Dated: August 07, 2014
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re	)	
	)	
LOLA JELKS WHITE,	)	**Case No. 09-12711**
	)	
Debtors .	)	**Chapter 13**
	)	

MEMORANDUM OPINION RE: DEBTOR'S MOTION TO SET ASIDE ORDER DISCHARGING CASE FOR THE PURPOSE OF CONVERTING TO CHAPTER 7

This matter is before the Court on the debtor's motion to set aside the order of discharge entered in her Chapter 13 case on May 30, 2014. The Court conducted a hearing on the Debtor's motion on July 31, 2014.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and, thus, may enter a final order in this matter. This

memorandum opinion shall serve as the Court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052.

I. FACTS

The facts in this proceeding are undisputed. Lola Jelks White ("Debtor") filed her Chapter 13 petition for bankruptcy relief on July 7, 2009. The Court confirmed her Chapter 13 plan on October 1, 2009, and set the percentage to be paid to unsecured creditors at 100% on September 16, 2010. The Debtor made all of her weekly plan payments of $402.00 on time and in full. Pursuant to 11 U.S.C. § 1328(a), the Debtor filed a Certification of Plan Completion and Request for Discharge on April 28, 2014. The Court granted the Debtor a discharge on May 30, 2014.

Five days after the Court entered the discharge order, the Debtor filed a "Motion to Set Aside Order Discharging Case for the Purpose of Converting to Chapter 7." In support of her motion, the Debtor stated that she had incurred significant post-petition debt during the pendency of her Chapter 13 case which she was unable to pay. For that reason, she asked the Court to set aside her Chapter 13 discharge and allow her to convert her case to Chapter 7 and discharge the post-petition debt. The Debtor did not provide any information in her motion as to the amount and nature of this debt; however, at the July 31, 2014 hearing, the Debtor's attorney stated that part of this debt consisted of a state court judgment of between $20,000 and $30,000. This judgment resulted from a default by the Debtor's daughter on a lease which the Debtor had co-signed.

II. ANALYSIS

Federal Rule of Civil Procedure 59, made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9023, applies to motions to alter, amend or set aside a judgment filed within 14 days of entry of the judgment. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 68, 102 S. Ct. 400, 407 (1982) ("Indeed, even motions captioned under Rule 60(b), but filed within 10 days of judgment, are normally deemed Rule 59 motions."); *Dove v. CODESCO*, 569 F.2d 807, 809 (4th Cir. 1978); *Huff*

v. Metro. Life Insurance Co., 675 F.2d 119, 122 (6th Cir. 1982).[1] Whether to grant or deny a Rule 59(e) motion is a decision which falls soundly within the discretion of the court. *Huff*, 675 F.2d at 122. "A motion to alter or reconsider a judgment is an extraordinary remedy and should be granted sparingly because of the interests in finality and conservation of scarce judicial resources." *United States ex rel. American Textile Mfrs. Inst., Inc. v. The Limited, Inc.*, 179 F.R.D. 541, 547 (S.D. Ohio 1997); *Hamerly v. Fifth Third Mortg. Co.* (*In re J & M Salupo Dev. Co.*), 388 B.R. 795, 800 (B.A.P. 6th Cir. 2008). "The relief available under Rule 59(e) is limited . . . ." *In re Leahy*, 376 B.R. 826, 829 (Bankr. S.D. Ohio 2007). Motions to alter or amend judgments may be granted in three instances: (1) if the court has committed a clear error of law, (2) if there is newly discovered evidence, i.e. an intervening change in controlling law, or (3) "to prevent manifest injustice." *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). The party seeking reconsideration of a decision bears the burden of proving the existence of sufficient grounds entitling them to Rule 59(e) relief. *J & M Salupo Dev. Co.*, 388 B.R. at 805. Courts may reconsider discharge orders pursuant to Rule 59(e). *Disch v. Rasmussen*, 417 F.3d 769, 775 (7th Cir. 2005); *In re Jones*, 111 B.R. 674, 680 (Bankr. E.D. Tenn. 1990).

In the case at bar, the Debtor has not argued that the Court committed an error of law or that newly discovered evidence exists. Instead, she argues that the Court should set aside her Chapter 13 discharge so that she may convert to Chapter 7 and discharge the post-petition debts she has acquired during the pendency of her Chapter 13 case. For purposes of Rule 59(e), this argument seems to fall under the "manifest injustice" category. "Manifest injustice, as contemplated by Rule 59(e), is an amorphous concept with no hard line definition." *Cusano v. Klein* (*In re Cusano*), 431 B.R. 726, 734 (B.A.P. 6th Cir. 2010) (internal quotation marks and citations omitted). Accordingly, courts must "look at the

[1]The cited cases indicate that motions filed within ten days after entry of the order are appropriately treated as Rule 59 motions to alter or amend. When Congress amended the time proscriptions set forth in Federal Rule of Bankruptcy Procedure 9006(a) in December 2009, the time for filing a Rule 59 motion was increased to 14 days. *See* Fed. R. Bankr. P. 9023 advisory committee note.

matter on a case-by-case basis." *Int'l Union United v. Bunting Bearings Corp.* (*In re Buting Bearings Corp.*), 321 B.R. 420, 423 (Bankr. N.D. Ohio 2004).

> A movant seeking Rule 59(e) relief must be able to show an error in the trial court that is direct, obvious, and observable. The movant must also be able to demonstrate that the underlying judgment caused them some type of serious injustice which could be avoided if the judgment were reconsidered. Essentially, the movant must be able to show that altering or amending the underlying judgment will result in a change in the outcome in their favor.

Cusano, 431 B.R. at 734.

"Ordinarily, a debtor who has obtained a chapter 13 discharge must wait six years before filing a chapter 7 petition (at least one that can result in a discharge)." *Carroll v. Sanders* (*In re Sanders*), 551 F.3d 397, 403 (6th Cir. 2008) (citing 11 U.S.C. § 727(a)(9)). However,

> if that debtor received the previous chapter 13 discharge after either (A) paying all of his unsecured debts in full or (B) proposing a payment plan in good faith, making his best effort to complete the payment plan in full and actually making payments totaling at least 70% of his unsecured debts, the debtor can turn around and obtain a chapter 7 discharge the next day.

Id. at 403-04 (citing § 727(a)(9)(A) and (B)); *see also Branigan v. Bateman* (*In re Bateman*), 515 F.3d 272, 280 (4th Cir. 2008); *Banks v. Griffin* (*In re Griffin*), 352 B.R. 475, 479-80 (B.A.P. 8th Cir. 2006). In the case at bar, the Debtor paid 100% of her allowed unsecured claims through her Chapter 13 plan. As a result, she is immediately eligible to seek a Chapter 7 discharge of the post-petition debts she acquired during her Chapter 13 case. Thus, setting aside her Chapter 13 discharge will not have any effect on her ability to immediately file for Chapter 7 relief and seek a discharge of those post-petition debts. There simply is no injustice, manifest or otherwise, to prevent in this case.

Although the Court can conceive of situations in which setting aside a Chapter 13 discharge might be appropriate under Federal Rule of Civil Procedure 59(e) or 60, this is not the case in which to address the propriety of such relief. The facts in this case allow the Debtor to do what she wants to do: seek a Chapter 7 discharge without having to wait

another year to file her petition. Any analysis of whether the Court could set aside the discharge order in this case would be an advisory opinion which the Court is prohibited from issuing. *Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013) (internal quotation marks and citations omitted) ("Federal courts may not decide questions that cannot affect the rights of litigants in the case before them or give opinions advising what the law would be upon a hypothetical state of facts.").

III. CONCLUSION

For the reasons stated herein, the Court concludes that setting aside the Chapter 13 discharge order in this case is not necessary. As such, the Court denies the Debtor's motion.

The Court will entered a separate order in accordance herewith.

IT IS SO ORDERED.

Mailing List:

Ken Walker, attorney for debtor
Debtor
Tim Ivy, Chapter 13 Trustee
United States Trustee

Dated: August 07, 2014
The following is SO ORDERED:

Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re	)	
	)	
LOLA JELKS WHITE,	)	**Case No. 09-12711**
	)	
Debtors .	)	**Chapter 13**
	)	

ORDER DENYING DEBTOR'S MOTION TO SET ASIDE ORDER DISCHARGING CASE FOR THE PURPOSE OF CONVERTING TO CHAPTER 7

For the reasons set forth in the Court's Memorandum Opinion entered in accordance herewith, the Debtor's Motion to Set Aside Order Discharging Case for the Purpose of Converting to Chapter 7 is **DENIED.**

IT IS SO ORDERED.

Mailing List:

Ken Walker, attorney for debtor
Debtor
Tim Ivy, Chapter 13 Trustee
United States Trustee