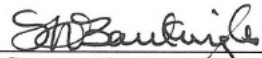




**SO ORDERED.**

**SIGNED this 13th 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

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**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  
MOTION FOR RELIEF FROM JUDGMENT**

Before the Court is the Motion for Relief From Final Judgment (“Rule 60(b) Motion”) filed by Debtor on April 2, 2021 [Doc. 220], through which she asks the Court, pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure 9024, to set aside the Order Approving Sale of Real Property Free and Clear of Liens (“Sale Order”) entered on March 11, 2021 [Doc. 200], and the Memorandum and Order denying Debtor’s Emergency Application for a Temporary Restraining Order (“Motion for TRO”) entered on March 12, 2021 (“March 12 Memorandum and Order”) [Doc 204]. In her Rule 60(b) Motion, Debtor “contends, the judge has made a substantive mistake of law in the final judgment, and the relief sought is more than simply a clarification, it changes the ultimate decision of the court . . . [and] seek[s] an order from the court vacating its orders . . . until the

constitutional challenges stated in [her] Brief in Support can be decided on appeal, along with a Motion for a Stay submitted to the Sixth Circuit on March 31, 2021, for among other reasons, staying the proceedings until Sarah [Valdes] can go through the state court process to obtain a guardian ad litem[.]” [Doc. 220.]

Debtor also filed a Brief in Support of Motion for Relief From Judgment (“Brief”), in which she argues that the Motion for TRO was mailed to the Court via certified mail on March 5, 2021, with an expected delivery date of March 8, 2021, but it was not received until “hours after conclusion of the hearing held on March 11, 2021, at which Debtor did not appear.” [Doc. 221 at ¶ 1.] Debtor also argues that she did not attend the March 11 hearing because she “looked at the Judge’s calendar on March 10, 2021, and there were no hearings listed, only the word “FINAL” appeared on the screen[, which] made [her] believe that [her] Motion for Stay had been granted<sup>1</sup> [and that t]he court could have just as easily considered the motion when it was received hours after the hearing held on March 11, 2021; rather than to disregard it.” [*Id.*] Debtor further argues that “the constitutional challenge of Rule 6 found in [Adversary Proceeding] No. 3:20-ap-03032-SHB [that her “Fifth Amendment right to equal protection under the law” has been violated]” also applies with respect to the Motion for TRO and that “[t]he application [she] mailed on March 5, 2021, was in actuality, filed with the court on March 5, 2021,” and because an attorney would have the ability to file documents electronically, her documents should be considered to be filed when they are placed in the mail. [*Id.* at ¶ 2.] Debtor finally states that “[t]he court’s decision to rule on the Trustee’s motion to unlawfully take our property on March 11, 2021, was prejudicial and discriminatory toward me, and the TRO should have been allowed until [she] filed [her] brief in support of a temporary and permanent injunction.” [*Id.*]

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<sup>1</sup> Given that Debtor receives Court orders electronically on entry because she elected to participate in the Debtor Electronic Bankruptcy Noticing system [Doc. 4], she at least should have contacted the clerk’s office concerning any confusion she might have had about the March 11, 2021 hearing.

Rule 60(b)(6) provides that the Court may set aside or relieve a party from a final judgment or order for “any other reason that justifies relief[.]” As previously stated by the Court in its Memorandum and Order denying the Rule 60 Motion for Relief of Final Judgment filed by Plaintiffs on February 22, 2021, in *Kinney v. Anderson Lumber Co., Inc., et al.*, Adv. Proc. No. 3:20-ap-03028-SHB, on March 16, 2021 [Doc. 144 at p. 2], “[b]ecause courts should not ‘disturb the finality of a judgment without good reason[.]’ the party seeking relief under Rule 60(b) ‘bears the burden of establishing the grounds for such relief by clear and convincing evidence.’” *In re Ivens Props., Inc.*, No. 13-32471, 2014 WL 667659, at \*1 (Bankr. E.D. Tenn. Feb. 20, 2014) (quoting *Brown v. Timmerman–Cooper*, No. 2:10-cv-283, 2013 WL 3776585, at \*2 (S.D. Ohio July 17, 2013) (citation omitted); *Info–Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir.2008)); *see also McCurry ex rel. v. Adventist Health Sys./Sunbelt, Inc.*, 298 F.3d 586, 592 (6th Cir. 2002) (“The party seeking to invoke the Rule bears the burden of establishing that its prerequisites are satisfied.”). Moreover, a party 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 v. Euclid Manor Nursing Home*, 867 F.2d 291, 294 (6th Cir. 1989) (citations omitted). Furthermore, subsection (6) applies “only in exceptional or extraordinary circumstances which are not addressed in the first five numbered clauses of the Rule” since “almost every conceivable ground for relief is covered under the other subsections of Rule 60(b).” *In re Reiman*, 431 B.R. 901, 910 (Bankr. E.D. Mich. 2010) (quoting *Hopper*, 867 F.2d at 294; *Rogan v. Countrywide Home Loans, Inc. (In re Brown)*, 413 B.R. 700, 705 (B.A.P. 6th Cir. 2009)). “Consequently, courts must apply Rule 60(b)(6) relief only in ‘unusual and extreme situations where principles of equity mandate relief.’” *Blue Diamond Coal Co. v. Trs. of the UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001) (quoting *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990)).

As to each of Debtor's arguments in the Rule 60(b) Motion and Brief in Support Thereof, the Court finds that Debtor has not provided any grounds for setting aside either the Sale Order<sup>2</sup> or the March 12 Memorandum and Order.

First, Debtor argues that the Court should have granted her Motion for TRO; however, it was improperly filed as a motion rather than as an adversary proceeding as required by Federal Rule of Bankruptcy Procedure 7001(7) so that it was procedurally insufficient, irrespective of when it was received by the Court.<sup>3</sup> Additionally, this is Debtor's fourth request for the same injunctive relief in this case. The three prior requests were made in (1) Ex Parte Statement Concerning Dismissal of Adv. Proc. No. 3:20-ap-3032, Request to Issue a Protective Order and Enjoin Further Proceedings, filed by Debtor and William Kinney, acting jointly and pro se on February 9, 2021 [Doc. 176], which was denied by the Memorandum and Order entered February 11, 2021 [Doc. 179]; (2) Debtor's Application for a Temporary Restraining Order and Preliminary [*sic*] Injunction, filed by Debtor on March 3, 2021, which was denied by the Order entered March 3, 2021; and (3) the Motion for TRO filed on March 11, 2021 [Doc. 202], which

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<sup>2</sup> The Rule 60(b) Motion references the Sale Order, but neither the Rule 60(b) Motion nor Brief state a specific argument for setting aside the Sale Motion, which is the subject of a Notice of Appeal, as amended, filed on March 25, 2021 [Docs. 211, 219], seven days before the Rule 60(b) Motion was filed. In any event, because the Sale Order is the subject of an appeal that was pending before the United States District Court before the Rule 60(b) Motion was filed, this Court lacks authority to grant the Rule 60(b) Motion as to the Sale Order. *See* Fed. R. Bankr. P. 8008(a), 9024; *see also In re Salas*, No. 18-00260, 2020 WL 6054783, at \*11 (Bankr. D.D.C. Oct. 13, 2020) ("Although the Bankruptcy Court lacked authority during the pendency of the appeal to *grant* Rule 60(b) relief under Fed. R. Bankr. P. 9024, Fed. R. Bankr. P. 8008 clearly permitted the judgment creditors to file a Rule 60(b) motion in the Bankruptcy Court despite the pendency of the appeal."); *Geron v. Holding Capital Grp., Inc. (In re PBS Foods, LLC)*, 549 B.R. 586, 590 (Bankr. S.D.N.Y. 2016) ("The . . . Order is the subject of a pending appeal, and, accordingly, the Court has no jurisdiction to grant the Motion."). Even if the Court had authority to grant the Rule 60(b) Motion as to the Sale Order, the Court can find no substantive reason to reconsider the Sale Order.

<sup>3</sup> This procedural deficiency was first noted in the Court's March 3, 2021 Order denying Debtor's Application for a Temporary Restraining Order and Preliminary Injunction [Doc. 190.] Debtor has not attempted to file an adversary proceeding to request a temporary restraining order, a prerequisite of which, in any event, would be to obtain permission from the United States District Court for the Eastern District of Tennessee pursuant to the January 18, 2019 Order entered by then Chief United States District Judge Thomas A. Varlan barring Debtor 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), ECF No. 31.

was denied by the March 12 Memorandum and Order [Doc. 204] (which is the subject of the instant Rule 60(b) Motion).

Second, to the extent that Debtor seeks any relief on behalf of her daughter, Sarah Valdes, as the Court has explained many times, such action is not permitted because she is not authorized to file documentation on behalf of (or otherwise represent) her adult daughter. [See, e.g., March 12 Memorandum and Order [Doc. 204] at pp. 2-4.]

Third, Debtor argues in her Brief that the Motion for TRO was mailed on March 5 and should have been deemed received before the hearing or that the Court should have considered it because it was received “only hours” after the March 11 hearing. [Doc. 221 at p. 1.] Such arguments are misplaced because the Motion for TRO was denied on its merits, not because it was deemed to have been filed “untimely.”<sup>4</sup> Similarly, the Sale Order was entered on the merits of the underlying motion and was not granted simply because Debtor did not appear at the March 11 hearing.<sup>5</sup>

Finally, Debtor asks the Court to set aside the Sale Order and the March 12 Memorandum and Order because she filed a motion for stay with the Sixth Circuit Court of Appeals. [Doc. 220.] Because the Sixth Circuit Court of Appeals entered an Order on April 6, 2021, denying as moot Debtor’s motion to hold the sale in abeyance and dismissing Debtor’s petition for permission to appeal this Court’s Sale Order [Order, *In re Kinney*, No. 21-502 (6th Cir. Apr. 6, 2021), ECF No. 6], the Court likewise deems moot Debtor’s argument concerning the asserted

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<sup>4</sup> Because it was not filed in response to any motion, order, or rule under which a response was required or in accordance with any deadline, the Motion for TRO could not have been deemed “untimely,” and the Court did not treat it as untimely by referring in a footnote to the timing of Debtor’s filing in relation the March 11, 2021 hearing on the Motion to Sell Real Property Free and Clear of Liens and Notice of Sale (“Sale Motion”) [Doc. 182]. [Doc. 204 at p. 1 n.1.]

<sup>5</sup> The March 12 Memorandum and Order specifically addressed Debtor’s substantive assertion on her own behalf that the Chapter 7 Trustee should have been enjoined from selling her possessory interest in the property at issue. [Doc. 204 at pp. 4-5.] The Court notes, however, that Debtor did not file any objection to the Sale Motion on her own behalf, and her failure to appear at the noticed March 11, 2021 hearing to raise any objection to the Sale Motion on her own behalf, in fact, did constitute a waiver of any such objection. [See Docs. 187, 189.]

appeal to and motion for stay before the Sixth Circuit Court of Appeals.

**ORDER**

For the foregoing reasons, the Court directs that the Motion for Relief From Judgment filed by Debtor on April 2, 2021 [Doc. 220], is DENIED.

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