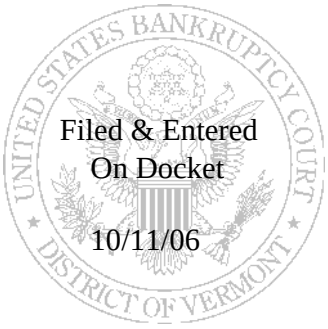
UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

WAYNE GEORGE MILLS,
Debtor.

Chapter 7 Case
 # 04-11382

WAYNE GEORGE MILLS,
Plaintiff,
v.
JANE KROCHMALNY,
Defendant



Adversary Proceeding
 # 06-1020

Appearances: *Wayne George Mills*
Guilford, Vt.
Plaintiff pro se

Jane C. Krochmalny
Guilford, Vt.
Defendant pro se

AMENDED ORDER[1]

ON PLAINTIFF'S MOTION TO DISMISS AUGUST 29, 2006 RULING AND *SUA SPONTE* AMENDMENT OF SCHEDULING ORDER

On October 4, 2006, the Plaintiff filed a motion captioned as "Motion to Dismiss Because of Judicial Misconduct" (the "motion") (doc. # 65). While the caption does not identify what the plaintiff seeks to dismiss, the first line of the motion specifies that the Plaintiff "ask[s] the court to Dismiss it's [sic] ruling of August 29, 2006 in the Adversary Proceeding." The motion, in its last sentence, also in essence, asks that I recuse myself: "The plaintiff also asks that a hearing be held on this matter in front of another, independent judge." The time to respond to the motion has passed and the Defendant has filed no response. For the reasons set forth below, the Court treats this motion as a motion seeking three types of relief: reconsideration of the August 29, 2006 ruling, recusal and an extension of time to respond to the Defendant's motion for summary judgment. The Court denies reconsideration and recusal, and grants the extension of time.

On August 29, 2006, the Court granted the Defendant's motion to quash (doc. # 36) and the Defendant's motion for a protective order (doc. # 42), denied the Plaintiff's motions to compel (docs. ## 32, 46, 47, and 48), established a filing deadline for the Plaintiff's response to the Defendant's motion for summary judgment and generally established a process for addressing the issues the parties have raised in this adversary proceeding. Moreover, and of particular concern to the Plaintiff, the Court determined that the discovery the Plaintiff was seeking and the arguments he has advanced in this proceeding, focused

[1] This Order is amended solely to correct the typographical error on page 5 of the Order issued on October 10, 2006. The Plaintiff has until 4:00 p.m. on October 20, 2006 to file a response to the Defendant's Motion for Summary Judgment.

predominantly on his allegations that the Defendant perpetrated a fraud in connection with the judgment which is the subject of the adversary proceeding, was inapposite to the issues before the Court. Specifically, the Court ruled that the arguments raised by the Plaintiff / Debtor against the Defendant / Creditor might constitute a basis for an objection to the Defendant's claim but did not respond to the Defendant's position that her claim is in the nature of support and therefore excepted from discharge. The Court also ruled that in light of the papers filed to date and the discovery issues that were aired on that day, it had become clear that the parties are arguing about two distinct issues: (1) whether the Defendant's claim is actually in the nature of support and hence one the Plaintiff may not discharge, and (2) whether the claim arose as a result of fraud by the Defendant and hence one that the Defendant may not enforce against the Plaintiff. In order to bring some clarity and logic to what has been a very procedurally disjointed matter, the Court bifurcated the issues and directed that the parties address first whether the Defendant's claim is excepted from discharge under §523(a). The Court pointed out that this approach would be most efficient because it would dispose of the adversary proceeding *in toto*: if the Court determined that the Defendant's claim is not support, and not excepted from discharge, then the Plaintiff's liability for this debt would be discharged and there would be no need to address the circumstances surrounding the creation of the debt; and if the Court determined that debt is excepted from discharge as support, then it would survive the bankruptcy case and any argument the Plaintiff wishes to raise with respect to the enforceability of the judgment would be within the jurisdiction of the state court, and this Court would abstain from adjudicating that question (doc. # 56). Both of these questions are currently open; the Court has not made a determination on the issue of dischargeability to date.

1. The Motion to Reconsider the August 29, 2006 Ruling

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 for reconsideration the Plaintiff must demonstrate he is entitled to relief from judgment under Bankruptcy Rule 9023 or 9024. Although it is difficult to discern the procedural basis for the Plaintiff's motion, it appears that his argument may fall under Rule 60(b) of the Federal Rules of Civil Procedure, since his motion mentions that he was surprised by the Court's approach at the hearing and felt "it was suspicious" and "not on the agenda." See Pl. motion, ¶¶ 3 & 4. Rule 60(b) as incorporated in Bankruptcy Rule 9024, provides, in relevant part:

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.**

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; . . . . The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken. . .

FED.R.CIV.P. 60(b). However, the Court finds that the Plaintiff's objection arises not out of any grounds articulated in this rule, but rather out of a misunderstanding of the procedural posture of the proceeding. Moreover, reconsideration under FED.R.CIV.P. 59(e), made applicable here by Bankruptcy Rule 9023, is warranted when there has been a clear error or manifest injustice in an order of the court or if newly discovered evidence is unearthed. See Doe v. New York City Dep't of Soc. Servs., 709 F.2d 782, 789 (2d Cir.), cert. denied, 464 U.S. 864 (1983). The Plaintiff has not articulated facts to satisfy this standard either.

The Court finds the Plaintiff has not set forth grounds under either Rule 9023 or 9024 to warrant reconsideration. Therefore, the Plaintiff's renewed request for an order compelling the turnover of documents the Plaintiff sought in the prior motion is denied.[2]

2. The Motion for Recusal

Although the Plaintiff does not specifically articulate the basis for his request that another judge handle this matter going forward, it appears that the Plaintiff is alleging that this Court should withdraw from presiding over this case because of gender bias. The controlling statute, 28 U.S.C. § 455(a), provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The basis for the Plaintiff's request is wholly unsubstantiated and relies upon unspecified allegations of "ex parte influence." It is this Court's determination that the allegations set forth in the motion do not rise to the level that demonstrates a reasonable basis for questioning this Court's impartiality.

The Plaintiff's argument of gender bias appears to turn on three key points, none of which is supported by specific facts or particular references to the record. First, the Plaintiff argues that since his wife is a female lawyer this would cause female judges, and this Court, to be predisposed to rule in her favor. Second, he asserts that female judges can be expected to rule in favor of women seeking child support. Third, the Plaintiff

[2] To the extent the Plaintiff seeks a reconsideration of the dismissal of his adversary proceeding, it appears that the Plaintiff has misapprehended the Court's previous ruling. The Court established a procedure for streamlining the determination in this case and has not ruled on whether the Defendant's claim is in the nature of support and whether it is dischargeable.

makes the bold allegation that the judicial system has too many female judges. His words are:

> It is the plaintiff's position that the presiding judge, Collen [sic] Brown, based on knowledge and belief, allowed herself to be influenced by ex-parte individuals on behalf of the defendant because, quite simply the defendant is a female and a female lawyer. . . . The judge was also influenced by ex-parte sources to not make a judgment in favor of the plaintiff because the matter allegedly involved "child support." Because the vast majority of recipients of "child support" are female, it is clearly a gender and feminist issue and the judge was imposed upon to not rule against her gender. . . . It is quite disturbing to the plaintiff to sit in one more court staring into the faces of a bank of females and no males. Any system so lopsided only fuels the outsized sense of feminist entitlement that already exists in the horrible and despicable judicial system.

See motion at par. 6-8. With the exception of the written order denying the Plaintiff's motion to compel, the Plaintiff has not offered any specific allegations of hostility or bias that are consistent with the record in this case. The Court's ruling alone does not mandate recusal. See Liteky v. United States, 510 U.S. 540, 555, 114 S.Ct. 1147 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion" under Section 455(a)). Therefroe, Plaintiff has not established the bias necessary to warrant recusal.

3. The Motion for Extension of Time

Although the Plaintiff does not specifically request an extension of his time to respond to the Defendant's motion for summary judgment, the allegations in his motion reveal that he misunderstood the August 29th order with regard to his opportunity to respond to that motion. He asserts that the Court has dismissed his claim, see motion at par 3, and ruled on the motion for summary judgment without giving him an opportunity to respond, see motion at par 5. The Court previously granted the Plaintiff two extensions of time to respond to the summary judgment, based upon the Plaintiff's apparent misunderstanding of the due date or the nature of his time frame for responding. At the August 29th hearing, the Court once again extended the date by which the Plaintiff's response was due, to September 20th and reiterated this in the Order. The Plaintiff did not respond by September 20th. After the Plaintiff filed his first motion for reconsideration, the Court further extended the Plaintiff's deadline to October 4th (doc. # 63). Since the Plaintiff's second motion for reconsideration indicates that the Plaintiff may have been so focused on other aspects of the hearing and order that he did not attend to the extension of time provision, the Court will *sua sponte* grant the Plaintiff one final extension of time to answer the Defendant's motion for summary judgment. The Plaintiff shall be permitted until October 20, 2006 to file a response. If he fails to file a response to the Defendant's motion for summary judgment by that date, the Court will consider the matter

fully submitted and rule on the motion.

THEREFORE, IT IS HEREBY ORDERED that

1. the Plaintiff's motion for reconsideration of the August 29, 2006 order is DENIED;
2. the Plaintiff's motion for recusal is DENIED; and
3. the Court *sua sponte* grants the Plaintiff an extension of time to respond to the Defendant's motion for summary judgment is GRANTED: the Defendant shall have a final extension such that any response he wishes to file must be filed by **4:00 p.m. October 20, 2006**.

IT IS FURTHER ORDERED that the Scheduling Order entered on April 27, 2006, that set the pre-trial conference for October 17, 2006, is amended to postpone the pre-trial conference in order to give the Plaintiff an opportunity to respond to the motion for summary judgment and the Court an opportunity to rule on the motion for summary judgment prior to the pre-trial conference. The pre-trial conference shall instead be held on **November 7, 2006 at 11:00 am in Rutland, Vermont**.

SO ORDERED.

October 11, 2006
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge