

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

MARJORIE P. PICKETT
Debtor.

Chapter 7 Case
02-11804

MARJORIE P. PICKETT,
Plaintiff,
v.
JOHN T. QUINN, STATE'S ATTORNEY
Defendant.

Adversary Proceeding
04-1014

ORDER
DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

The Plaintiff, Marjorie P. Pickett (the "Plaintiff"), filed a Motion to Reconsider the Court's January 25, 2005 Memorandum of Decision and Order granting the Defendant's Renewed Motion for Summary Judgment (docs. # 59,60), asserting that relatively recent amendments to the Vermont restitution statute, 13 V.S.A. § 7043, which were brought to counsel's attention after the Court's decision was issued, warrant this Court's reconsideration of its decision. The Plaintiff argues that because the amended restitution statute incorporates a reference to the Bankruptcy Code, stating that restitution obligations are not dischargeable under 11 U.S.C. § 523, that the Plaintiff's discharge injunction has been violated. See 13 V.S.A. § 7043(o); see also, 11 U.S.C. § 524(a)(2).

In its Memorandum of Decision, this Court found that the plain language of the Bankruptcy Code exempts criminal proceedings from the automatic stay and since the Plaintiff sought no relief other than enforcement of the automatic stay, the Court granted judgment as a matter of law to the Defendant (doc. # 59). As this Court recognized in its Memorandum of Decision, restitution is only one of the forms of punishment that may be imposed by the state under the Vermont "bad check" statute, 13 V.S.A. § 2002 (Id.) and no order of restitution has been entered against the Plaintiff (Id.).

The Bankruptcy Rules, which incorporate many procedures of the Federal Rules of Civil Procedure, do not recognize motions for reconsideration. In this Court, pursuant to Vt. LBR 9013-1(i), a motion captioned as a "Motion to Reconsider" shall be construed as a "Motion for Relief from a Judgment or Order." As such, the movant must set forth the grounds alleged to satisfy the criteria set forth in Fed R. Bankr. P. 9023 or 9024. See id.; see also, e.g., In re Arms, 238 B.R. 259 (Bankr. D. Vt. 1999); In re Village Craftsman, Inc., 160 B.R. 740, 744 (Bankr. D. N.J. 1993)(collecting cases). Hence, in order to prevail on the instant motion the Plaintiff must demonstrate she is entitled to relief from judgment under Bankruptcy Rule 9023 or 9024.

AFTER DUE CONSIDERATION of the Plaintiff's Motion to Reconsider, the Defendant's objection to reconsideration (doc # 65), and the record in this case, the Court concludes that the Plaintiff has failed to demonstrate grounds for obtaining relief from, or reconsideration of, the Court's memorandum of decision and order. Specifically,

THE COURT FINDS that, for the reasons set forth in the Defendant's objection and the plain language of the rule, Bankruptcy Rule 9023 is inapplicable in this instance, and accordingly the Plaintiff is not entitled to relief under Bankruptcy Rule 9023.


THE COURT FURTHER FINDS that although the Plaintiff's motion alleges newly discovered evidence (viz., the above-referenced state statute) warrants relief, and newly discovered evidence is a basis for relief from a judgment under Bankruptcy Rule 9024, which incorporates Rule 60 of the Federal Rules of Civil Procedure, the Plaintiff has not shown that the subject statute constitutes newly discovered evidence. The statute became effective on July 1, 2004. Thus, it was in existence several months prior to the filing of the revised motion for summary judgment and the Plaintiff has not demonstrated that she would not have been aware of this statute through the exercise of due diligence. The fact that she did not know about it does not make it grounds for relief from judgment.

THE COURT FURTHER FINDS that the statute addresses the discharge injunction, that the Plaintiff did not raise any issue or prayer for relief based upon the discharge injunction, and hence the "newly discovered" statute has no cognizable relevance to the Court's decision.

Based upon these findings, IT IS HEREBY ORDERED that the Plaintiff's Motion to Reconsider (doc. # 63) is denied.

SO ORDERED.

March 11, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge