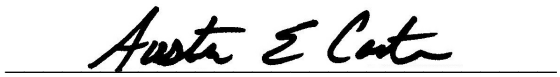
SO ORDERED.

SIGNED this 20 day of December, 2024.



Austin E. Carter
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

In re:	)	
	)	Case No. 23-30610-AEC
David James Farnham,	)	
	)	Chapter 13
Debtor.	)	

ORDER DENYING MOORE CREDITORS' SECOND MOTION UNDER BANKRUPTCY RULES 7052 (FRCP 52), 9023 (FRCP 59), 9024 (FRCP 60) & THE JUDICIAL ESTOPPEL DOCTRINE

Before the Court is the *Moore Creditors' Second Motion Under Bankruptcy Rules 7052 (FRCP 52), 9023 (FRCP 59), 9024 (FRCP 60) & the Judicial Estoppel Doctrine* (Doc. 97) (the "Second Motion"). In this Motion, Moore[1] again asks the Court to reconsider its order dismissing this case.[2] For the reasons that follow, the Court DENIES the Second Motion.

[1] The Court refers to Francis X. Moore and FXM, P.C., d/b/a Frank X. Moore Law together as "Moore" in the singular.

[2] Aside from being a rare maneuver, a second motion for reconsideration may render a party without the ability to appeal the original order for which reconsideration is sought. *See Marsh v. Dep't of Child. & Families*, 259 F. App'x 201, 204 (11th Cir. 2007) ("Because [appellant] filed the second motion to reconsider more than ten days after the dismissal of his complaint and relied on the same grounds as he did in his first amended motion to reconsider, the filing of the second motion to reconsider did not toll the . . . time limit for filing a notice of appeal.") (citations omitted); *see also Taylor v. Taylor (In re Taylor)*, 343 F. App'x 753, 755–56 (3d Cir. 2009) (holding that, when second motion for reconsideration presents factual and legal issues "roughly similar" to those presented in

I. Jurisdiction.

The Court has jurisdiction under 28 U.S.C. §§ 1334(a) and 157(a), and the delegation made to this Court by the Amended Standing Order of Reference from the District Court, entered February 21, 2012. This matter is a core proceeding under 28 U.S.C. § 157(b)(1) and (2). Venue is appropriate in this Court under 28 U.S.C. § 1408.

II. Background and Findings of Fact.

The Debtor filed this case on December 4, 2023. On May 7, 2024, Moore filed a motion to convert this case to chapter 7, which was set to be heard on May 29, 2024. (Docs. 52, 53). Before the hearing on that motion, on May 16, 2024, the Debtor filed a *Voluntary Dismissal* (Doc. 59). When filing his Voluntary Dismissal via the Court's ECF system, the Debtor's attorney described his filing on the Court's docket as "Motion to Voluntarily Dismiss Case by Debtor." (*Id.*).[3] In his Voluntary Dismissal, the Debtor "certifie[d] that this case was not previously converted from Chapter 7." (*Id.*). In accordance with its usual procedure, on May 17, 2024, the Court entered an *Order Dismissing Voluntary Petition*. (Doc. 60).

A. First Motion for Reconsideration

After the Court dismissed this case, on May 31, 2024, Moore requested that the Court reconsider the dismissal, via his *Moore Creditors' Motion Under Bankruptcy Rules 7052 (FRCP 52), 9023 (FRCP 59), 9024 (FRCP 60) & the Judicial Estoppel Doctrine*. (Doc. 63) (the "First Motion"). This Motion was heard on July 30, 2024.

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first motion for reconsideration, the appeal period under Federal Rule of Bankruptcy Procedure 8002(a) is not restarted by the filing of second motion.).

[3] Although he later questions this procedure, Moore, too, referred to the Debtor's Voluntary Dismissal as a "motion to dismiss," in an email to Debtor's counsel. (*See* Doc. 97 at ¶ 17).

At that hearing, Moore argued that the Debtor should not be allowed to dismiss his case because he was ineligible for relief under chapter 13,[4] and because he had engaged in inappropriate conduct, including: failure to file his tax returns; failure to schedule all of his assets and all of his creditors; scheduling illegitimate claims of the Creviston Creditors;[5] inclusion of unnecessary expenses on his Schedules; prepetition collusion with the Creviston Creditors to harm Moore; attempting to use dismissal of the case to avoid the Bankruptcy Rule 2004 examination to which he previously consented; destruction of evidence in a prepetition investigation; proposing his plan in bad faith; and unreasonably delaying matters in this case before seeking dismissal.

On September 6, 2024, the Court issued its Opinion and Order denying the First Motion (Doc. 93) (the "September 6 Order"). For purposes of the September 6 Order, the Court expressly assumed that, if given the opportunity, Moore would have presented evidence supporting his factual assertions outlined above. Because it addresses virtually every argument Moore makes in his Second Motion, the Court incorporates herein its September 6 Order.

B. Second Motion for Reconsideration

Moore's Second Motion is in essence a repeat of his First Motion.[6] Indeed, the Argument and Citation of Authority section of Moore's Second Motion (pp. 16–21) is a virtually identical copy of the Argument and Citation of Authority section in Moore's First Motion to reconsider the Court's dismissal. In the Second Motion,

[4] The Debtor in his Schedule I reports that he is unemployed but receives income from social security and family contributions. (Doc. 1 at 35–36).

[5] The Creviston Creditors are defined collectively in the September 6 Order as Linda Creviston, Marissa Creviston, Lori Andre, and Rebecca Hughson.

[6] Moore complains in his Second Motion that the Court in its September 6 Order characterizes his First Motion as a "motion to vacate." Doc. 97 at ¶¶ 27, 29. Moore apparently has forgotten that, at the July 30, 2024 hearing, it was he who first characterized his First Motion as the "motion that I filed to vacate, essentially." In any event, the Court assigns no import to the defined term it chooses simply to enhance readability of its order.

Moore adds only one argument in his Argument and Citation of Authority that did not appear in his First Motion—that the Debtor is ineligible for chapter 13 under 11 U.S.C. § 109(e). However, even that argument is not new, because Moore argued it at the hearing on his First Motion and the Court addressed it in its September 6 Order denying the First Motion. The remaining four subsections of his Argument and Citation of Authority are exact duplicates from the First Motion, except for the second paragraph on page 17, where Moore changes some dates from that same paragraph on page 4 of the First Motion, in an attempt to show timeliness under Civil Rule 52.

The only other arguably meaningful legal argument addition to Moore's Second Motion is that he specifically recites each subpart of Civil Rule 60 in the Background section of his Second Motion (Doc. 97 at 12). Nevertheless, in the Argument section of his Second Motion, Moore argues only under Civil Rule 60(b)(3), as he did in the First Motion. (Doc. 97 at 18).

C. Debtor's New Case.

After this case was dismissed, on June 28, 2024, the Debtor filed a new chapter 13 case, which remains pending before this Court.[7]

II. Legal Analysis.

Aside from Moore's repetitive arguments, courts generally are unenthusiastic about second motions to reconsider a prior order. As one bankruptcy court has remarked, "serial requests for reconsideration are improper." *In re Harris*, 450 B.R. 324, 336 (Bankr. D. Mass. 2011). The bankruptcy appellate panel for the Ninth Circuit has observed:

> [B]y filing the second motion to reconsider, the debtor is attempting to take a second bite at the apple. He even unabashedly

[7] *In re Farnham*, case no. 24-30325. Moore has been an active litigant in the Debtor's new case. Among his many pleadings is a motion to convert the case to chapter 7, which is currently under advisement. (Case no. 24-30325, Doc. 31).

> characterizes the second motion to reconsider as a "renewed motion" in the caption. The bankruptcy court already ruled on the first motion to reconsider . . . . He cannot continue to repeat the same arguments in slightly different motions and expect different consideration or results.

In re Perry, No. ADV 10-01356-GM, 2013 WL 3369310, at *6 (B.A.P. 9th Cir. July 2, 2013), aff'd, 586 F. App'x 283 (9th Cir. 2014).

For the reasons outlined below, foremost of which is that Moore's Second Motion offers no argument not addressed in the Court's September 6 Order, the Court denies the Second Motion.

A. Burden of Proof; General Standard.

Moore bears the burden of proof with respect to his Motion. *See In re RWD Real Est., LLC*, No. 09-41061, 2010 WL 2926141, at *2 (Bankr. M.D. Ga. July 26, 2010) (Laney, J.); *In re Pac. Cargo Servs., LLC*, No. 13-30439-TMB7, 2013 WL 5299545, at *5 (Bankr. D. Or. Sept. 18, 2013), *aff'd*, No. 3:13-CV-01978-AA, 2014 WL 2041821 (D. Or. May 9, 2014) (holding that movant bears burden of proof for motions brought under Civil Rules 59 or 60). As the movant, Moore must "set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Gold Cross EMS, Inc. v. Children's Hosp. of Ala.*, 108 F. Supp. 3d 1376, 1379 (S.D. Ga. 2015).

A court's decision to alter or amend a judgment is highly discretionary. *See Am. Home Assurance Co. v. Glenn Estess & Assocs., Inc.*, 763 F.2d 1237, 1238–39 (11th Cir. 1985). Such relief should be granted only in rare instances. *See, e.g., Mannings v. Sch. Bd. of Hillsborough Cty., Fla.*, 149 F.R.D. 235, 235 (M.D. Fla. 1993) ("The Court's reconsideration of a previous order is an extraordinary remedy, to be employed sparingly. When issues have been carefully analyzed and decisions rendered, only a change in the law, or the facts upon which a decision was based, justifies reconsideration of the Court's previous order.") (citation omitted); *In re*

DEF Invs., 186 B.R. 671, 681 (Bankr. D. Minn. 1995) ("The Rules are simply not designed to furnish a vehicle by which a disappointed party may reargue matters already argued and disposed of, nor are they aimed at providing a mechanism by which new arguments or legal theories, which could and should have been raised prior to the issuance of judgment, can be later advanced."). "Because it 'is not an appeal, . . . it is improper on a motion for reconsideration to ask the Court to rethink what the Court has already thought through – rightly or wrongly.'" *Ellison v. Unknown*, No. CV 122-143, 2023 WL 5962098, at *1 (S.D. Ga. Sept. 13, 2023) (citations omitted).

"In the interests of judicial efficiency and finality of decisions, 'reconsideration of a previous order is an extraordinary remedy to be employed sparingly.'" *Bingham v. Nelson*, No. 5:08-CV-246-CAR, 2010 WL 339806, at *1 (M.D. Ga. Jan. 21, 2010) (citations omitted). "[L]itigants are not to use a Rule 60(b) motion as a substitute for an appeal." *Steverson v. GlobalSantaFe Corp.*, 508 F.3d 300, 305 (5th Cir. 2007) (citation omitted).

B. Eligibility

Moore contends that he is entitled to a ruling from the Court as to the Debtor's eligibility. In doing so, Moore fails to acknowledge that the Court has already addressed the arguments as to the Debtor's eligibility that he made in connection with his First Motion. For Moore's benefit, the Court summarizes its reasoning on this issue, more fully set forth in the September 6 Order.

1. *Eligibility is Irrelevant Under § 1307(b).*

Although Moore first raised the eligibility issue at the July 30 hearing and not in his First Motion,[8] the Court in its September 6 Order nevertheless made clear that it considered arguments as to ineligibility irrelevant when invoked in the

[8] Moore waited until the July 30, 2024 hearing to first raise his ineligibility argument. This was after the case had already been dismissed and more than seven months after it was filed.

context of a debtor's request to dismiss his case under 11 U.S.C. § 1307(b), so long as the case has not been previously converted. Indeed, the Court in its September 6 Order expressly assumed that, if presented the opportunity, Moore would have introduced evidence supporting the facts that he suggests render the Debtor ineligible for Chapter 13 relief. (Doc. 93 at 4). The Court made clear that it sided with the many cases cited that consider a debtor's right to dismiss his case under § 1307(b) superior to arguments or evidence concerning Chapter 13 eligibility. (*Id.* at 4–12).[9] After the Court entered its September 6 Order, the Ninth Circuit issued a new decision supporting this Court's position:

> [W]e conclude that, when a debtor files a bankruptcy petition under Chapter 13 and certifies that they meet the chapter-specific eligibility requirements, the debtor is presumptively a debtor under Chapter 13—and the petition filing is enough to commence a Chapter 13 case under § 301(a). And once a Chapter 13 case has been commenced under § 301(a), the debtor has an absolute right to voluntarily dismiss that case under § 1307(b), and *the bankruptcy court is not required to conclusively resolve any disputes about the debtor's Chapter 13 eligibility before granting a dismissal request.*

Tico Constr. Co. v. Van Meter (In re Powell), 119 F.4th 597, 603 (9th Cir. 2024) (emphasis added).[10]

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[9] The Court in its September 6 Order cited approvingly to several decisions where the court allowed a debtor to dismiss his case under § 1307(b) despite allegations of ineligibility. (Doc. 93 at 8-10 (citing *TICO Constr. Co. v. Van Meter (In re Powell)*, 644 B.R. 181 (B.A.P. 9th Cir. 2022), aff'd 119 F.4th 597 (9th Cir. 2024); *In re Fulayter*, 615 B.R. 808 (Bankr. E.D. Mich. 2020); *In re Neiman,* 257 B.R. 105, 107 (Bankr. S.D. Fla. 2001)).

[10] Moore argues that, if the Debtor is ineligible for chapter 13 relief, the Court was without authority to grant the Debtor's dismissal request under 11 U.S.C. § 1307(b) and thus the case should have been converted to chapter 7. In support of this argument, he cites to *In re Anderson*, 21 B.R. 443 (Bankr. N.D. Ga. 1981). In *Anderson*, the court was not called upon to consider whether a debtor may use social security payments or family contributions as regular income to qualify for chapter 13. Rather, that court, in connection with a lender's stay relief motion, held that the debtor would not be allowed to base his plan on a lawsuit recovery or an asset sale. The court held that, because the debtor had no regular income, the case "must be dismissed or converted." *Id.* at 446. Therefore, even if the Court were to find the Debtor ineligible, under the ruling in *Anderson*, dismissal of the case would be an appropriate resolution. Dismissing this case is precisely what the Court did.

Despite his now having read the September 6 Order, Moore in his Second Motion again fails to cite a single case where a court refused to grant a debtor's dismissal request under § 1307(b) in order to evaluate and rule on arguments concerning the debtor's ineligibility.

2. *The Debtor's Reported Income of Social Security and Family Contributions Do Not Render Him Ineligible.*

Even if eligibility were relevant to a debtor's § 1307(b) dismissal, Moore's arguments concerning the Debtor's ineligibility miss the mark and in any event were addressed in the September 6 Order. There, the Court explained its disagreement with Moore's argument that the Debtor is ineligible for chapter 13 relief because he reports only social security benefits and family contributions as income:

> The Moore Creditors argue that the Debtor is ineligible for chapter 13 relief because his Schedules reveal only social security benefits and family contributions available to fund a plan. While these concerns may go toward feasibility of the plan at confirmation, there is no per se disqualification of debtors from using those sources of income to fund a plan. *See In re Robinson*, 535 B.R. 437, 443–44 (Bankr. N.D. Ga. 2015) (recognizing broad and liberal interpretation of "regular income" for chapter 13 debtors, which can come from a variety of sources, including social security and family contributions) (citations omitted).

(Doc. 93 at 3 n.7).

Similarly, the Court advised Moore of his erroneous position as to social security income at the September 18, 2024 hearing in the Debtor's new case, no. 24-30325 (at which Moore volunteered that he is "rusty on [his] bankruptcy"), where the Court cited to the Eleventh Circuit decision, *United States v. Devall*. In that decision, the Eleventh Circuit plainly states:

> Under the original Bankruptcy Act, Chapter 13 plans were restricted to wage earners. Thus, one of the primary defects of the old law was that "it [did] not permit some individuals with regular

> income to qualify, such as small business owners or social welfare recipients, because their principal incomes do not come from wages, salary, or commissions." To remedy this defect, Congress modified the code so that any "individual with regular income" could file a voluntary petition for relief under Chapter 13. 11 U.S.C. § 109(e). The legislative history of the Bankruptcy Reform Act clearly indicates that the purpose of this modification was to "permit almost any individual with regular income to propose and to have approved a reasonable plan for debt repayment based on that individual's exact circumstances." Moreover, "[e]ven individuals whose primary income is from investments, pensions, *social security* or welfare may use chapter 13 if their income is sufficiently stable and regular."

United States v. Devall, 704 F.2d 1513, 1515–16 (11th Cir. 1983) (citations omitted) (emphasis in original). The Circuit continues its decision by noting that a debtor may, but cannot be forced to, rely on social security income in his chapter 13 case (*Id.* at 1517). *See also Mort Ranta v. Gorman*, 721 F.3d 241, 253 (4th Cir. 2013) ("[I]t has long been established that Social Security income may be used to fund a Chapter 13 plan.") (citing 11 U.S.C. § 109(e)); *In re Ogden*, 570 B.R. 432, 436–37 (Bankr. N.D. Ga. 2017), amended, No. 16-12280-WHD, 2017 WL 2124413 (Bankr. N.D. Ga. May 15, 2017) (debtor may but is not required to use social security income in chapter 13 case).

Rather than addressing the relevant case law, Moore points to a footnote in a "report on Chapter 13 Bankruptcy" available on USCourts.gov to support his position. Moore argues that this footnote proves that social security income is not included in the definition of "current monthly income" in 11 U.S.C. § 101(10A). (Doc. 97 at 16). Moore misconstrues what he reads, as the cited footnote from the "report on Chapter 13 Bankruptcy" neither concerns eligibility for Chapter 13 nor supports his conclusion that social security income cannot serve as the "regular income" that a chapter 13 debtor is required to have under 11 U.S.C. §§ 101(30) or 109(e). *See* Chapter 13 — Bankruptcy Basics, United States Courts,

https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (Last Accessed December 11, 2024).

Instead, the footnote to which Moore cites is part of a discussion about the required length of a debtor's Chapter 13 plan, which is governed by 11 U.S.C. § 1322(d). The sentence to which the footnote is appended states: "If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period 'for cause.'" *Id.* The following sentences further explain: "If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d)." *Id.* Thus, the footnote Moore cites provides no support for his argument. The Debtor is eligible for Chapter 13 based on his social security income alone.

Moore's other argument as to eligibility—that family contributions cannot serve as "regular income"—was also addressed in the September 6 Order. (Doc. 93 at 3 n.7 (citing *In re Robinson*, 535 B.R. 437, 443–44 (Bankr. N.D. Ga. 2015).[11] Nevertheless, in his Second Motion, without any citation and without acknowledging *Robinson*, Moore declares that, by definition, the Debtor's reported contributions from his brother cannot qualify as "regular" income as necessary for Chapter 13. (Doc. 97 at 16). The Court disagrees, as provided in the September 6 Order.[12]

[11] As noted in the September 6 Order, although family contributions may qualify as "regular income," they are subject to a feasibility analysis at confirmation, under 11 U.S.C. § 1325(a)(6). (Doc. 93 at 3 n.7). *See also In re Baird*, 228 B.R. 324, 329 (Bankr. M.D. Fla. 1999) ("[P]ayments due purely to 'the generosity of a close relative' may fall within the category of stable and regular income.").

[12] Aside from the case law discussed herein and the September 6 Order, two preeminent bankruptcy treatises quickly dispense with Moore's arguments. *See* HON. W. HOMER DRAKE, JR., HON. PAUL W. BONAPFEL, & ADAM GOODMAN, CHAPTER 13 PRACTICE AND PROCEDURE § 12:7 (2023) (recognizing that efforts to restrict debtor eligibility as a matter of law based on types of income have been unsuccessful, and that social security and family contributions may each be basis for debtor eligibility); 1 WILLIAM L. NORTON, III, NORTON BANKR. L. & PRAC. § 17:10 (3d ed. 2024) (recognizing that debtor's "regular income" requirement may be satisfied with social security).

C. New Trial/Rule 7052

Moore spends a great deal of time in his Second Motion arguing that he is entitled to an evidentiary hearing on the Debtor's dismissal request and on his motion to convert. The Court disagrees.

As the Court unequivocally ruled in its September 6 Order (and advised Moore at the July 30 hearing), Bankruptcy Rule 7052 (and thus Civil Rule 52) ***does not apply*** in connection with a debtor's dismissal request under § 1307(b) (Doc. 93 at 15). As for Moore's motion to convert, that motion is moot because the Court granted the dismissal of this case (and denied Moore's First Motion to vacate that dismissal).[13]

D. Civil Rule 59

Moore offers nothing for argument as to Rule 59 except a copy-and-paste of the paragraphs of argument from his First Motion. The Court denies his request for the reasons set forth in its September 6 Order (Doc. 93 at 15–16). The Court further reminds Moore that Rule 59 is not intended as a vehicle to request the court "'to reexamine an unfavorable ruling.' The remedy in that situation is to appeal." *Barry C. S. v. Kijakazi*, 625 F. Supp. 3d 1342, 1353–54 (N.D. Ga. 2022) (citing *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010)).

E. Civil Rule 60

Although in the Argument & Citation of Authority section of Moore's Second Motion, he recites verbatim the same argument—concerning alleged fraud—that he

[13] The Court in its September 6 Order cites to many cases that make clear a debtor's right to dismiss under § 1307(b) supersedes a creditor's pending motion to convert under § 1307(c). *See, e.g., In re Kemp*, No. 21-40365, 2022 WL 50368 (Bankr. D. Kan. Jan. 5, 2022); *In re Minogue*, 632 B.R. 287 (Bankr. D. S.C. 2021); *In re Fulayter*, 615 B.R. 808 (Bankr. E.D. Mich. 2020); *In re Pennington*, No. 16-22914-GLT, Doc. 106 (Bankr. W.D. Pa. May 14, 2018); *In re Sinischo*, 561 B.R. 176 (Bankr. D. Colo. 2016); *Ross v. AmeriChoice Fed. Credit Union*, 530 B.R. 277 (E.D. Pa. 2015), vacated sub nom, *In re Ross*, 858 F.3d 779 (3d Cir. 2017); *In re Thompson*, No. 10-23017, 2015 WL 394361 (Bankr. E.D. Ky. Jan. 28, 2015); *In re Williams*, 435 B.R. 552 (Bankr. N.D. Ill. 2010); *In re Patton*, 209 B.R. 98 (Bankr. E.D. Tenn. 1997); *In re Harper-Elder*, 184 B.R. 403 (Bankr. D.D.C. 1995); *In re Smith*, 257 B.R. 344 (Bankr. N.D. Ala. 2001); *In re Neiman*, 257 B.R. 105 (Bankr. S.D. Fla. 2001).

made in his First Motion, earlier in his Second Motion—in the "Background" section—he sets forth the full text of Civil Rule 60. He appears to make some arguments about the applicability of some of these subparts, albeit only in footnotes for the recited subparts of Civil Rule 60.

The Court incorporates its September 6 Order, where it ruled against Moore's arguments under Civil Rule 60(b)(3) (Doc. 93 at 16) and will not address that subpart of the Rule again here.[14]

However, because Moore cites to the other subparts of Civil Rule 60, the Court will address each here. The Court finds that Moore has failed to satisfy his burden with respect to any of the other subparts.

To prevail on a motion brought under Civil Rule 60(b), the movant must demonstrate the applicability of at least one subpart of the Rule. "[L]itigants are not to use a Rule 60(b) motion as a substitute for an appeal." *Steverson v. GlobalSantaFe Corp.*, 508 F.3d 300, 305 (5th Cir. 2007) (citation omitted)*; see also In re Johnson*, No. 19-57871-WLH, 2020 WL 61827, at *2 (Bankr. N.D. Ga. Jan. 6, 2020) ("Rule 60(b) was not intended to provide relief for error on the part of the court or to afford a substitute for appeal.") (citation omitted)).

1. *Civil Rule 60(a).*

Civil Rule 60(a) provides that "the court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Fed. R. Civ. P. 60; Fed. R. Bankr. P. 9024. The Court detects no clerical mistake or mistake arising from oversight or omission.

[14] As with the First Motion, when Moore argues under Civil Rule 60 in his Second Motion, he alleges the Order dismissing the case was procured through "fraud." The Court presumes Moore argues under Civil Rule 60(b)(3).

2. *Civil Rule 60(b)(1).*

Civil Rule 60(b)(1) provides that a court may relieve a party from a final judgment or order due to "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). Moore makes the curious suggestion when citing Rule 60(b)(1) that the Debtor must have "surprised the Court" with his "unlawful[]" procedural maneuver to procure the dismissal of the case (Doc. 97 at 12 n.2). Nothing could be further from the truth. The Debtor's attorney in followed the typical protocol for procuring a dismissal of a chapter 13 case under 11 U.S.C. § 1307(b). When filing the Voluntary Dismissal, the Debtor's attorney submitted a proposed order granting the dismissal. *See* M.D. Ga. LBR 9013-1(a). The Court has explained in detail in its 18-page September 6 Order that it considers the Debtor's actions in procuring the dismissal typical and not unlawful. The Court detects no mistake, inadvertence, surprise, or excusable neglect that would invoke Civil Rule 60(b)(1).

3. *Civil Rule 60(b)(2)*

Civil Rule 60(b)(1) provides that a court may relieve a party from a final judgment or order based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to more for a new trial under Rule 59(b)." Fed. R. Civ. 60(b)(2). Here, Moore offers no newly discovered evidence. Rather, he seeks to introduce evidence that existed before the Court dismissed this case and before the Court issued its September 6 Order denying Moore's First Motion.

Nevertheless, Moore argues that the evidence he seeks to introduce would be "newly discovered evidence" because the Court did not hold a hearing on the Debtor's dismissal request or on Moore's motion to convert, in violation of "the Constitution, Code, and Rules." (Doc. 97 at 12 n.3). As explained in its September 6 Order, no hearing is required on a debtor's dismissal request under § 1307(b). (Doc.

93 at 14). Moreover, and as the Court explained in its September 6 Order, the Court has now considered and ruled on Moore's arguments even though he was not entitled to a hearing.

As made clear in the Court's September 6 Order denying the First Motion, no evidence Moore suggests he could prove would affect the Court's decision. Rather, any such evidence is irrelevant to a debtor's right to dismiss his case under § 1307(b). The only relevant fact is the single condition found in § 1307(b)—i.e., whether the subject case was previously converted. Here, this case was not previously converted and therefore the Court approved the Debtor's request to dismiss it.

4. *Civil Rule 60(b)(4)*

Civil Rule 60(b)(4) provides that a court may relieve a party from a final judgment or order when "the judgment is void." Fed. R. Civ. 60(b)(4). Moore argues in a footnote that the dismissal order of the Court is void because the Court "lacked the power and authority to grant" the dismissal of the case, because the Debtor was not eligible for relief under Chapter 13. For all of the many reasons the Court has explained in its September 6 Order and in this Order, the Court rejects this argument. A debtor's eligibility is not relevant to his request to dismiss a previously unconverted case under § 1307(b), so long as the case has not previously been converted as set forth in that statute. Moreover, the fact that the Debtor relies on social security benefits and family contributions as income sources does not render him ineligible for Chapter 13 relief.

5. *Civil Rule 60(b)(5)*

Civil Rule 60(b)(5) provides that a court may relieve a party from a final judgment or order when the judgment has been satisfied, released, discharged, or based on an earlier judgment that has been reversed or vacated, or when applying it

prospectively is no longer equitable. Moore makes no argument under this subpart, even in a footnote. The Court detects no entitlement to relief under this subsection.

6. *Civil Rule 60(b)(6)*

Civil Rule 60(b)(6) authorizes a court to relieve a party from a final judgment or order for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Known as the "catch-all" provision, Civil Rule 60(b)(6) can apply only when subparts (b)(1) through (b)(5) do not. *See In re Johnson*, No. 19-57871-WLH, 2020 WL 61827, at *3 (Bankr. N.D. Ga. Jan. 6, 2020) ("[A] Rule 60(b)(6) motion must be based on some reason other than those stated in clauses (1)-(5)."") (citing *Solaroll Shade and Shutter Corp., Inc. v. Bio-Energy Sys., Inc.*, 803 F.2d 1130, 1133 (11th Cir. 1986)). Such relief is available only in "extraordinary circumstances." *Fed. Trade Comm'n v. Nat'l Urological Grp., Inc.*, 80 F.4th 1236, 1244 (11th Cir. 2023) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005)).

Moore has failed to show extraordinary circumstances. The only argument Moore makes under this cite is in a footnote where he concludes '[w]hile it is not necessary in this case, if all else fails the 'any other reason' would surely apply." (Doc. 97 at 12n.6). The Court disagrees and finds that Moore has demonstrated no reason for application of Civil Rule 60(b)(6).

F. Hearing Requested on Second Motion

Although Moore noticed his Second Motion for a hearing using the Court's self-calendaring procedures, the Court declines to hold a hearing on the Second Motion.[15] A party does not have a right to a hearing on a motion to reconsider—particularly, as here, when a hearing would not assist the court in reaching a decision. *See Gupta v. U.S. Att'y Gen.*, No. 20-12811, 2021 WL 3011931, at *4 (11th Cir. July 16, 2021) ("A district court does not abuse its discretion in denying a

[15] Moore separately has filed an *Insistence on Evidentiary Hearing on Pending Contested Matters,* on October 13, 2024 (Doc. 99). The Court will address that filing in a separate order.

request for an evidentiary hearing for a Rule 60(b) motion when the hearing would not aid the court's analysis.") (citing *Cano v. Baker*, 435 F.3d 1337, 1342–43 (11th Cir. 2006)); *Vasconcelo v. Miami Auto Max, Inc.*, 851 F. App'x 979, 985 (11th Cir. 2021) ("[N]othing in rule 60(b) or our case law interpreting it compelled the district court to hold an evidentiary hearing before making its findings.").

As made clear in the Court's Order denying the First Motion, no evidence Moore suggests he could prove would affect the Court's decision. The Court declines to hold a hearing on the Second Motion.

III. Conclusion

For the foregoing reasons, the Court finds that Moore has not demonstrated entitlement to the relief he requests. The Court DENIES Moore's Second Motion to Reconsider. This case remains dismissed.[16]

[16] The Court expects that this will be the last time it addresses Moore's arguments against dismissal of this case, barring direction from a higher court. Unless and until that occurs, the Court considers appropriate a district court's remarks concerning a second motion to reconsider: "A motion to reconsider a ruling denying a motion to reconsider has carried federal civil procedure to new levels of abuse. We trust this will be the last time we will be asked to opine on this matter." *Good v. Kvaerner U.S., Inc.*, No. IP 1:03-CV-0476 SEB-, 2003 WL 23104240, at *1 n.1 (S.D. Ind. Dec. 12, 2003).