

**Dated: November 18, 2022**  
**The following is ORDERED:**



A handwritten signature in black ink, appearing to read "Denise E. Barnett".

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**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

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

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In re:

ROBERT MCGILL EDWARDS,  
Debtor.

Case No. 19-28780  
Chapter 13

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**ORDER VACATING ORDER APPROVING**  
**DEBTOR'S APPLICATION FOR UNCLAIMED FUNDS**

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Robert McGill Edwards ("Debtor") filed his Chapter 13 petition on November 4, 2019.<sup>1</sup> The Chapter 13 plan was confirmed on February 25, 2020.<sup>2</sup> Two years into the plan, on July 20, 2022, on Debtor's request, the Court entered an Order of Voluntarily Dismissal of Case.<sup>3</sup>

On September 7, 2022, the chapter 13 trustee turned over a check to the Bankruptcy Clerk's Office for unclaimed funds in the amount of \$63.38, which arose from a check that was made payable to John R. Cheadle, Jr., Esq. The unclaimed funds relate to Creditor Harpeth Financial Services, LLC (Claim 14), and Mr. John R. Cheadle is the Creditor's attorney.

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<sup>1</sup> ECF No. 1.

<sup>2</sup> ECF No. 43.

<sup>3</sup> ECF No. 70.

On September 20, 2022, Debtor, proceeding *pro se*, filed an *Application for Payment of Unclaimed Funds* in the amount of \$63.38.<sup>4</sup> The Bankruptcy Clerk’s Office processed and submitted an *Order Granting Application for Payment of Unclaimed Funds*, which was entered on October 26, 2022.<sup>5</sup> The Court now vacates its Order pursuant to Rule 60(b) (1) and (6), Federal Rules of Civil Procedure (incorporated through Rule 9024, Federal Rules of Bankruptcy Procedure): mistake, inadvertence, surprise, or excusable neglect, or any other reason justifying relief from the operation of the judgment.<sup>6</sup>

Pursuant to 11 U.S.C. § 347(a), “[f]unds held by a court for an owner that has failed to claim the funds, failed to negotiate payment of the funds, or cannot be located, are typically identified as unclaimed funds. A trustee must treat the funds associated with any uncashed checks as unclaimed property under [section] 347, and deposit them with the court to be held in trust for the party entitled to be paid.”<sup>7</sup>

Section 2042 of Title 28 reads:

No money deposited under section 2041 of this title shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court under section

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<sup>4</sup> ECF No. 77.

<sup>5</sup> ECF No. 84.

<sup>6</sup> Under Rule 60(b) the Court may vacate its Order due to:

- (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 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.

<sup>7</sup> *In re McDowell*, 578 B.R. 786, 789 (Bankr. M.D. Tenn. 2017) (citing *In re Gettig Technologies, Inc.*, No. 1:05-bk-06044-MDF, 2016 WL 836992 (Bankr. M.D. Pa. Mar. 3, 2016)) (discussing the chapter 13 trustee’s obligation to deposit unclaimed funds with the court to be held in a trust for the claimant, not to be redistributed to other creditors.).

2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.<sup>8</sup>

As one court explained, section 347(a) “is unambiguous and clearly expresses Congress’ intent that unclaimed funds are to be paid into the court to be held in trust for the claimant, and not redistributed to other creditors.”<sup>9</sup> Debtors are not “claimants” because they are not the intended payees of the funds, and as such, “the funds belong to the original creditors of the debtors’ bankruptcy estates.”<sup>10</sup>

In this case, Debtor is not entitled to the unclaimed funds in the amount of \$63.38.

Accordingly, it is **ORDERED**:

1. This Court’s Order Approving Debtor’s Application for Unclaimed Funds is vacated.
2. Unclaimed funds in the amount of \$63.38 shall not be distributed to Debtor.

cc:  
Debtor  
Debtor’s attorney  
Chapter 13 Trustee  
All parties on the Matrix

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<sup>8</sup> 28 U.S.C. § 2042 (2022).

<sup>9</sup> *In re McDowell*, 578 B.R. at 789 (citing *Gettig*, 2016 WL 836992 at \*3).

<sup>10</sup> *In re Transport Group, Inc.*, Nos. 93-30015, 93-30016, 2007 WL 1083887, at \*1 (Bankr. W.D. Ky. Apr. 9, 2007).