

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

In re:

Case No. 13-21977

MICHAEL B. WHITE and
DARLA K. WHITE,

Chapter 7

Debtors.

Honorable Daniel S. Opperman

ORDER DENYING DEBTOR'S MOTION TO VACATE
BANKRUPTCY ORDERS (DOCKET NOS. 299 AND 358)

On December 6, 2023, Debtor Michael White filed a Motion To Set Aside two Orders of this Court. The first was entered on March 16, 2015, at Docket No. 299 and entitled, "Order Allowing Sale of Real and Personal Property." The second was entered on June 25, 2015, at Docket No. 358 and entitled, "Order Confirming Sale of Real Estate C/K/A 11085 S Block Rd., Birch Run, MI 48415." In connection with this second Order, Mr. White also requests that the Trustee's Deed dated August 5, 2015 be stricken "as void." Mr. White asks that these Orders be set aside pursuant to Federal Rule of Civil Procedure 60(b)(4) and (b)(6).¹ Under Rule 60(b)(4), Mr. White argues that this Court lacked "jurisdictional authority" under "express provisions" of certain sections of the Bankruptcy Code, including 11 U.S.C. §§ 365(d)(1), 522(d)(1), and 554, and applicable case law. Mr. White does not make any substantive argument as to Rule 60(b)(6) in his Motion and Brief, other than a brief mention at the beginning.

The instant Motion drew objections from the Chapter 7 Trustee, Collene Corcoran; Frankenmuth Credit Union; and Interested Parties David Fisher, Adam Flory, Donald Knapp, Koral Knapp and Smith Bovill, P.C. The arguments of these respondents may be summarized as

¹ Made applicable to this bankruptcy case by Federal Rule of Bankruptcy Procedure 9024.

follows. First, any argument that these Orders are void based on jurisdiction is not valid because these Orders concerned bankruptcy estate property, over which this Court had jurisdiction when entered. Second, Debtor lacks standing to file this Motion, because the requested relief is from final orders that have been appealed and affirmed on appeal. Third, any argument related to Debtor's exemptions, or more specifically, denial of Debtor's exemptions is irrelevant because the property was sold for less than the existing liens. Thus, there was not equity from which the exemptions could be paid.

Mr. White filed a reply to these objections on January 3, 2024, which focuses on his argument that this Court's Orders impermissibly denied him his allowed exemptions in the property. The Court has reviewed the pleadings and finds that the relevant law and facts have been set forth in the pleadings and that oral argument will not aid in the disposition of the Motion. Accordingly, pursuant to E.D. Mich. LR 7.1(f)(2), the Court finds that the Motion shall be decided on the pleadings submitted.

The Court's two Orders were appealed and affirmed by the District Court by Order Granting the Chapter 7 Trustee's Motion To Dismiss and Dismissing Appeal, dated March 11, 2016. The District Court concluded that the issue on appeal was moot, specifically concluding on Pages 7 and 8 of the Order:

The bankruptcy court authorized the sale of the 11085 Block Road property on March 16, 2015 and then confirmed the sale on June 25, 2015. There is no evidence in the bankruptcy record that the Whites obtained a stay of the property sale by posting the appropriate cash bond. The Whites had until July 2, 2015 to do so. Thus, the only way that the Whites can avoid the mootness rule is by demonstrating bad faith on the part of the purchaser.

* * * *

Thus, since the Whites cannot show bad faith by the purchaser of the 11085 Block Road property, all claims on appeal related to that real estate are moot. The Whites' appeal of the order confirming sale of that piece of property will be dismissed as moot.

The Sixth Circuit Court of Appeals entered an Order on March 31, 2017 affirming the District Court's Order, and the United States Supreme Court denied Mr. White's petition for writ of certiorari on January 8, 2018.

Mr. White continues to assert his exemptions were impermissibly denied or restricted in violation of applicable law, namely *Law v. Siegel*, 571 U.S. 415 (2014). Mr. White continues to misunderstand first the facts, and then, the law.

The facts are relevant here in two parts: first, the subject Orders concerned the sale of the indicated property, and are unrelated to the issue of exemptions; and second, even if exemptions were implicated by the subject Orders, there was no equity from the sale of real property sold to the purchasers, Donald and Koral Knapp and, thus, there were no funds available from which Mr. White's allowed exemption could be paid.

The law is as follows. First, this Court had jurisdiction to enter the subject Orders related to bankruptcy estate property. 28 U.S.C. §§ 1334, 157(a), 157(b)(2)(a) (matters concerning the administration of the estate) and (b)(2)(N) (orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate); E.D. Mich. LR 83.50. Second, Plaintiff appealed this decision to the District Court, which affirmed this Court's jurisdiction, as well as this Court's findings of fact and law. The District Court's decision was affirmed by the Sixth Circuit Court of Appeals, and the United States Supreme Court denied Mr. White's petition for writ of certiorari.

Under Rule 60(b)(4), a judgment may be set aside if it is void. "A judgment is void under 60(b)(4) if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or

if it acted in a manner inconsistent with due process of law.” *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 108 (6th Cir. 1995) (internal quotation marks and citation omitted).

As to Rule 60(b)(6), The Sixth Circuit “adheres to the view that courts should apply Rule 60(b)(6) only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule.” *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989) (citations omitted). “This is because almost every conceivable ground for relief is covered under the other subsections of Rule 60(b).” *Rogan v. Countrywide Home Loans, Inc. (In re Brown)*, 413 B.R. 700, 705 (B.A.P. 6th Cir. 2009) (citing *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir.1990)).

As to general application of Rule 60(b), “[t]he parties may not use a Rule 60(b) motion as a substitute for an appeal, or as a technique to avoid the consequences of decisions deliberately made yet later revealed to be unwise.” *Hopper*, 867 F.2d at 294. “Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof.” *Jinks v. Alliedsignal, Inc.*, 250 F.3d 381, 385 (6th Cir. 2001) (citation omitted).

The Court denies Plaintiff’s Motion for two reasons. First, there is no basis for relief under either Rule 60(b)(4) or (b)(6). This Court had jurisdiction to enter the two subject Orders authorizing the sale of bankruptcy estate property. Thus, the judgment is not void for lack of jurisdiction, nor did the Court or the parties act in a manner inconsistent with due process of law. The Court concludes there is no other basis justifying relief under Rule 60(b)(6). Second, Plaintiff exercised his right to appeal these Orders, and both appellate courts affirmed this Court by concluding the appeal was moot. The Court concludes that Mr. White filing a Rule 60(b) motion now in this Court is an improper attempt to exercise an appeal of a final, non-appealable

judgment. What Mr. White is attempting with the instant Motion is what the Sixth Circuit Court of Appeals in *Hopper* and *Jinks* warned against as an impermissible “second chance” or “substitute for an appeal,” when there is no longer a right to appeal.

WHEREFORE, IT IS HEREBY ORDERED that Mr. White’s Motion To Set Aside this Court’s March 16, 2015 Order (Docket No. 299) and this Court’s June 25, 2015 Order (Docket No. 358), as well as the request to strike the Trustee’s Deed in connection with the sale, is DENIED.

Not for Publication

Signed on January 18, 2024



/s/ Daniel S. Opperman

Daniel S. Opperman
United States Bankruptcy Judge