

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
Ashland Division

IN RE:	:	
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ED EDWARDS AND SALLY EDWARDS,	:	Chapter 7
	:	Case No. 10-10435
	:	Judge Joseph M. Scott
	:	
Debtors	:	
	:	

ORDER DENYING DEBTOR’S MOTION FOR RECONSIDERATION

This matter is before the Court on the *pro se* Debtor’s¹ motion to reconsider (“Motion to Reconsider”) (Doc. 189) the Court’s Order (“Eviction Order”) (Doc. 183) entered May 25, 2012, granting the motion to evict and remove (“Motion to Evict”) (Doc. 176) the Debtor from property located at 2531 Forest Avenue, Ashland, Kentucky (“Property”). The Motion to Evict was filed by Phaedra Spradlin, Chapter 7 Trustee (“Trustee”) due to the Debtor’s failure to comply with an Order (Doc. 169) of this Court requiring him to vacate the Property by midnight April 20, 2012, and on Debtor’s statement that he “does not intend to surrender the property voluntarily.” (Doc. 173 ¶ 8). The Trustee and First and Peoples Bank (“Bank”), the secured lender, filed responses (Docs. 193 & 198) objecting to the Motion to Reconsider. A hearing was held on June 19, 2012, and the Court took the matter under advisement. After review of the pleadings, the arguments of the Trustee and Debtor, the Trustee’s supplement (“Supplement”) (Doc. 230), and the record in this case, the Court finds that the Motion to Reconsider will be denied.

Venue for Debtors’ Chapter 7 case is proper in this District under 28 U.S.C. §§ 1408 and 1409. This Court has jurisdiction of this Chapter 7 case pursuant to 28 U.S.C. § 1334(b). This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

¹ Due to the death of Sally Edwards after the filing of the petition, Ed Edwards is the sole Debtor in this case. The Court has previously acknowledged in this case that *pro se* debtors are generally given a certain amount of flexibility. With respect to Mr. Edwards, the Court has found “that the Debtor is a well-educated and long-time businessman.” *In re Edwards*, No. 10-10435, slip op. at 5 (Bankr. E.D. Ky. June 23, 2011) (denying Debtor’s motion to convert).

RELEVANT FACTS

1. The Debtor and his late wife, Sally Edwards, filed their *pro se* Chapter 7 petition on August 17, 2012 ("Petition Date").

2. As of the Petition Date, the Debtor owned four parcels of real estate in Ashland, Kentucky ("Ashland Real Estate"), including the property located at 2531 Forest Avenue. All four parcels of the Ashland Real Estate are encumbered by mortgages held by the Bank.

3. The Bank and the Trustee have entered into an agreement ("Sale Agreement") (Doc. 185) whereby the bankruptcy estate will receive \$1,500 of the sale proceeds from each parcel of the Ashland Real Estate for a total of \$6,000.

4. Pursuant to the Sale Agreement, the Trustee has received \$1,500 from the sale of a parcel of the Ashland Real Estate located at 2753 Jackson Avenue.

5. On the Court's order, the Trustee filed the Supplement reflecting that the balance in the bankruptcy estate's accounts, as of August 31, 2012, is \$5,007.65. The Trustee expects to receive an additional \$18,495.85 (including \$4,500 from the sale of the remaining parcels of the Ashland Real Estate).

6. Proofs of claim filed by unsecured creditors in this case total \$19,566.08.

7. The Trustee estimates that her fees will be approximately \$5,093.

8. The Trustee estimates a distribution to unsecured creditors of approximately 94% of each claim.

MOTION TO RECONSIDER

The Debtor requests that the Eviction Order require him to vacate the Property after an auction of the Property rather than one week prior to an auction. In support of the Motion to Reconsider, Debtor asserts (i) that the Trustee must sell the Property for approximately \$195,000 for the bankruptcy estate to benefit from the sale of the Property and it is "highly unlikely" that the Property will sell at that price at an auction; (ii) the affidavit of Michael Hill, Vice President of the

Bank, contains materially false statements; and (iii) by joining in the Motion to Evict and the Sale Agreement, the Bank is in clear violation of the automatic stay.

LAW AND DISCUSSION

The Eviction Order was entered on May 25, 2012. Debtor filed his Motion to Reconsider seven days later, on June 1, 2012. The Debtor does not indicate whether the Motion to Reconsider is filed pursuant to Federal Rule of Civil Procedure 59 or Rule 60.²

The determination of whether a motion is to be considered under Rule 59 or Rule 60 is generally dependent on when the motion was filed. See *In re Quality Stores, Inc.*, 272 B.R. 643, 649 (Bankr. W.D. Mich. 2002) (citing *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 265, 268 (6th Cir. 1998)). Motions seeking reconsideration under Rule 59 must be filed no later than fourteen days after entry of judgment in an adversary proceeding. See Fed. R. Bankr. P. 9023. “Conversely, ‘where a party’s Rule 59 motion is not filed within the mandatory . . . period, it is appropriate for a court to consider the motion as a motion . . . for relief from judgment’ under Rule 60.” *Id.* at 649 (citing *Feathers*, 141 F.3d at 268). Because the Debtor’s Motion to Reconsider was filed seven days after the Eviction Order, we will treat the Motion to Reconsider as one under Rule 59(e).

The grant or denial of a Rule 59(e) motion is within the informed discretion of the court. Moreover, such a motion is an extraordinary remedy and should be granted sparingly because of the interests in finality and conservation of scarce judicial resources. A court may reconsider a previous judgment: (1) to accommodate an intervening change in controlling law; (2) to account for newly discovered evidence; (3) to correct a clear error of law; or (4) to prevent manifest injustice. A motion under Rule 59(e) is not intended to provide the parties an opportunity to relitigate previously-decided matters or present the case under new theories. Rather, such motions are intended to allow for the correction of manifest errors of fact or law, or for the presentation of newly-discovered evidence. The burden of demonstrating the existence of a manifest error of fact or law rests with the party seeking reconsideration.

Hamerly v. Fifth Third Mortg. Co. (In re J&M Salupo Dev. Co.), 388 B.R. 795, 805 (B.A.P. 6th Cir. 2008) (internal quotations and citations omitted).

² Federal Rules 59 and 60 are made applicable to bankruptcy cases by Federal Rules of Bankruptcy Procedure 9023 and 9024.

The Motion to Reconsider addresses none of the four bases for reconsideration stated above. Even giving the Debtor some leeway because of his status as a *pro se* party, he states no reason for the Court to grant the Motion to Reconsider. He is incorrect that the Trustee must sell the Property for approximately \$195,000 before the bankruptcy estate receives any benefit. The Bank has agreed to give the bankruptcy estate \$1,500 from the sale proceeds prior to the Bank receiving the full amount of the outstanding debt owed to the Bank. It is true that the unsecured creditors will be benefited by a small amount with respect to the sale of each parcel under the Sale Agreement. However, the total benefit of \$6,000, after deducting the Trustee's fees of approximately \$1,200, results in almost 25% of the expected 94% dividend to unsecured creditors. That is not an insignificant amount.

Debtor's unsupported allegation that the affidavit of Mr. Hill contains materially false statements, deserves no comment. The Trustee, as the liquidator of the bankruptcy estate, has the authority to move to evict the Debtor. See e.g., *Truong v. Truong (In re Truong)*, No. 03-40283 (NLW), Adv. No. 09-2684, 2009 WL 4043106 (Bankr. D.N.J. 2009) (While the trustee was marketing property of the estate, debtors refused to cooperate, and the court was forced to direct the U.S. Marshal to remove debtors from the property.). Debtor's actions throughout this proceeding, particularly his written declaration that he will not voluntarily vacate the Property, demonstrate that his presence at the Property is a hindrance to its sale.

CONCLUSION

The Debtor has not carried his burden of demonstrating the existence of a manifest error of fact or law. The Motion to Reconsider is substantially an attempt by the Debtor to relitigate the issues previously decided.

IT IS HEREBY ORDERED that the Motion to Reconsider is **DENIED**.

Copies to:
Phaedra Spradlin, Chapter 7 Trustee
John O. Morgan, Jr., Esq.
Rachelle C. Dodson, Esq.
Matthew Wixson, Esq.
Ed Edwards, Debtor

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
***Joseph M. Scott, Jr.***  
**Bankruptcy Judge**  
**Dated: Wednesday, September 05, 2012**  
**(jms)**