Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
RALPH COLE	)	CASE NO. 10-14322
	)	
	)	
Debtor	)	

DECISION AND ORDER

At Fort Wayne, Indiana, on April 26, 2011.

The debtor's wife died shortly before he filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. On January 26, 2011 the trustee filed a motion for turnover seeking, inter alia, any and all life insurance proceeds the debtor received on account of his wife's death. Both the motion and the required notice of it, see, N.D. Ind. L.B.R. B-2002-2, were properly served upon the debtor and his counsel. When there was no objection within the time required, the court granted the motion and, by an order entered on February 18, 2011, required the debtor to turnover to the trustee all proceeds from life insurance policies owned by his deceased wife which named him as a beneficiary. When the debtor failed to comply with the order February 18, the trustee asked the court to hold him in civil contempt. Over the debtor's objection, that motion was granted by the court's order of April 18, 2011, following a hearing attended by his counsel. The debtor has now filed motions for relief from both the February 18 order of turnover and the April 18 order of contempt, arguing, pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure, that those orders are void.[1] The court may dispose of these motions without requiring a response from the trustee and without holding a hearing. N.D. Ind. L.B.R. B-29023-1(b); B-7007-2(a). See also,

[1]Both motions were accompanied by the required supporting briefs. See, N.D. Ind. L.B.R. B-9023-1(a).

United States v. 8136 S. Dobson Street, Chicago, Ill., 125 F.3d 1076, 1086 (7th Cir. 1997). In this situation there is no need for either.

The debtor's motions argue that the court's orders are void because they are wrong. Debtor contends the trustee has no right to the insurance proceeds because they have been claimed as exempt, through an amended schedule C filed on April 13, 2011.[2] The Supreme Court recently had the occasion to consider when an order is void for the purposes of Rule 60(b)(4), see, United Student Aid Funds, Inc. v. Espinosa, __ U.S. __, 130 S.Ct. 1367 (2010), and that decision answers the questions raised by debtor's motion. The Court held:

> 'A judgment is not void . . . simply because it is or may have been erroneous.' Hoult v Hoult, 57 F.3d 1, 6 (1st Cir. 1995) . . . Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error [the court lacked even an arguable basis for jurisdiction] or on a violation of due process that deprives a party of notice and the opportunity to be heard. Espinosa, 130 S.Ct. at 1377.

No such arguments are or can be made here. This court clearly had subject matter jurisdiction over the underlying bankruptcy case and the trustee's motion for turnover, as well as the authority to enforce that order. See, 28 U.S.C. §§ U.S.C. 1334, 157; 11 U.S.C. § 105; N.D. Ind. L.B.R. 200.1; Matter of Rimsat, Ltd., 98 F.3d 956 (7th Cir. 1996) (affirming bankruptcy court's order of contempt). See also, Kimco Leasing, Inc. v. Knee, 144 B.R. 1001, 1006-1008 (D. N.D. Ind. 1992) (bankruptcy court has jurisdiction over issue of civil contempt). It also had personal jurisdiction over the debtor, who commenced this case with a voluntary petition for relief under Chapter 7. Finally, both orders

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[2]The court had previously sustained the trustee's objections to debtor's claimed exemption for the insurance proceeds and denied the exemption. See, Order dated March 2, 2011. The amended claim (to which the trustee has objected) was filed at 4:23 p.m. on April 13 – approximately 2 hours AFTER the court had orally ruled on the motion for contempt. See, Order for Preliminary Hearing, dated March 17, 2011; docket entry #65, dated April 13, 2011.

were issued under circumstances that fully comport with the demands of due process, which requires only notice reasonably calculated to apprise interested parties of the action and the opportunity to present objections. Espinoza, 130 S.Ct at 1378. The turnover order was not entered until after both the debtor and his counsel had been served with the motion and the required notice of the opportunity to object thereto and the order of contempt was not issued until after a hearing, attended by debtor's counsel, at which the court overruled the debtor's objections.

Debtor's Motions for Relief from Void Order, filed on April 21, 2011, are DENIED.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court