

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

**William Hobson and
Emma Louise Hobson,**

Case No. 01-11367

Debtors.

Chapter 13

MEMORANDUM OPINION AND ORDER DENYING MOTION TO REOPEN

An order discharging the debtors after completion of the plan, closing the case and discharging the trustee was entered in this case on April 11, 2002. On April 24, 2002, the debtors filed a "Motion to Set Aside Dismissal" which was heard by Judge Kennedy on June 13, 2002. Based upon the fact that the case was not dismissed, but was instead closed, Judge Kennedy treated the Hobsons' motion as a "Motion to Reopen" under 11 U.S.C. § 350. After listening to oral arguments relating to the motion on June 13, 2002, Judge Kennedy issued an oral bench ruling denying the "Motion to Reopen." Thereafter, on June 26, 2002, Judge Boswell signed and entered the order denying the motion.

The Hobsons filed another "Motion to Set Aside Dismissal" on July 1, 2002. This motion was heard on June 25, 2002, at which time Judge Boswell denied the motion.

The Hobsons filed a "Motion to Reopen Case" on August 5, 2002. The motion was heard on September 12, 2002. This memorandum opinion and order shall serve as the court's "Findings of Fact and Conclusions of Law." FED. R. BANKR. P. 7052.

As stated in open court on June 13, 2002, Judge Kennedy treated the Hobsons' April 11, 2002, "Motion to Set Aside" as if it were a "Motion to Reopen." When the order denying the motion was entered on June 26, 2002, it became a final order of the court. Pursuant to 28 U.S.C. § 158 and FED. R. BANKR. P. 8002, a party has ten days after the date of entry of an order to appeal. If a party fails to appeal an order within this ten day period, the order becomes final.

Once an order becomes a final order of the court, a party must file a motion to set aside the order pursuant to FED. R. BANKR. P. 9024. This rule incorporates FED. R. CIV. P. 60 and

provides that a party may receive relief from a "final judgment, order or proceeding" for several reasons, including:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or,
- (6) any other reason justifying relief from the operation of the judgment.

FED. R. CIV. P. 60(b)(1)-(6). Rule 60(b) attempts to balance the interest in stability of judgments (i.e., the policy of res judicata) with the interest in seeing that judgments not become instruments of oppression and fraud. In the Sixth Circuit, courts must apply Rule 60(b) "equitably and liberally . . . to achieve substantial justice." *United Coin Meter Co. v. Seaboard Coastline R.R.*, 705 F.2d 839, 844-45 (6th Cir. 1983). A decision to grant or deny a Rule 60(b) motion is within the discretion of the trial court. *See, for example, In re Roxford Foods, Inc.*, 12 F.3d 875 (9th Cir. 1993).

In the case at bar, the Hobsons did not allege that the June 26, 2002, order denying their "Motion to Set Aside" (as amended to a "Motion to Reopen" by Judge Kennedy in open court) should be set aside for any of the reasons stated in Rule 60(b). As a result, the Court finds that their "Motion to Reopen" (as amended to a "Motion to Set Aside" by this Court), should be denied.

III. ORDER

It is therefore **ORDERED** that the Debtor's "Motion to Reopen" filed on August 5, 2002, is **DENIED**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: September 23, 2002