



SO ORDERED.

SIGNED this 7th day of April, 2021

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**


Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

MARGARET ELIZABETH KINNEY

Case No. 3:20-bk-30540-SHB
Chapter 7

Debtor

MEMORANDUM AND ORDER

On March 25, 2021, Debtor and William Kinney (“Joint Appellants”), acting *pro se*, filed a Notice of Appeal [Doc. 211], as amended on April 2, 2021 [Doc. 219],¹ to jointly appeal “pursuant to Federal Rules of Appellate Procedure Rule 3(b)(1) and 28 U.S. Code § 158(a)(1), with a request for a direct appeal to the U.S. Court of Appeals for the Sixth Circuit, pursuant to 28 U.S. Code § 158(d)(2).” [Doc. 219 at p. 1.] Joint Appellants indicate that they seek to appeal

¹ The Notice of Appeal was signed by Debtor but not by William Kinney, for whom a signature line was blank, although Mr. Kinney signed the Certificate of Service. [Doc. 211 at pp. 12, 13.] The Notice of Appeal purported also to identify Sarah E. Valdes as an appellant [*id.* at p. 1]; however, Ms. Valdes did not sign the Notice of Appeal or the Certificate of Service. Instead, Debtor signed both the Notice of Appeal and the Certificate of Service “for Sarah E. Valdes,” and Mr. Kinney also signed the Certificate of Service “for Sarah E. Valdes.” [*Id.* at pp. 12, 13.] Because the Notice of Appeal did not comply with Rule 8003(a)(3), the Court entered an order on March 29, 2021, to detail the deficiencies and direct the filing of an amended notice of appeal to correct the deficiencies. [Doc. 215.] The Amended Notice of Appeal identifies, and is signed by, Debtor and Mr. Kinney as Joint Appellants.

the Court's March 11, 2021 Order Approving Sale of Real Property Free and Clear of Liens (the "Sale Order") [Doc. 200]. [Doc. 219.] The Court will treat the Notice of Appeal, as amended, as a request for certification for direct appeal to the United States Court of Appeals for the Sixth Circuit pursuant to Federal Rule of Bankruptcy Procedure 8006(f) and 28 U.S.C. § 158(d)(2). Because Joint Appellants' stated reasons for direct appeal are insufficient to justify direct review by the Sixth Circuit Court of Appeals, the request is denied for the following reasons.

I. BACKGROUND

Debtor initiated this Chapter 7 case by the filing of her petition on February 24, 2020. The underlying reason for Debtor's seeking Chapter 7 relief was the state-court judgment entered in favor of Anderson Lumber Company, Inc. ("Anderson") and against Joint Appellants on August 5, 2019.² Joint Appellants filed the Anderson Adversary Proceeding on June 16, 2020. [*Anderson Adversary Proceeding* (Bankr. E.D. Tenn. June 16, 2020), ECF No. 1.] The Court granted the defendants' motions to dismiss the Anderson Adversary Proceeding on January 13, 2021, and that order became final without appeal on January 27, 2021 [Order, *Anderson Adversary Proceeding* (Bankr. E.D. Tenn. Jan. 13, 2021), ECF No. 131]. *See* Fed. R. Bankr. P. 8002(a)(1).

While the Anderson Adversary Proceeding was pending, the Chapter 7 Trustee filed an adversary proceeding against Joint Appellants' daughter, Sarah Valdes, to whom Joint Appellants had transferred real property in 2016. [Adversary Complaint, *Milligan v. Valdes*, Adv. Proc. No. 3:20-ap-3032-SHB (the "Valdes Adversary Proceeding") (Bankr. E.D. Tenn.

² The long history of state- and federal-court litigation between Joint Appellants and Anderson is provided in the Court's Memorandum Opinion on Defendants' Motions to Dismiss in *Kinney v. Anderson Lumber Co., Inc.*, Adv. Proc. No. 3:20-ap-3028-SHB (the "Anderson Adversary Proceeding") (Bankr. E.D. Tenn. Jan. 13, 2021), ECF No. 130.

June 30, 2020), ECF No. 1.] On October 22, 2020, the Court entered a judgment in favor of the Chapter 7 Trustee in the Valdes Adversary Proceeding on the Trustee's claim to recover Debtor's partial interest in real property located at 2444 (also known as 2442) Allegheny Loop Road, Maryville, Blount County, Tennessee 37803 (Parcel ID 124-73.03) (the "Property") for the benefit of the bankruptcy estate. [Judgment, *Valdes Adversary Proceeding*, ECF No. 30.] Debtor's partial interest in the Property (along with the partial interest of Mr. Kinney) had been conveyed to Ms. Valdes by a Quit Claim Deed executed on March 19, 2016, but because the Quit Claim Deed was not recorded prepetition, the Chapter 7 Trustee was granted summary judgment under 11 U.S.C. § 544(a). [*Valdes Adversary Proceeding*, ECF Nos. 20, 21, 30, 57.] The Court also granted summary judgment on the Trustee's claim under 11 U.S.C. § 549 to set aside Ms. Valdes's postpetition transfer of the Property by recordation of the Quit Claim Deed on April 17, 2020. [*Id.*] Finally, the Court's October 22, 2020 ruling included a determination that the avoided transfer of the interest in the Property was recovered solely for the benefit of the bankruptcy estate to be administered by the Trustee under 11 U.S.C. § 550(a)(1). [*Id.*]

With leave of Court, the Chapter 7 Trustee amended the Complaint on December 11, 2020 [*Valdes Adversary Proceeding*, ECF Nos. 42, 44] to request authorization under 11 U.S.C. § 363(h) to sell the Property, now co-owned by the bankruptcy estate and Ms. Valdes. The Court granted summary judgment to the Trustee on February 5, 2021, and entered a judgment that became final without appeal on February 19, 2021 [*Valdes Adversary Proceeding*, ECF Nos. 80, 81]. *See* Fed. R. Bankr. P. 8002(a)(1).

On February 12, 2021, the Chapter 7 Trustee filed his Motion to Sell Real Property Free and Clear of Liens and Notice of Sale ("Motion to Sell") in this case, which he noticed for hearing to be held on March 11, 2021, with service to Joint Appellants. [Doc. 182.] On March 3,

2021, Joint Appellants filed the Objection to Trustee's Sale of Real Property on Behalf of Sarah E. Valdes.³ [Doc. 187.] Also on March 3, 2021, Joint Appellant William Kinney filed his Statement of Property Rights, Objection to Trustee's Sale of Real Property ("William Kinney's Objection"). [Doc. 188.] Debtor also filed an Application for a Temporary Restraining Order and Preliminary Injunction [Doc. 189], which the Court denied without prejudice because it was not properly filed as required by Federal Rule of Bankruptcy Procedure 7001(7) and did not otherwise comply with the Court's local rules. [Doc. 190.]

At the noticed March 11, 2021 hearing on the Trustee's Motion to Sell, neither of the Joint Appellants appeared to prosecute any objection to the Motion to Sell. The Court, thus, granted the Motion to Sale, overruling William Kinney's Objection on the merits and because he had abandoned it by not appearing at the noticed hearing. [Doc. 200.] Joint Appellants' Notice of Appeal, as amended, identifies the Sale Order as the decision being appealed.

II. ANALYSIS

Pursuant to Federal Rule of Bankruptcy Procedure 8006(b), this matter remains pending in this Court "for 30 days after the effective date under Rule 8002 of the first notice of appeal from the judgment, order, or decree for which direct review is sought." Accordingly, this Court has jurisdiction to consider the Joint Appellants' request for certification pursuant to Bankruptcy Rule 8001(f)(1).

Although the Amended Notice of Appeal did not include the requirements of Federal Rule of Bankruptcy Procedure 8006(f)(2), the Court will liberally construe the initial Notice of Appeal and find that it complies with the content requirements of Rule 8006(f)(2). The initial Notice of Appeal states that Joint Appellants' "request satisfies [28 U.S.C.] § 158(d)(2)(i) in that

³ The Court struck the objection filed by Joint Appellants on behalf of Ms. Valdes because they were not authorized by law to file documents on behalf of or otherwise represent Ms. Valdes. [Doc. 201.]

the judgment involves several questions of law, and matters of public importance.” [Doc. 211 at ¶ 2.] The “examples” identified by Joint Appellants are enumerated as follows:

(1) a “Constitutional Challenge of Rule 6” [*id.* at pp. 2-3], which concerns challenges to the Court’s rulings in the Valdes Adversary Proceeding that are final and have not been appealed [*Valdes Adversary Proceeding*, ECF Nos. 49, 51, 74, 80, 81, 86];

(2) the “Judiciary Act of 1789, Section 35” [Doc. 211 at pp. 3-4], which concerns the Court’s striking of pleadings in the Valdes Adversary Proceeding filed by the Joint Appellants on behalf of Ms. Valdes that are final and have not been appealed [*Valdes Adversary Proceeding*, ECF No. 86];

(3) an allegation that Ms. Valdes is legally incompetent and that her Fifth Amendment rights were violated by the Court’s entry of summary judgment against Ms. Valdes in the Valdes Adversary Proceeding [Doc. 211 at pp. 4-5], which judgments are final and have not been appealed [*Valdes Adversary Proceeding*, ECF Nos. 57, 81];

(4) “Judge Varlan’s Fraudulent Pre-Filing Injunction” [Doc. 211 at p. 5], which concerns a January 18, 2019 ruling by then Chief United States District Judge Thomas A. Varlan that barred Joint Appellants from “filing any new civil actions in the United States District Court for the Eastern District of Tennessee without first obtaining written certification from th[e] Court that the complaint has some legal and factual merit” [Order, *Kinney v. Anderson Lumber Co., Inc.*, No. 3:18-cv-227-HAV-HGB (E.D. Tenn. Jan. 18, 2019) (the “Restraining Order”), ECF No. 31], which is a final order that was not appealed;

(5) an allegation that Anderson was “in default in the district court case of 00078 on October 18, 2017” and that the “Sixth Circuit violated [Joint Appellants’] rights under the First, Fifth, and Seventh Amendments by affirming the Districts Courts [*sic*] dismissal while knowing Anderson was in default” [Doc. 211 at pp. 5-6], which concerns the final decision of the Sixth Circuit Court of Appeals [Order, *Kinney v. Anderson Lumber Co., Inc.*, No. 18-5146 (6th Cir. Sept. 13, 2018), ECF

No. 24, *cert. denied*, No. 18-1026 (Apr. 16, 2019), ECF No. 32];

(6) “Rule 60 Motion to Vacate” [Doc. 211 at pp. 6-7], which concerns the Court’s denial of Joint Appellants’ Rule 60 motion filed in the Anderson Adversary Proceeding in which both the judgment and the order denying the Rule 60 motion are final and have not been appealed [Order, *Anderson Adversary Proceeding*, ECF No. 131; Memorandum & Order on Rule 60 Motion for Relief of Final Judgment, *Anderson Adversary Proceeding*, ECF No. 144];

(7) an allegation that “Blue Tarp is in default” [Doc. 211 at p. 8], which concerns the Anderson Adversary Proceeding in which Blue Tarp Financial, Inc. was a defendant, the dismissal of which is now final and has not been appealed [*Anderson Adversary Proceeding*, ECF No. 131]; and

(8) an assertion that this Court misapplied the *Rooker-Feldman* doctrine in the Anderson Adversary Proceeding [Doc. 211 at pp. 8-9], which concerns the dismissal of Joint Appellants’ claims in the Anderson Adversary Proceeding, which is final and was not appealed [*Anderson Adversary Proceeding*, ECF No. 131].

Joint Appellants identify several “other issues on appeal” [Doc. 211 at pp. 9-11], all of which concern either the Anderson Adversary Proceeding, the 2018 Sixth Circuit decision at issue in number 5 above, or the Valdes Adversary Proceeding. Finally, Joint Appellants raise this Court’s application of the Restraining Order to refuse to accept their complaint on February 22, 2021, asserting that the Restraining Order was void ab initio. [*Id.* at p. 11.]

Under 28 U.S.C. § 158(d)(2)(B), if the court before which the matter is pending determines that a circumstance specified in § 158(d)(2)(A)(i), (ii), or (iii) exists, it should certify the matter for direct appeal. Section 158(d)(2)(A)(i)-(iii), in turn, provides as follows:

(i) the . . . order . . . involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the . . . order . . . involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the . . . order . . . may materially advance the progress of the case or proceeding in which the appeal is taken.

None of Joint Appellants' stated grounds for direct appeal address the Sale Order, which is the only decision from which they appeal. [Doc. 219.] The decisions of which Joint Appellants complain in their statement of the reasons for direct appeal are all final decisions that were not appealed and are not the subject of the instant appeal. [Doc. 211.] Moreover, the Sale Order was entered only after Joint Appellants failed to appear at the March 11, 2021 hearing, notwithstanding that they clearly had notice of the hearing given that they had filed documents in opposition to the Motion for Sale. Furthermore, William Kinney's objection to the Motion for Sale was based on an asserted right to a homestead exemption under Tennessee law; however, Mr. Kinney lost any homestead exemption in the Property when he transferred his ownership interest to Ms. Valdes by Quit Claim Deed in 2016. Accordingly, as addressed by the Court at the March 11, 2021 hearing, Mr. Kinney's objection lacked merit.

The Court further finds, after a review of the record in this case, that certification is not otherwise appropriate under 11 U.S.C. § 158(d)(2)(A).⁴ The order being appealed⁵ does not involve a question of law as to which there is no controlling decision of the Sixth Circuit Court of Appeals or the United States Supreme Court, this case does not involve a matter of public

⁴ As stated by another bankruptcy court that denied the *pro se* appellants' request for certification of a direct appeal: "Although the Court may want to certify these matters to the Court of Appeals in the hope that [*pro se* appellants] would abide by an order of that court, since they disregard the orders of this one, that in itself is not enough to satisfy the standard set forth in Section 158(d)(2)." *Nickless v. Kessler (In re Berman)*, Nos. 04-45436, 05-04225, 2007 WL 43973, at *1 (Bankr. D. Mass. Jan. 5, 2007). The *Berman* court also noted that "the Bankruptcy Court is not the final gatekeeper of this direct appeal process. On its face Section 158(d)(2) does not prohibit a party to a properly filed appeal from seeking certification from . . . the District Court." *Id.* at *2.

⁵ The Court's determination under § 158(d)(2)(A) would be no different even if the orders and/or judgments in the Anderson Adversary Proceeding or the Valdes Adversary Proceeding were being appealed. In any event, they are not the subject of this appeal, and the time for appeal of those decisions has expired under Federal Rule of Bankruptcy Procedure 8002(a)(1).

importance, and direct appeal would not have the potential to materially advance the case.

For these reasons, the Court directs the following:

1. Joint Appellants' request for certification of a direct appeal to the United States Court of Appeals for the Sixth Circuit is DENIED.

2. The clerk will docket the filings as a notice of appeal to the United States District Court for the Eastern District of Tennessee and will strike Sarah E. Valdes as a joint appellant.

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