to reinstate his case will cause a manifest injustice. After considering the matter thoroughly, the Court concludes that Debtor has failed to meet his burden of demonstrating the existence of either of these bases for relief.

Debtor's case was originally dismissed for a valid reason—failure to pay the full filing fee. *See* 11 U.S.C. § 1307(c)(2). Although Debtor may have had a reasonable explanation for his failure to pay the filing fee[5] and demonstrated to the Court that he has corrected that particular deficiency, the Court was not required to reinstate Debtor's case if,

[5] On this point, the Court gives Debtor the benefit of the doubt with regard to his contention that he was not able to return to the Courthouse to pay the filing fee until October 20, 2014, although the Court does note that Debtor was able to prosecute his case in other ways, including the filing of a Notice of Appeal on October 14, 2014, of the Court's September 29, 2014 Order denying Debtor's Motion to Extend the Automatic Stay and a Motion for Stay Pending Appeal. Nonetheless, one might wonder how Debtor received notice of the Court's September 29th Order in time to file a timely notice of appeal if he was out of the state between September 20, 2014, and October 20, 2014.

after considering the totality of the circumstances, the Court found that the case had no reasonable likelihood of culminating in a successful reorganization or, for that matter, serving any legitimate bankruptcy purpose. *In re Lancett,* 2014 WL 2120350, at *1 (Bankr. W.D.N.C. May 21, 2014) (quoting *In re Potes*, 336 B.R. 731, 732 (Bankr. E.D. Va. 2005)) ("While motions to reopen [a dismissed case] should be granted liberally, '[i]f no useful purpose can be served by reopening a case, granting the motion is a futile gesture wasteful of the court's and the litigants' resources and the motion should be denied.'").

Having considered Debtor's filing history, as well as the information available to the Court regarding Debtor's present case, the Court could have reached no conclusion other than that: (1) the Plan, as filed, was not confirmable, as it failed to treat Wells Fargo's secured claim, as required by sections 1322(b)(2) and 1325(a)(5) of the Bankruptcy Code, and did not commit all of Debtor's projected disposable income, as required by section 1325(b)(1)(B); (2) the Plan, if amended to treat properly the secured claim against the Property, would not be feasible, as Debtor could not cure the arrearage owed to the secured creditor within the 60-month time period provided in section 1322(d)(2); and (3) the continuation of Debtor's case would result in undue delay and unfair prejudice to Wells Fargo and Debtor's other creditors and, therefore, if reinstated, would be subject to dismissal for cause, pursuant to section 1307(c)(1). Far from establishing that reinstatement of the case is necessary to prevent manifest injustice, these conclusions support the Court's ultimate conclusion that reinstatement would be futile, an unnecessary

waste of judicial resources, and prejudicial to Debtor's creditors and the Trustee.

During the hearing, the Trustee raised these objections in opposition to the First Reconsideration Motion for good reason. The Trustee realized, as did the Court, that reinstatement of the case would soon be followed by another hearing on confirmation, at which the Court would reach the very same conclusions. Indeed, Debtor proffered no change in circumstances and filed no amendments to either his Schedules or his Plan to demonstrate that he had any ability to propose a confirmable plan. He relied entirely upon the speculative suggestion that, given more time, he could persuade Wells Fargo Bank to subordinate voluntarily its lien to permit Debtor to refinance the Property, which Debtor himself scheduled as being worth $35,000 less than the amount owed to Wells Fargo. It goes without saying that the Court has, considering Debtor's filing history and particularly the outcome of the Prior Case, absolutely no confidence in such a strategy. Although Debtor asserts that the Court improperly refused to allow him additional time to correct the deficiencies of the Plan and erroneously considered what would otherwise be confirmation issues, the Court properly exercised its discretion by considering all of the facts and circumstances of the case to conclude that reinstating this case is not required to prevent manifest injustice. *A fortiori*, Debtor has, likewise, failed to demonstrate that the Denial Order was based upon any manifest error of law or fact.

For the reasons stated above, Debtor's Motion to Reconsider (Dkt. No. 47) is hereby **DENIED**.

The Clerk is **DIRECTED** to serve a copy of this Order on Debtor, the Trustee, and Wells Fargo Bank, N.A., to the attention of Kimberly D. Rayborn, Esquire.

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