

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: PATRICIA A. QUARLES

**4:02-bk-16785 E
CHAPTER 13**

ORDER

An Emergency Motion to Appeal filed by Debtor, Patricia A. Quarles, came on for hearing October 17, 2002. Debtor appeared *pro se*. Kimberly Burnette, Esq. made a special appearance on behalf of Wells Fargo Home Mortgage, Inc. (“**Wells Fargo**”) to challenge the Court’s jurisdiction. Natasha Graf, Esq. appeared on behalf of the standing Chapter 13 Trustee, Joyce B. Babin.

Although Debtor’s Motion is styled “Emergency Motion to Appeal,” the substance of Debtor’s motion clearly indicates that it is (1) a motion for relief from judgment under Rule 9024 of the Federal Rules of Bankruptcy Procedure¹, (2) a motion for turnover of her personal property, and (3) a motion for damages due to a willful violation of the automatic stay under 11 U.S.C. § 362(h).² The Court treated the motion accordingly, and, after hearing testimony and arguments of Debtor and counsel, denied the Debtor’s Rule 9024 motion for the reasons set forth below, and continued the hearing on the alleged violation of the automatic stay. Although it was not addressed in Court, Debtor’s motion for turnover of her personal property must be denied because a motion for

¹All references to rules in this order refer to the Federal Rules of Bankruptcy Procedure unless otherwise indicated.

²Although Rule 9004(b) provides that: “Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a *brief designation of the character of the paper*,” (emphasis added), the Advisory Committee note to that Rule states: “Failure to comply with this or any other rule imposing a merely formal requirement does not ordinarily result in the loss of rights.” See *In re Futrell*, 69 B.R. 378, 381 (Bankr. W.D. La. 1987) (“[Although defective,] the pleading taken as a whole fairly puts the debtor and the court on notice with respect to the claim and the relief sought.”).

turnover must be brought as an adversary proceeding under Rule 7001(1).

Debtor alleges that the agreed order granting Wells Fargo's Motion for Relief from Automatic Stay After Foreclosure Sale (the "**Relief Order**") should be annulled for lack of due process because Debtor was not adequately represented by her attorney, Clarence Cash. Wells Fargo argues that the Court lacks jurisdiction to hear Debtor's motion for several reasons. Wells Fargo asserts that it failed to receive proper notice of the Debtor's motion and was not named as a party to the motion. Wells Fargo also argues that the Debtor is bound by the Relief Order because her attorney agreed to the Relief Order in the scope of his representation of her. Wells Fargo also asserts that the Debtor's motion is untimely under Rule 8002, Time for Filing Notice of Appeal, and Rule 9023, New Trials; Amendment of Judgments. Because the Court is treating the Debtor's motion as a Rule 9024 motion rather than a motion under Rule 8002 or Rule 9023, the Court need not address Wells Fargo's arguments regarding the untimeliness of Debtor's motion under Rule 8002 and Rule 9023. With respect to Rule 9024, Wells Fargo asserts that Debtor failed to state any grounds for relief under Rule 9024. The Court agrees, and accordingly, does not reach Wells Fargo's other jurisdictional arguments.

Rule 9024 permits the Court to correct clerical mistakes and provides for relief from judgments for the following reasons (1) mistake, inadvertence, surprise, or excuseable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation or other misconduct of 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 (6) any other reason justifying relief from the operation of the judgment. The only ground asserted by Debtor is lack of proper representation by her attorney with regard to the hearing on the Relief Order. The Court finds

that Debtor's allegations regarding her representation, even if proven to be true, do not justify relief from the Relief Order. Debtor was present at the hearing on the Relief Order and agreed to its entry. Only now does the Debtor argue that her legal representation was insufficient. Debtor states that her attorney informed her that there was no defense to Wells Fargo's motion for relief and that was the basis of her consent to the entry of the Relief Order. During the hearing requesting annulment of the Relief Order, the Court informed Debtor that allegations concerning her representation must be litigated in another forum. However, the Court notes that on the day Debtor filed bankruptcy, the real property at issue was not property of the estate under 11 U.S.C. § 541 because it was sold in a non-judicial foreclosure sale the day before Debtor filed bankruptcy. *See In re Cook*, 253 B.R. 249 (Bankr. E.D. Ark. 2000) (Under Arkansas law, a non-judicial foreclosure sale is complete upon acceptance of the highest bid; where sale is completed prior to debtor's bankruptcy filing, the property sold is not property of the estate). Given these facts, Debtor failed to allege grounds justifying relief from the Relief Order under Rule 9024. Accordingly, it is hereby

ORDERED that the portion of Debtor's motion seeking annulment of the August 1, 2002, Relief Order is **DENIED**;

ORDERED that the portion of Debtor's motion seeking turnover of her personal property is **DENIED WITHOUT PREJUDICE** to the debtor. If the debtor wishes to pursue a turnover action, she is to file an appropriate adversary proceeding; and it is further

ORDERED that the portion of Debtor's motion seeking damages for violation of the automatic stay with respect to her personal property is **CONTINUED**.

IT IS SO ORDERED.



HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATED: October 22, 2002

cc: Ms. Patricia Quarles, Debtor
Ms. Kimberly Burnette, attorney for Wells Fargo
Ms. Joyce Bradley Babin, Chapter 13 Trustee
Mr. Clarence Cash
U.S. Trustee