

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN
DISTRICT OF IOWA

IN RE:)

) Chapter 7

ROBIN A. HUPTON,)

SUSAN K. HUPTON,) Bankruptcy No. 02-02159

)

Debtors.)

**ORDER RE MOTION PURSUANT TO BANKRUPTCY RULES 7052 AND
9023**

The Court filed an Order re Objection to Exemption and Motion for Turnover on November 25, 2002. It found Debtor's interest in a Prudential annuity is not exempt and is not excluded from the bankruptcy estate under § 541(c)(2). Further, Trustee is entitled to liquidate Debtor's interest in the annuity as property of the estate.

Debtor filed a Motion Pursuant to Bankruptcy Rules 7052 and 9023 on December 5, 2002. These rules provide for amendment of findings, alteration or amendment of judgment, or new trial through adoption of Rules 52 and 59 of the Federal Rules of Civil Procedure. This Court has reviewed the Motion and concludes that no purpose would be served by additional oral argument. Ruling on this Motion can be made without further hearing.

A motion under Rule 59(e) is not an opportunity to reargue a case. In re No-Am Corp., 223 B.R. 512, 514 (Bankr. W.D. Mich. 1998). "Rule 59(e) motions are aimed at re-consideration, not initial consideration." Id.

[The] court has broad discretion in determining whether to grant a Fed. R. Civ. P. 59(e) motion to alter or amend judgment. . . . Federal Rule of Civil Procedure 59(e) was adopted to clarify a [] court's power to correct its own mistakes in the time period immediately following entry of judgment. Rule 59(e) motions serve a limited function of correcting manifest errors of law or fact or to present newly discovered evidence. Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment.

Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs., 141 F.3d 1284, 1286 (8th Cir. 1998) (citations omitted); DeWit v. Firststar Corp., 904 F. Supp. 1476, 1495 (N.D. Iowa 2002). Arguments and evidence which could have been presented earlier in the proceedings cannot be presented in a Rule 59(e) motion. Peters v. General Serv. Bureau, Inc., 277 F.3d 1051, 1057 (8th Cir. 2002). When issues have been carefully analyzed and a judgment has been rendered, only a change in the law or the facts upon which the court's decision was based generally justifies a reconsideration or amendment of a court's previous order. In re DEF Invs., Inc., 186 B.R. 671, 681 (Bankr. D. Minn. 1995).

Debtor argues that New Jersey law should be applied as Prudential is a New Jersey corporation and the annuity was established there. She asserts a New Jersey statute which shields annuities from execution excludes the annuity from the bankruptcy estate. Debtor has not previously pled or argued the applicability of other law. It is axiomatic that Debtor has the burden to plead and prove applicable law. If foreign law is not pled or proven, the law of the forum applies. The Court finds that Debtor has not met that burden as regards application of New Jersey law. Furthermore, Debtor was required to present this argument earlier in the proceedings.

Debtor additionally asserts that the annuity contract provides that it may only be transferred to Prudential by the annuitant within ten days of receipt of the annuity. Again, Debtor has not previously asserted this argument. From the record presented, the Court notes the ten-day limit appears in a paragraph entitled "Right to Cancel Contract." Neither the Beneficiary Provision nor the Limitation Provision contain this ten-day limit.

Finally, Debtor argues the contract has no value and is therefore not an asset of the estate. Debtor's interest in the annuity is the right to receive monthly payments until May of 2008. The Court does not agree that this interest has no value.

Based on the foregoing, the Court concludes Debtor is not entitled to amendment of findings, alteration or amendment of judgment, or new trial under Rules 7052 or 9023. As such, Debtor's Motion must be denied and the Court's November 25, 2002 ruling remains as entered in its entirety.

WHEREFORE, Debtor's Motion Pursuant to Bankruptcy Rules 7052 and 9023 is DENIED.

SO ORDERED this 19th day of December, 2002

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE