

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 06-11753

Plaintiff,

v.

Honorable Nancy G. Edmunds

PETER HENDRICKSON and DOREEN
HENDRICKSON,

Defendants.

_____ /

**ORDER DENYING (1) DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT,
[26] AND (2) DEFENDANTS' MOTION FOR RECONSIDERATION [27]**

This matter comes before the Court on Defendant Peter Hendrickson's and Defendant Doreen Hendrickson's (collectively, "Defendants") motions for relief from judgment and for reconsideration, both filed on March 13, 2007.¹ On February 26, 2007, this Court accepted in part and rejected in part the magistrate judge's report and recommendation, granted the government's motion for summary judgment, and granted the government's request for a preliminary injunction. Defendants' motion for relief from judgment is based upon Fed. R. Civ. P. 60(b)(4) and (6), as they argue that this Court lacked subject matter jurisdiction to hear the case. The motion for reconsideration is presumably brought under Rule 7.1(g)(3) of the Local Rules for the Eastern District of Michigan, and Defendants argue that the government has not met its burden of proof regarding the fact that they received erroneous tax refunds for 2002 and 2003.

¹If Defendants desire to appeal, they must do so in accordance with the Rules of Appellate Procedure. An appeal from an order of this Court must be taken to the Sixth Circuit Court of Appeals.

Rule 60(b) provides a number of grounds under which a court has the discretion to set aside a judgment, including the two that Defendants cite here: “(4) the judgment is void; . . . or (6) any other reason justifying relief from the operation of the judgment.” “A judgment is void under 60(b)(4) ‘if the court that rendered it lacked jurisdiction of the subject matter, or of the parties,’” *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995) (quoting *In re Edwards*, 962 F.2d 641, 644 (7th Cir. 1992)). Defendants do not argue that this Court lacks personal jurisdiction over them, and nothing in their motion convinces the Court that the magistrate’s finding that subject matter jurisdiction exists here was incorrect. Furthermore, a party merely seeking to re-litigate prior issues is not entitled to relief under Rule 60(b). *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 543 (6th Cir. 2004).

With regards to Rule 60(b)(6), the Sixth Circuit has held that “[r]elief from a judgment pursuant to Rule 60(b)(6) ‘is appropriate to accomplish justice in an extraordinary situation’” *Id.* (quoting *Overbee v. Van Waters & Rogers*, 765 F.2d 578, 580 (6th Cir.1985)). Defendants fail to state a sufficient reason to meet this demanding standard, so they are not entitled to relief on this alternative ground under Rule 60(b).

Turning to Defendants’ motion for reconsideration, the Court will not grant a motion for reconsideration under Rule 7.1(g)(3) of the Local Rules for the Eastern District of Michigan “that merely present[s] the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.” The majority of Defendants’ motion attempts to re-argue the previously rejected assertion that wages do not constitute income for federal tax purposes, and thus, does not meet the requirements of L.R. 7.1(g)(3). The

only new argument is that “the statutes invoked or relied upon by Plaintiff and the Court . . . are unconstitutional, being plainly violative of at least the ‘necessary and proper’ clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution.” (Defs.’ Mot. for Reconsideration at 9.) This assertion is not supported by any legal authority, however, and the Court declines to address Defendants’ position without any indication that there is a legal basis for this newly alleged defense to the government’s claims.

Because Defendants’ motions for relief from judgment and for reconsideration fail to satisfy the requirements of Fed. R. Civ. P. 60(b) and L.R. 7.1(g)(3), the Court hereby DENIES both motions in their entirety.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
U. S. District Judge

Dated: May 2, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on May 2, 2007, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager