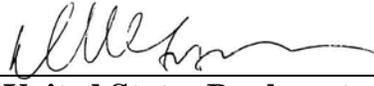




The following constitutes the ruling of the court and has the force and effect therein described.

  
United States Bankruptcy Judge

Signed August 09, 2010

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re	§	
	§	Case No. 09-43665-dml-7
Stephen Anthony Warren,	§	
	§	
Debtor.	§	
	§	
Lida T. Mosiman,	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 09-04282
	§	
Stephen Anthony Warren,	§	
Defendant.	§	

**MEMORANDUM ORDER**

Before the court are the *Amended Motion to Alter or Amend the Judgment and Brief in Support* (the “Motion to Amend”), the *First Amended Motion for Amended or Additional Findings of Fact and Brief in Support* (the “Findings Motion”), and the *First Amended Motion to Correct Clerical Mistake in the Judgment and Brief in Support* (the “Motion to Correct,” and together, the “Motions”), filed by Lida T. Mosiman

(“Mosiman”) on July 22, 2010. By the Motions, Mosiman seeks reconsideration of the court’s Memorandum Opinion (the “Opinion”) and Judgment (the “Judgment”), which were entered in the above-styled adversary proceeding on June 29, 2010, and July 8, 2010, respectively.

Mosiman seeks reconsideration, first, on the ground that Warren’s answer did not comply with Fed. R. Civ. P. 8(b)(1)(B), which requires a defendant to “admit or deny the allegations asserted against [him] by an opposing party.”<sup>1</sup> Mosiman also asserts—correctly—that *pro se* litigants are not exempt from the relevant rules of procedure and substantive law. *See Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981). But that is not the end of the analysis because the court construes pleadings of *pro se* litigants liberally. *E.g.*, *Granger v. Slade*, No. 09-60646, 2010 U.S. App. LEXIS 6022 (5th Cir. March 22, 2010); *Price v. Porter*, 351 Fed. Appx. 925 (5th Cir. 2009) (“We construe *pro se* litigants’ pleadings liberally . . . but *pro se* litigants are not exempt from compliance with the relevant rules of procedure and substantive law . . .”).<sup>2</sup>

Construing Warren’s answer liberally, the court concludes that it comports with Fed. R. Civ. P. 8(b)(1)(B) and/or 8(b)(3). Rule 8(b)(1)(B) requires that Warren admit or deny the allegations against him. First, his answer states, “Opposed Complaint Discharge ability [sic] per (11 U.S.C. 523),” which may be construed as a denial of the basis of

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<sup>1</sup> Fed. R. Civ. P. 8 is made applicable in this adversary proceeding by Fed. R. Bankr. P. 7008.

<sup>2</sup> The court notes that Mosiman’s second amended complaint must also be construed somewhat liberally, despite the fact that Mosiman was represented by counsel. It is titled as a complaint to determine dischargeability, and the statement of jurisdictional grounds states that it is an adversary proceeding to determine dischargeability. But the demand for relief required by Fed. R. Civ. P. 8(a)(3) does not ask that Warren’s debt to Mosiman be declared nondischargeable. It is arguable, therefore, that Mosiman’s second amended complaint does not comply with Fed. R. Civ. P. 8(a)(3).

Mosiman's complaint, *i.e.*, that Warren procured loans from Mosiman through fraud.

Second, Warren's answer states, "Factual Allegation: (false)," which may be construed to be a denial of Mosiman's factual allegations.<sup>3</sup> Furthermore, the same statements in Warren's answer could be construed to be a general denial that comports with Fed. R. Civ. P. 8(b)(3). Either way, the court concludes that, construed liberally, Warren's answer fairly apprises Mosiman of Warren's intent to deny the allegations in the complaint.<sup>4</sup>

It is the court's view that, where procedural rules provide latitude to do so, a court should decide a case on its merits. *See Conley v. Gibson*, 355 U.S. 41, 48 (1957) ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."); *Denver & Rio Grande Western R. Co. v. Union Pacific R. Co.*, 119 F.3d 847, 848-49 (10th Cir. 1997) ("Although practitioners are expected to carefully comply with procedural rules, case law interpreting those rules is founded upon a policy which favors deciding cases on the merits as opposed to dismissing them because of minor technical defects."). In the case at bar, considering the evidence at trial, while the court sympathizes with Mosiman and would concur that Warren clearly abused his friendship with her, the court has not been able to find that he

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<sup>3</sup> The court notes that there are limited factual allegations in Mosiman's second amended complaint. In fact, of the many statements by Warren she sought to prove at trial, only three were alleged in the complaint.

<sup>4</sup> "As has been noted in many judicial opinions, the theory of [Rule 8(b)] is that a defendant's pleading should apprise the opponent of those allegations in the complaint that stand admitted and will not be in issue at trial and those that are contested and will require proof to be established to enable the plaintiff to prevail." Wright and Miller, 5 Fed. Prac. & Proc. Civ. § 1261 (3rd ed.) (and cases cited therein).

defrauded her.

Mosiman, however, also asks the court to reconsider the Opinion and the Judgment on the ground that the evidence at trial establishes actual fraud. The court stands by the findings of fact and conclusions of law embodied in the Opinion and the Judgment and therefore declines to reconsider them on this basis. Warren was involved in an extremely nasty divorce in which emotions ran high. While Mosiman suffered severe loss due to that dispute, she failed to show that that loss was through Warren's fraud.<sup>5</sup>

Next, Mosiman asks the court to clarify its statement in the Opinion that "Mosiman has not proven that any of the statements were knowing or fraudulent falsehoods." The court believes it was clear in the Opinion: Warren, when he made the statements at issue, believed them—as even Mosiman testified.<sup>6</sup> Mosiman failed to show that most of the statements were untrue—rather she presented testimony contradictory of Warren's by Warren's ex-wife and former father-in-law.<sup>7</sup> The court, given the actual, if understandable, animosity of the latter two witnesses, concluded it could not find based on a preponderance of the evidence facts sufficient to sustain Mosiman's claims of Warren's knowing falsehoods.

Finally, Mosiman asks the court to correct a clerical mistake in the Judgment,

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<sup>5</sup> The Motion to Amend and the Findings Motion seek additional findings that Warren made statements not addressed in detail in the Opinion (Findings Motion p. 3 and Motion to Amend p. 6). As the court stated in the Opinion at footnote 2, Mosiman did not establish by a preponderance of the evidence that these additional statements were actually made.

<sup>6</sup> Furthermore, at least one statement Warren made to Mosiman turned out to be true: that Warren's daughter was very sick and Warren's ex-wife was not initially seeking appropriate care. This statement would be considered extremely inflammatory had it not been proven true. Warren may well have believed other potentially inflammatory statements to be true as well. But Mosiman did not prove at trial that many of the statements were actually false, nor did she prove that Warren had no reasonable basis to believe the statements.

<sup>7</sup> The hearsay evidence from Rockwall County authorities cannot be used to bolster that testimony.

namely that the Judgment refers to Mosiman's first amended complaint as being the live complaint. In fact, the live complaint at the time of trial was Mosiman's second amended complaint. The court will amend the judgment accordingly.

Thus, to the extent that the Motion to Correct seeks correction of the clerical mistake in the Judgment referring to the wrong complaint, the Motion to Correct will be granted. In every other respect, the Motions will be denied. It is, therefore,

**ORDERED** that, to the extent that the Motion to Correct seeks amendment of the Judgment to reflect the correct complaint, the Motion to Correct is hereby **GRANTED**; it is further

**ORDERED** that, to the extent the Motion to Correct seeks a new judgment declaring Warren's debt to Mosiman nondischargeable, the Motion to Correct is hereby **DENIED**; it is further

**ORDERED** that the Motion to Amend is **DENIED** in its entirety; and it is further

**ORDERED** that the Findings Motion is **DENIED** in its entirety.

### END OF MEMORANDUM ORDER ###