



Dated: November 09, 2011
The following is SO ORDERED:


G. Harvey Boswell
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE:

Melinda Kay Holdeman,

Debtor.

Case No. 10-10713

Chapter 7

MEMORANDUM OPINION RE: UNITED STATES TRUSTEE'S MOTION FOR RELIEF FROM ORDER ENTERED SEPTEMBER 1, 2011, GRANTING MOTION AUTHORIZING/DIRECTING CHAPTER 7 TRUSTEE TO DISBURSE FUNDS and DEBTOR'S OBJECTION THERETO

The Court conducted a hearing on the United States Trustee's Motion for Relief from Order Entered September 1, 2011, Granting Motion Authorizing/Directing Chapter 7 Trustee to Disburse Funds and the Debtor's objection thereto on October 5, 2011. FED. R. BANKR. P. 9014. The Court has reviewed the testimony from the hearing and the record as a whole. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FACTS

The debtor in this case, Melinda Kay Holdeman (“Melinda Holdeman”), filed her chapter 7 petition for bankruptcy relief on March 4, 2010. At the time of filing, Melinda Holdeman was represented by Mary Ellen Stevens (“Stevens”). Jesse H. Ford (“Ford”) was appointed as the chapter 7 trustee. Melinda Holdeman’s § 341 meeting of creditors was conducted on March 30, 2010. On March 31, 2010, Ford entered a “Report of No Distribution and Meeting of Creditors Held” on the case docket. Melinda Holdeman’s case was discharged on June 4, 2010. The Court issued the final decree on June 8, 2010.

On March 2, 2011, Melinda Holdeman’s ex-husband Paul Holdeman filed a chapter 13 petition for bankruptcy relief.¹ Melinda Holdeman filed a secured proof of claim in that case on March 31, 2011 for \$84,366.05 (Case no. 11-10620 Claim 12-1). Attached to proof of claim was a copy of a May 2, 2008, order from the Obion County Chancery Court which provided that the “parties had agreed, pursuant to their mediation agreement which was incorporated into the Final Decree, to have the bowling alley business appraised.” The appraised value of the bowling alley business was determined to be \$206,000 as of the date of Paul and Melinda Holdeman’s divorce. The order directed Paul Holdeman to pay Melinda Holdeman \$103,000 for her interest in the bowling alley. On April 5, 2011, Melinda Holdeman filed an amended proof of claim in Paul Holdeman’s case for \$84,037.66 (Case no. 11-10620 Claim 12-2).¹

On April 11, 2011, Stevens filed a motion to reopen Melinda Holdeman’s chapter 7 case for the purpose of amending schedule C and the statement of financial affairs to add the pre-petition judgment in Melinda Holdeman’s divorce settlement. The Court granted the motion to reopen on April 12, 2011. Melinda Holdeman filed amended schedules B and C and an amended statement of financial affairs on April 15, 2011. According to amended schedule B, Melinda Holdeman added a “2005 Divorce Settlement–Amended, Obion County Chancery Court” with a current value of \$103,000.00 to the schedule under item 17. Melinda Holdeman amended schedule C to claim an

¹Paul Holdeman’s chapter 13 case is a joint petition with his current wife, Joni Leigh Holdeman, case number 11-10620.

¹At this time, there is nothing in the record about why Melinda Holdeman reduced her claim from \$103,000 to \$84,037.66.

exemption of \$6,000 in the divorce settlement pursuant to Tenn. Code Ann. § 26-2-103. The amended statement of financial affairs added the divorce settlement under item “4. Suits and administrative proceedings, executions, garnishments and attachments.” No one filed an objection to Melinda Holdeman’s amended exemptions.

After Melinda Holdeman’s case was reopened, Ford was re-appointed as the chapter 7 trustee. On May 9, 2011, Ford contacted the Court and indicated that there may be assets available for distribution to Melinda Holdeman’s creditors. The Court then issued a notice to creditors to file claims in Melinda Holdeman’s case by August 8, 2011. On May 10, 2011, Ford filed a notice of withdrawal of the no-asset report.

On May 31, 2011, Melinda Holdeman amended her proof of claim in Paul and Joni Holdeman’s case to reflect a total claim of \$84,037.66. She also amended the type of claim from secured to priority (Case no. 11-10620 Claim 12-3).

On July 20, 2011, the Court entered a “Consent Order on Objection of Confirmation to Plan by Melinda Holdeman” in Paul and Joni Holdeman’s chapter 13 case (Case no. 11-10620 Docket no. 62). Pursuant to the terms of that consent order, the chapter 13 trustee in Paul and Joni Holdeman’s case agreed to pay \$25,000 to Ford, on behalf of Melinda Holdeman, “as a priority creditor, same being a Domestic Support Obligation pursuant to 11 U.S.C. § 507(a)(1)(A)² and 11 U.S.C. § 101(14A).” In exchange for this payment, Melinda Holdeman agreed to “forever release and discharge Paul Andrew Holdeman from any and all financial obligations, whether Domestic Support Obligations or otherwise, incurred by him” in connection with Paul and Melinda’s divorce proceeding in Obion County Chancery Court.

On July 25, 2011, Melinda Holdeman, through attorney Stephen Hughes,³ filed a proof of claim in her own case in the amount of \$25,000 (Case no. 10-10713 Claim no. 6). The proof of claim indicated it was an unsecured priority claim pursuant to § 507(a)(1). Attached to the proof of claim was a copy of the July 20, 2011, consent order entered in Paul and Joni Holdeman’s chapter 13 case. No parties objected to this proof of claim. On August 7, 2011, Melinda Holdeman filed

²The July 19, 2011, order mistakenly listed the relevant statute as 11 U.S.C. § 507(a)(i)(A).

³After the case was reopened, Hughes was substituted for Stevens as Holdeman’s attorney.

an amended proof of claim in Paul and Joni Holdeman's case to amend the total amount of the claim to \$25,000 (Case no. 11-10620 Claim no.12-4) .

On August 11, 2011, Melinda Holdeman filed a "Motion Authorizing/Directing Chapter 7 Trustee to Disburse Funds" in her own case. Pursuant to the terms of that motion, Melinda Holdeman asked the Court to order Ford to disburse the money from the July 20, 2011, judgment to her as a priority claimant. The total amount Melinda Holdeman sought was \$25,000 "less the applicable Chapter 7 Trustee commission[] of \$3,350." No objections to the motion were filed and the Court granted the motion without a hearing on August 31, 2011. The order granting the motion was entered on the Court's docket on September 1, 2011.

The United States Trustee ("Trustee") did not receive notice of the motion to disburse until September 8, 2011, when Ford advised the Trustee of the order. Upon learning of the order, the Trustee filed a Rule 9024 motion for relief in which he alleged several reasons for why the September 1, 2011, order should be set aside. First, the Trustee alleged that the \$25,000 judgment was property of the estate under 11 U.S.C. § 541 and any claim Holdeman had to estate property was limited to the allowable exemptions under state law.⁴ Second, the Trustee alleged that Holdeman is not a "creditor" as defined in 11 U.S.C. § 101(1). Third, the Trustee alleged that Holdeman does not fit within the description of claimants of domestic support obligations entitled to priority claims in 11 U.S.C. § 507(a)(1).

Melinda Holdeman filed a written objection to the Trustee's 9024 motion on September 26, 2011. Pursuant to the terms of the objection, Melinda Holdeman alleged that:

Without waiving any legal argument which [she] may have, she asserts that the Order Granting Motion Authorizing/Directing Chapter 7 Trustee To Disburse Funds is the result of a negotiated settlement involving substantial contested issues of law and fact concerning the within Bankruptcy estate, as well as the Bankruptcy Estate of the debtor's ex-spouse (Paul Andrew Holdeman, Case No. 11-10620, Doc 62, filed 7/20/11), and the debtor's legal malpractice claim against her former attorney of record (Case No. 10-10713, Doc 37, motion filed 9/08/11), said settlement having been reached after negotiations involving no less than seven lawyers, including the informed involvement of the Chapter 7 Trustee, Jesse H. Ford, III at all stages.

⁴As permitted by 11 U.S.C. § 522(b)(2), Tennessee has opted out of the federal exemptions. As a result, the available exemptions are determined by Tennessee law. *See* Tenn. Code Ann. § 26-2-112.

(Case no. 10-10713 Docket no. 50).

II. DISCUSSION

A. Federal Rule of Bankruptcy Procedure 9024

The United States Trustee filed his motion for relief from the September 1, 2011, order pursuant to Federal Rule of Bankruptcy Procedure 9024. This rule incorporates Federal Rule of Civil Procedure 60 and provides that a party may receive relief from a “final judgment, order or proceeding” for several reasons, including:

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (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(a) & (b)(1)-(6). In this case, the U.S. Trustee did not specify under which particular section he was seeking relief; however, after reviewing the language of Rule 60 as well as the caselaw interpreting it, the Court concludes that the U.S. Trustee is entitled to relief under Rule 60(b)(1).

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).

Relief under Rule 60(b)(1) is appropriate in

instances where the court *changes its mind*, either because it made a legal or factual mistake in making its original determination, or because on second thought it has decided to exercise its discretion in a manner different from the way it was exercised in the original determination.

Pruzinsky v. Gianetti (In re Walter), 282 F.3d 434, 440-41 (6th Cir. 2002) (citing *Blanton v. Anzalone*, 813 F.2d 1574, 1577 n.2 (9th Cir. 1987)).

As will be discussed *infra*, the Court mistakenly granted Ford's "Motion Authorizing/Directing Chapter 7 Trustee to Disburse Funds" when it failed to notice that Ford had failed to file a Bankruptcy Rule 9019(a) motion to approve the settlement. Without such a motion and without the Court's approval of the settlement, Ford's compromise and settlement of the judgment against Melinda Holdeman's ex-husband was without effect. Consequently, Ford had no authority to seek to disburse the money to Melinda Holdeman. The Court's failure to check the docket for the proper procedural posture is the type of mistake contemplated by Rule 60(b)(1).

B. Property of the Estate Pursuant to 11 U.S.C. § 541 & Bankruptcy Rule 9019(a)

By virtue of 11 U.S.C. § 541, the filing of a bankruptcy petition creates a bankruptcy estate. Section 541(a) of the Bankruptcy Code defines "property of the estate" as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "This definition is unquestionably broad, its main purpose being to bring anything of value that the debtors have into the [bankruptcy] estate." *Lyon v. Eiseman (In re Forbes)*, 372 B.R. 321 (B.A.P. 6th Cir. 2007) (internal quotation marks and citation omitted).

"While federal law defines what types of property comprise the estate, state law generally determines what interest, if any, a debtor has in property." *O'Dowd v. Trueger (In re O'Dowd)* 233 F.3d 197, 202 (3d Cir. 2000); *Butner v. United States*, 440 U.S. 48, 99 S. Ct. 914 (1979). In Tennessee, "a state divorce court's division of marital property in a proceeding commenced prepetition is controlling with respect to property of the estate . . ." *Coffey v Coffey (In re Coffey)*,

348 B.R. 775, 781 (Bankr. E.D. Tenn. 2006). A judgment of divorce which divides marital property between the parties divests property rights from one spouse and vests them in the other. *Id.* In the case at bar, the Obion County Chancery Court entered a judgment in the amount of \$103,000 to Melinda Holdeman on May 2, 2008. When the state court order became final, the property rights in that judgment were divested from Paul Holdeman and vested in Melinda Holdeman. Consequently, at the time Melinda Holdeman filed her chapter 7 petition on March 4, 2010, she had a property interest in the \$103,000 judgment which became property of the estate. Additionally, until such time as Paul Holdeman satisfied the judgment, Melinda Holdeman had the right to enforce the property settlement.

“As ‘legal and equitable interests,’ causes of action that belong to the debtor constitute property of the estate under § 541(a)(1).” *Parker v. Goodman (In re Parker)*, 499 F.3d 616, 624 (6th Cir. 2007) (citing *Stevenson v. J.C. Bradford & Co (In re Cannon)*, 277 F.3d 838, 853 (6th Cir. 2002)). “Additionally, rights derivative from the debtor’s causes of action constitute an interest in property that the estate acquires.” *Id.* Once a chapter 7 bankruptcy petition is filed, the right to pursue, compromise and/or settle the debtor’s causes of action vest in the chapter 7 trustee for the benefit of the estate. *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988).

Although a chapter 7 trustee has the sole authority to settle causes of action belonging to the estate, any settlement of such actions is unenforceable and without effect “when the parties to the agreement fail to comply with [Federal Rule of Bankruptcy Procedure] 9019(a), which requires notice to creditors and court approval.” *Am. Prairie Constr. Co. v. Hoich*, 594 F.3d 1015, 1025 (8th Cir. 2010); *Travelers Ins. Co. v. Am. Agcredit Corp. (In re Blehm Land & Cattle Co.)*, 859 F.2d 137, 141 (10th Cir. 1988); *Billingham v. Wynn & Wynn, P.C. (In re Rothwell)*, 159 B.R. 374, 379 (Bankr. D. Mass. 1993). Requiring court approval of any settlement ensures that a bankruptcy court adequately complies with its “affirmative duty to reach a ‘fair and equitable’ settlement.” *Rankin v. Brian Lavan & Assocs., P.C. (In re Rankin)*, 2011 WL 3701441 (6th Cir 2011) (unpublished) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S. Ct. 1157 (1968) (“There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself [or herself] of all the facts necessary for an intelligent and objective opinion of the probabilities of

ultimate success” on the merits, the complexity and expense of litigations and the reasonable views of creditors.); *Olson v. Anderson (In re Anderson)*, 377 B.R. 865, 870-71 (B.A.P. 6th Cir. 2007). In cases such as the one at bar in which the trustee settled Melinda Holdeman’s state court divorce judgment of \$103,000 for one \$25,000 payment, compliance with Rule 9019 is even more important.

Conclusion

Because the filing and granting of the “Motion Authorizing/Directing Chapter 7 Trustee to Disburse Funds” was premature in this case, the Court will grant the United States Trustee’s motion and enter an order setting aside the September 1, 2011, “Order Granting Motion Authorizing/Directing Chapter 7 Trustee to Disburse Funds.” The Chapter 7 Trustee is directed to file a motion, pursuant to Bankruptcy Rule 9019(a), to approve the compromise and settlement of the state court judgment. Once that motion is filed, the United States Trustee may file any objection he feels is appropriate and/or necessary. The Court will then take up those objections and arguments at the hearing on the Rule 9019(a) motion.

Mailing List

debtor

Samuel K. Crocker, United States Trustee

Beth R. Derrick, Assistant United States Trustee

Jesse H. Ford, III, chapter 7 trustee

Stephen Hughes, attorney for debtor

Mary Ellen Stevens, former attorney for debtor