UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

DREXEL ALAN WHITE	)	
	)	Case No. 1:19-CV-130
v.	)	
	)	Judge Travis R. McDonough
REGIONS BANK	)	
	)	Magistrate Judge Christopher H. Steger
	)	
	)	
	)	

MEMORANDUM OPINION

On May 1, 2019, Appellant Drexel Alan White appealed certain orders from the United States Bankruptcy Court for the Eastern District of Tennessee. (Doc. 1.) After White's appeal, United States Trustee Kara L. West (the "Trustee") filed a motion to intervene (Doc. 22) and a motion to dismiss the appeal (Doc. 16). For the following reasons, the Court concludes that the bankruptcy court did not err, and its rulings will be **AFFIRMED**. The Trustee's motion to intervene (Doc. 22) and motion to dismiss will be **DENIED AS MOOT**.

I. BACKGROUND

This case is before the Court on Appellant-Debtor Drexel Alan White's appeal of the bankruptcy court's order on Regions Bank d/b/a Regions Mortgage's ("Regions Mortgage") motion for instructions regarding mortgage overpayments made to Regions Mortgage. (*See* Doc. 1.)

On November 29, 2012, White filed for Chapter 13 bankruptcy in the United States Bankruptcy Court for the Eastern District of Tennessee. The bankruptcy court confirmed White's Chapter 13 plan on January 11, 2013, with the confirmed plan providing that White's

mortgage payments would be made outside the plan. (Doc. 10-2, at 2–3.) On June 17, 2014, Regions Bank filed a motion for relief from the automatic stay, asserting that White was nine months behind on his mortgage payments. (Doc. 10-3.) On July 17, 2014, White moved to modify his Chapter 13 plan so that monthly mortgage payments and a separate arrearage payment would be paid from inside the plan. (Doc. 10-8.) On August 28, 2014, the bankruptcy court confirmed White's modified plan, which included mortgage and arrearage payments to Regions Bank inside the plan. (Doc. 10-11.) Thereafter, the Trustee paid all monthly payments owed to Regions Bank but did not make any payments toward White's mortgage arrearage. (Doc. 14, at 6; Doc. 28, at 11.)

On September 14, 2017, the Trustee filed a certificate of final payment, and on November 2, 2017, she filed her final report. (Docs. 10-13, 10-14, 10-15.) Even though the Trustee failed to make the arrearage payments, on November 15, 2017, the bankruptcy court entered an order of discharge. (Doc. 10-16.) After discharge, White resumed paying his monthly mortgage payments to Regions Bank, but he soon discovered that the Trustee had not paid the arrearages. (Doc. 14, at 6.) After this discovery, on December 15, 2017, the Trustee filed a motion for agreed order to set aside her certificate of final payment and to allow White to pay the arrearage, as well as future monthly mortgage payments to Regions Bank, through his Chapter 13 plan. (Doc. 10-17.) The Trustee's motion specifically states:

> Comes now, the Standing Chapter 13 Trustee, Kara L. West, through counsel, and moves the Court, **pursuant to Federal Rules of Civil Procedure 59 and 60(b), made applicable to bankruptcy proceedings through Federal Rules of Bankruptcy Procedure 9023 and 9024**, to set aside the Trustee's Certificate of Final Payment and **allow the Trustee to reopen this case to administer additional assets**. In support of such motion, the Trustee and Debtor agree that a pre-petition mortgage arrearage to Regions Bank was not coded to be paid by error of the Trustee. **The Trustee's Certificate of Final Payment should not have been filed. Both parties acknowledge this is not a dischargeable debt**, but the Debtor would like the opportunity to cure this pre-petition arrearage as intended in the

> confirmed plan. All other creditors have been paid pursuant to the confirmed plan. The parties request that the case continue as confirmed and the previously issued wage order be reinstated.

(Doc. 10-17 (emphasis added).) The agreed order submitted by the parties, and entered by the bankruptcy court, states that it is "ORDERED, that the case shall continue under the confirmed plan; and ORDERED that the Trustee's certificate of final payment is WITHDRAWN." (Docs. 10-18, 10-19.)

In 2018, White received bills and collection letters from Regions Bank, and, as a result, he made monthly mortgage payments directly to Regions Bank, unaware that the Trustee was also making monthly mortgage payments to Regions Bank through his confirmed Chapter 13 plan. (Doc. 14, at 7.) As a result, White paid $6,274.65 to Regions Bank that was also paid to Regions Bank by the Trustee. (*Id.*; Doc. 27, at 7; Doc. 28, at 11–12.) White subsequently requested a refund from Regions Bank, but it refused to refund him the money; instead, on March 25, 2019, Regions Bank filed a motion in the bankruptcy court requesting instructions as to what it should do with White's overpayments. (Doc. 10-20.) The bankruptcy court held a hearing on April 18, 2019, and, after the hearing, the bankruptcy court ordered Regions Bank to pay the overpayments to the Trustee. (Doc. 10-22.) In its order, the bankruptcy court also stated: "[b]eing filed erroneously, the discharge order of November 15, 2017, is vacated, which is without prejudice to the granting of a discharge upon completion of the chapter 13 plan." (*Id.*) On May 3, 2019, Regions Bank paid the Trustee $6,274.65. (Doc. 14, at 8; Doc. 28, at 10–11.)

On May 5, 2019, White filed a notice of appeal to this Court. (Doc. 1.) In his appeal, White contends that the bankruptcy court should have ordered Regions Bank to refund his overpayments directly to him, not the Trustee, and that the bankruptcy court erred in vacating his discharge. (Doc. 14, at 4.) Despite the pending appeal, on September 5, 2019, the Trustee filed

a final report and account in the bankruptcy court, and, on September 9, 2019, the bankruptcy court entered a second order of discharge. (Docs. 160, 161 in Case No. 1:12-bk-16140.)

II. STANDARD OF REVIEW

In an appeal from a bankruptcy court, the Court must uphold the findings of fact made by the bankruptcy court unless such findings are clearly erroneous. *In re Gardner*, 360 F.3d 551, 557 (6th Cir. 2004). The Court reviews *de novo* the bankruptcy court's conclusions of law. *Id*. The Court has the authority to affirm, modify, or reverse a judgment or order of the bankruptcy court and may remand the case to the bankruptcy court for further proceedings. Fed. R. Bankr. P. 8013.

III. ANALYSIS

In his appeal, White contends that the bankruptcy court erred when it: (1) vacated his discharge on April 18, 2019; (2) ordered Regions Bank to remit his mortgage overpayments to the Trustee; and (3) failed to order Regions Bank to refund his overpayment with interest. (Doc. 14.)

A. Vacatur of White's Discharge

White first argues that the bankruptcy court erred when it vacated his April 18, 2019 discharge without statutory authority to do so. Rule 9024 of the Federal Rules of Bankruptcy Procedure states that Rule 60 of the Federal Rules of Civil Procedure applies in bankruptcy cases with certain exceptions. In relevant part, Rule 60 provides that, on a motion and just terms, a court "may relieve a party . . . from a final judgment, order, or proceeding" based on "mistake, inadvertence, surprise, or excusable neglect," but specifies that such a motion must be made within "a reasonable time" and "no more than a year after entry of the judgment or order." Fed. R. Civ. P. 60(b)(1), (c)(1).

In his appeal, White contends that the bankruptcy court erred in vacating the discharge because it did so on April 18, 2019—more than a year after it entered the discharge order. (Doc. 14, at 10–14.) White's argument, however, ignores the parties' and the bankruptcy court's actions immediately after they realized the first discharge order was entered in error. Approximately one month after the bankruptcy court entered the first discharge order, the Trustee moved for agreed order to set aside her certificate of final payment and to allow White to pay the arrearage, as well as future, monthly mortgage payments to Regions Bank, through his Chapter 13 plan. (Doc. 10-17.) The Trustee's motion specifically states that: (1) she brought the motion pursuant to Federal Rule of Civil Procedure 60(b) as made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9024; (2) she seeks to "reopen" the bankruptcy case; (3) the Trustee's Certificate of Final Payment should not have been filed; (4) "[b]oth parties acknowledge that this is not a dischargable debt"; and (5) White "would like an opportunity to cure this pre-petition arrearage as intended in the confirmed plan." (*Id.*) The bankruptcy court granted the motion and entered an agreed order stating that it is "ORDERED, that the case shall continue under the confirmed plan; and ORDERED that the Trustee's certificate of final payment is WITHDRAWN." (Docs. 10-18, 10-19.) The practical effect of the parties' actions and the bankruptcy court's order is that the bankruptcy court timely vacated White's initial discharge under Rule 60(b)(1) on December 15, 2017, even if the bankruptcy court did not expressly state that the discharge was vacated until its order on April 18, 2019. (*See* Docs. 10-19, 10-22.) Accordingly, the bankruptcy court did not err in vacating White's first discharge.

B. Overpayments Made to Regions Bank

White next argues that the bankruptcy court erred in failing to order Regions Bank to refund overpayments to him directly with interest. (Doc. 14, at 14–15.) At the time of the bankruptcy court's hearing on Regions Bank's motion for instructions regarding the overpayment, the confirmed Chapter 13 plan provided that the Trustee had approximately $1,927.84 left to pay on White's mortgage arrearage. (Doc. 13-1, at 12.) The bankruptcy court determined that the most efficient way to effectuate the terms of the Chapter 13 plan was to remit the overpayment to the Trustee, have the Trustee disburse the funds as required pursuant to the confirmed Chapter 13 plan, and refund the remaining balance, if any, to White. While the bankruptcy could have ordered Regions Bank to refund the overpayments directly to White, it did not elect to do so, and White has not identified any authority demonstrating that the bankruptcy court erred in ordering Regions Bank to remit the overpayments to the Trustee. Additionally, because the bankruptcy court did not err in ordering Regions Bank to remit the overpayments to the Trustee, it did not err in failing to order Regions Bank to refund the overpayments to White with interest.

IV. CONCLUSION

For the reasons stated herein, the Court concludes that the bankruptcy court did not err, and its rulings are **AFFIRMED**. The Trustee's motion to intervene (Doc. 22) and motion to dismiss (Doc. 16) are **DENIED AS MOOT**. The hearing set for February 26, 2020, is **CANCELLED**.

AN APPROPRIATE JUDGMENT WILL ENTER.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE