UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Thomas B. McNamara

In re: SHERRY ANN MCGANN, Debtor.	Bankruptcy Case No. 20-18118 TBM Chapter 7

ORDER DENYING REQUESTS MADE IN "[NOTICE SENT TO DISTRIC [SIC] COURT 24-CV-727] EMERGENCY MOTION FOR JUDICIAL INTERVENTION AND REQUEST FOR APPOINTMENT OF COUNSEL"

This matter comes before the Court on the "[Notice Sent to Distric [sic] Court 24-CV-727] Emergency Motion for Judicial Intervention and Request for Appointment of Counsel" (Docket No. 480, the "Notice") filed by Debtor, Sherry Ann McGann (the "Debtor") on July 2, 2024.

On March 14, 2024, the Debtor filed a "Complaint Motion for Hearing and Jury Trial" in the United States District Court for the District of Colorado ("the "District Court") in the case captioned: *Sherry McGann v. Jeanne Jagow et al.*, Case No. 24-CV-727 (D. Colo.) (the "District Court Action"). (District Court Docket No. 1, the "Complaint.") In the Complaint, the Debtor asserted claims for abuse of process, civil conspiracy, fraud, intentional infliction of emotional distress, outrageous conduct, invasion of privacy, and negligent misrepresentation against Chapter 7 Trustee Jeanne Jagow (the "Chapter 7 Trustee") and her legal counsel ("Counsel"). Thereafter, the Chapter 7 Trustee and Counsel filed a "Motion to Dismiss" in the District Court Action requesting that the District Court Action be dismissed. (District Court Docket No. 9, the "Motion to Dismiss")

On June 20, 2024, United States Magistrate Judge Susan Prose issued a "Recommendation and Order on Several Motions" in the District Court Action wherein she stated:

> [T]he court respectfully RECOMMENDS that the Defendants' Motion to Dismiss (ECF No. 9) be granted and the case be dismissed for lack of subject matter jurisdiction. The Court FURTHER RECOMMENDS that the dismissal be without leave to amend, as it is plain that allowing amendment would be futile.

(District Court Docket No. 12, the "Magistrate Judge Recommendation.")

The Debtor apparently disagreed with the Magistrate Judge Recommendation. So, on later that same day, June 20, 2024, the Debtor filed the Motion for Reconsideration with the District Court. (District Court Docket No. 14.) As the title suggests, the Motion for Reconsideration requested mainly that the District Court reconsider the Magistrate Judge Recommendation.

Subsequently, on July 19, 2024, United States District Judge Nina Y. Wang entered an "Order Adopting Magistrate Judge's Recommendation" and "Judgment" whereby she "OVERRULED" the Debtor's Motion for Reconsideration (which she construed as an objection to the Magistrate Judge Recommendation) and "GRANTED" the Motion to Dismiss. (District Court Docket Nos. 25 and 26, the "Order Adopting Recommendation" and "Judgment.") The District Court Action "is closed and final judgment has been entered." (District Court Docket No. 29.)

Meanwhile, on July 1, 2024, during the interval between the Magistrate Judge Recommendation and the Order Adopting Recommendation and Judgment, the Debtor filed a an "Emergency Motion for Judicial Intervention and Request for Appointment of Counsel" with the District Court in the District Court Action. (District Court Docket No. 19, the "Emergency Motion.") In the Emergency Motion, the Debtor stated:

> **Motion for Judicial Intervention**
>
> Given the complexity and severity of the procedural and substantive issues at hand, and the demonstrable impact on my well-being and financial status, I urgently request this court's intervention. Specific actions requested are:
>
> 1. **Appointment of Counsel:** Immediate appointment of legal counsel to assist with navigating the complexities of these interconnected cases, ensuring that my procedural rights are preserved and that I can mount an effective defense and advocacy for my interests.
> 2. **Show Cause:** A directive for the Trustee and associated parties to show cause why I continue to be held within these bankruptcy proceedings under conditions that have proven prejudicial and detrimental to my interests.
> 3. **Review and Reconsideration:** A thorough review of all related proceedings and a reconsideration of all decisions made without proper consideration of my financial offers, the trustee's management, and the cumulative adverse effects on me.

All of the foregoing requested relief apparently was directed to the District Court. United States District Judge Nina Y. Wang denied the Emergency Motion in the Order Adopting Recommendation. (Docket No. 25 at 13.)

For reasons entirely unclear to this Court, the Debtor apparently elected to duplicate the proceedings and refile the Emergency Motion in this Court on July 2, 2024

under the caption: "[Notice Sent to Distric [sic] Court 24-CV-727] Emergency Motion for Judicial Intervention and Request for Appointment of Counsel." (Docket No. 480.) Since United States District Judge Nina Y. Wang already has denied the Emergency Motion, the Court cannot interject itself into such matters. The Notice is effectively moot and must therefore be denied because it already has been denied in the District Court Action.

However, the Court adds a few additional observations. The Notice is procedurally defective. The Debtor seems to be improperly asking two separate courts to adjudicate the same Emergency Motion. This Court will not oblige. In any event, with respect the Debtor's request "for appointment counsel," this Court has no statutory or other legal authorization to appoint counsel for the Debtor in this Chapter 7 liquidation case. *Cf. Muth v. Muth (In re Muth)*, 514 B.R. 719, 2014 WL 1712527, at *7 (10th Cir. BAP 2014) (slip op.) (noting that there is no constitutional right to appointed counsel in civil actions, including the underlying Chapter 11 case). *See also Nat'l City Bank v. Flowers (In re Flowers)*, 83 B.R. 953 (Bankr. N.D. Ohio 1988) (noting that that bankruptcy proceeding is civil in nature, that neither the Bankruptcy Code, Bankruptcy Rules, or Federal Rules of Civil Procedure authorize appointed counsel for individual debtors in bankruptcy matters, and holding that "[a]lthough the Debtor has a right to retain counsel, that right does not require the government to provide counsel for litigants in civil matters"). With respect to the Debtor's request for "[a] directive for the Trustee and associated parties to show cause why I continue to be held within these bankruptcy proceedings under conditions that have proven prejudicial and detrimental to my interests," the Court notes that the Debtor herself voluntarily commenced this Chapter 7 liquidation case. Years later, the Debtor requested dismissal. On January 31, 2024, the Court issued its "Order Denying Motion to Dismiss," wherein the Court explained in painstaking detail why this bankruptcy case was not dismissed. (Docket No. 371.) Finally, with respect to the Debtor's request for "review and reconsideration" of "all related proceedings" and "all decisions," the Court will not entertain such request. It is procedurally improper (by not identifying the "proceedings" and "decisions"). And, besides, the Court has carefully considered and adjudicated all motions in this Chapter 7 liquidation (except for a few more recent motions or notices which are still pending).

Accordingly, to the extent that the Notice asks that this Court to enter any relief (which is quite unclear on the face of the Notice), the Court DENIES such request.

DATED this 25th day of July, 2024.

BY THE COURT:

Thomas B. McNamara

Thomas B. McNamara,
United States Bankruptcy Judge

EXHIBIT 9

(ORDER DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Thomas B. McNamara

In re: SHERRY ANN MCGANN, Debtor.	Bankruptcy Case No. 20-18118 TBM Chapter 7

ORDER DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL

I. Introduction.

Years ago, the Debtor, Sherry Ann McGann (the "Debtor"), filed for protection under Chapter 7 of the Bankruptcy Code.[1] As of the Petition Date, she owned real property and improvements located at 1535 Grand Avenue, Grand Lake, Colorado 80447 (the "Grand Lake Property"). The Grand Lake Property initially appeared to be over-encumbered with liens. However, the Chapter 7 Trustee Jeanne Y. Jagow (the "Trustee") reached a settlement agreement (approved by the Court) which resulted in several liens being removed. Since the Grand Lake Property then appeared to have value for the bankruptcy estate, the Trustee sought access to the Grand Lake Property. The Debtor refused. So, the Trustee asked the Court to compel the Debtor to provide the Trustee with access to the Grand Lake Property and prevent the Debtor from interfering with the Trustee's efforts to market and potentially sell the Grand Lake Property. The Debtor objected. After litigation and a trial on the topic (and other disputes), the Court issued an Oral Ruling (Docket No. 320, the "Access Oral Ruling")[2] granting the relief requested by the Trustee. The next day, the Court entered a confirming written "Order Requiring the Debtor to Turnover Property to the Trustee." (Docket No. 321, together with the Oral Access Ruling, the "Access Order.") Among other things, the Access Order directed that "the Debtor shall allow the Trustee, her agents and representatives reasonable access to the Grand Lake Property to inspect, market, repair, improve, monitor, visit, and sell it." The Debtor appealed the Access Order to the United States Bankruptcy Appellate Panel for the Tenth Circuit (the "Tenth Circuit BAP"), which eventually denied such appeal as moot. *McGann v. Jagow (In re McGann)*, BAP Appeal No. 23-24 (Docket No. 347.)

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[1] All references to the "Bankruptcy Code" are to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. Unless otherwise indicated, all references to "Section" are to sections of the Bankruptcy Code.

[2] The Court uses the convention "Docket No. ___" to refer to documents filed in the CM/ECF system in this bankruptcy case, *In re McGann*, Bankr. Case No. 20-18118 TBM (Bankr. D. Colo.).

After the Debtor's further intransigence and the Court's finding the Debtor in contempt of Court for failure to comply with the Access Order, the Trustee and her professionals eventually gained access to inspect the Grand Lake Property. Based upon such inspection and the Trustee's assessment of value, the Trustee filed a "Renewed Motion for Order Requiring the Debtor to Turnover Property (1535 Grand Avenue) to the Trustee" (Docket No. 403, the "Turnover Motion") under Section 542(a). This time, the Trustee asked for the Court to order the Debtor to surrender and vacate the Grand Lake Property "so that the Property may be prepared for sale, and marketed." The Debtor objected. (Docket No. 404, the "Turnover Objection.") The parties engaged in further litigation. The Court conducted another trial directed to the value of the Grand Lake Property and the amount of remaining encumbrances. **On July 19, 2024, the Court entered an "Order Granting Motion for Turnover. (Docket No. 488, the "Turnover Order.")** As the title suggests, the Court granted the Turnover Motion and ordered the Debtor "to surrender to the Trustee the Grand Lake Property" by August 19, 2024.

A few days later, **the Court entered an "Order Denying 'Combinded [Sic] Motion for Reconsideration and Conditional Request for Permission.'" (Docket No. 491, the "Reconsideration Denial Order.")** The Reconsideration Denial Order denied the Debtor's "Combinded [sic] Motion for Reconsideration and Conditional Request for Permission" (Docket No. 477, the "Motion for Reconsideration"), which appeared to be directed mainly toward the United States District Court for the District of Colorado in another case originated by the Debtor: *Sherry McGann v. Jeanne Jagow et al.*, Case No. 24-CV-727 (D. Colo.) (the "District Court Action."). The Debtor's filing of the Motion for Reconsideration with this Court appeared to duplicate the exact same Motion for Reconsideration filed in the District Court Action. United States District Judge Nina Y. Wang denied the Motion for Reconsideration in the District Court Action. In the Reconsideration Denial Order, the Court stated: "The Debtor seems to be improperly asking two separate courts to adjudicate the same Motion for Reconsideration. In any event, this Court has no statutory or other legal authorization to 'reconsider' the actions taken in the District Court Action by the United States Magistrate Judge and the United States District Judge."

Meanwhile, the Trustee filed the "Chapter 7 Trustee's Motion for Allowance of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)(1)(A)." (Docket No. 461, the "Administrative Expense Motion.") As set forth in the Administrative Expense Motion, the Trustee sought allowance of an administrative expense claim for her out-of-pocket costs incurred in connection with obtaining an insurance policy for the Grand Lake Property. The Debtor filed an Objection. (Docket No. 465, the "Administrative Expense Objection.") **On July 23, 2024, the Court entered an "Order Granting Trustee's Motion for Allowance of Administrative Expense Claim." (Docket No. 493, the "Administrative Expense Order.")**

The Debtor disagreed with all the foregoing. So, the next day (July 24, 2024), she filed a "Notice of Appeal." (Docket No. 495, the "Notice of Appeal.") **Through the single Notice of Appeal, the Debtor sought to appeal to the Tenth Circuit BAP three separate orders: (1) the Turnover Order; (2) the Reconsideration Denial Order; and (3) the Administrative Expense Order.** Subsequently, the Tenth Circuit BAP issued an "Order Construing Notice of Appeal as Multiple Notices of Appeal." *See* McGann v. Jagow (In re McGann), BAP Appeal Nos. CO-24-12, CO-24-13, and CO-24-14 (the "Appeals"). The Appeals are pending in the Tenth Circuit BAP.

Immediately after filing the Notice of Appeal, the Debtor filed an "Emergency Motion for Stay Pending Appeal." (Docket No. 496, the "Stay Motion.") As set forth in the Stay Motion, the Debtor has requested that the Court stay pending appeal three separate orders: (1) the Turnover Order; (2) the Reconsideration Denial Order; and (3) the Administrative Expense Order. The Trustee objected to the Stay Motion. (Docket No. 509, the "Stay Objection.") So, the Stay Motion is now ripe for decision by the Court. Meanwhile, to add a bit more confusion, the Debtor filed a variant of the Stay Motion styled "Notice Renewed Motion for Stay Pending Appeal of Turnover [Bankr. ECF No. 488], Notice of Additional Evidence, and Immediate Relief" with the Tenth Circuit BAP in two entirely different appellate proceedings: *McGann v. Jagow (In re Jagow)*, BAP Appeal No. CO 24-4 and *McGann v. Jagow (In re Jagow)*, BAP Appeal No. CO 24-7 (the "Renewed Motions for Stay"). Fed. R. Bankr. P. 8007(a)(1) states that "[o]rdinarily, a party must move first in the bankruptcy court for . . . a stay of a judgment, order, or decree of the bankruptcy court pending appeal . . . ." So, notwithstanding the parallel and duplicative Renewed Motions for Stay in the Tenth Circuit BAP, the Court determines that it must rule on the Stay Motion and Stay Objection in the first instance.

For the reasons set forth below, the Court denies the Stay Motion.[3]

II. Procedural Background.

The tortured procedural history of this case has been explained in detail by the Court in dozens of various Orders entered over the last year. Rather than restate it all again, the Court incorporates herein by reference the "Procedural Background" set forth in the Turnover Order and the "Background" set forth in the Administrative Expense Order. (Docket Nos. 488 at 1-8 and 493 at 1-4.) But, to summarize just a bit, the Debtor's most recent bankruptcy case was commenced on December 22, 2020 (the "Petition Date"), when the Debtor filed her petition for relief under Chapter 7 of the Bankruptcy Code. (Docket No. 1.) Since the Petition Date, the Debtor has enjoyed the

[3] The Debtor currently is proceeding in a *pro se* capacity. The Court construes the Stay Motion liberally due to the Debtor's *pro se* status. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, the Court cannot and does not act as the Debtor's advocate, *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991), and applies the same procedural rules and substantive law to the Debtor as to a represented party. *Murray v. City of Tahlequah*, 312 F.3d 1196, 1199 n. 2 (10th Cir. 2008); *Dodson v. Bd. of Cnty. Comm'rs*, 878 F. Supp. 2d 1227, 1236 (D. Colo. 2012).

protection of the automatic stay provided for in Section 362(a), received a discharge pursuant to Section 727, and enjoyed the benefits of the discharge injunction pursuant to Section 524.

The Grand Lake Property is the Debtor's most significant asset. On the Debtor's Schedule C (Docket No. 16), the Debtor claimed a homestead exemption in the amount of $105,000 against the Grand Lake Property (which she identified as a residence and "farm location") pursuant to Colo. Rev. Stat. § 34-54-102(1)(e). The Debtor has not amended her Schedule C.

On June 23, 2021, the Trustee commenced an Adversary Proceeding against 450 Oka Kope, LLC ("Oka Kope") and others: *Jagow v. 1450 Oka Kope, LLC et al. (In re McGann)*, Adv. Pro. No. 21-1132 (Bankr. D. Colo.) (the "Oka Kope Adversary Proceeding"). Subsequently, the Trustee settled the Oka Kope Adversary Proceeding and filed a "Motion to Approve Settlement Agreement." (Docket No. 93.) As part of the Settlement Agreement, Oka Kope agreed to withdraw certain liens against the Grand Lake Property. The Debtor objected to the Settlement Agreement between the Trustee and Oka Kope. On May 3, 2022, after an evidentiary hearing, the Court approved the Settlement Agreement which resolved the Oka Kope Adversary Proceeding and entered a confirming judgment. (Docket Nos. 146 and 147.) As a result of the Settlement Agreement, Oka Kope released its liens against the Grand Lake Property.

With Oka Kope's liens released, it appeared that there would be equity in the Grand Lake Property for the benefit of the bankruptcy estate. For the last two years, the Debtor has engaged in sustained litigation (in multiple courts) trying to stop the Trustee from accessing and selling the Grand Lake Property for the benefit of the bankruptcy estate. The most recent litigation sequence resulted in the Court's issuing the Turnover Order along with a series of other collateral orders on various disputed topics.

III. Legal Analysis and Conclusions of Law.

A. The Debtor's Request for Stay.

In the Stay Motion, the Debtor asks for a stay pending appeal of three separate orders: (1) the Turnover Order; (2) the Reconsideration Denial Order; and (3) the Administrative Expense Order. The Debtor invokes Fed. R. Bankr. P. 8007(a)(1)(A). Fed. R. Bankr. P. 8007(a)(1) states, in part: "Ordinarily, a party must move in the bankruptcy court for the following relief: (A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal." So, the Stay Motion is properly presented to this Court in the first instance, and it is this Court which must decide the Stay Motion before the Debtor solicits the further involvement of the Tenth Circuit BAP.

B. The Legal Standard for a Stay on Appeal.

"The decision of whether to grant a stay pending appeal is left to the discretion of the bankruptcy court." *Lang v. Lang (In re Lang)*, 305 B.R. 905, 911 (10th Cir. BAP 2004). "However, '[a] stay is an intrusion into the ordinary process of administration of judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant.'" *Zzyym v. Pompeo*, 2019 WL 764577, at *1 (D. Colo. Feb. 21, 2019) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). The Debtor "bears the burden of showing that the circumstances justify an exercise of that discretion." *Zzyym*, 2019 WL 764577, at *1 (quoting *Nken*, 556 U.S. at 434). "[I]t is a heavy burden." *Morreale v. 2011-STP-1 CRE/CADC Venture, LLC (In re Morreale)*, 2015 WL 429502, at * 1 (D. Colo. Jan. 30, 2015).

In exercising the Court's discretion, the Court is guided by four well-established factors:

> (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; (3) whether granting the stay will result in substantial harm to the other parties to the appeal; and (4) the effect of granting the stay upon the public interest.

Lang, 305 B.R. at 911. *See also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (confirming similar standard for stay pending appeal under analogous Fed. R. Civ. P. 62(c)); *F.T.C. v. Mainstream Mktg. Servs., Inc.*, 345 F.3d 850, 852 (10th Cir. 2003) (utilizing similar factors to evaluate stay on appeal under Fed. R. App. P. 8 and 18).

As an overlay of the standard formulation, the Court also considers the importance and novelty of the issues being appealed. *See* Charles Alan Wright et al., 11 FEDERAL PRACTICE AND PROCEDURE § 2904 (West 2012) ("Many courts also take into account that the case raises substantial difficult or novel legal issues meriting a stay."). In any event, all the factors are "interconnected" and may be considered in sliding scale fashion. *In re Revel AC, Inc.*, 802 F.3d 558, 571 (3d Cir. 2015). *See also Mainstream Mktg.*, 345 F.3d at 852-53 (noting that "probability of success" factor may be relaxed if the other three factors tip decidedly in favor of stay).

C. The Debtor Failed to Establish Likelihood of Success on the Appeals.

"It is not enough that the chance of success on the merits be 'better than negligible.'" *Nken*, 556 U.S. at 434 (quoting *Sofinet v. INS*, 188 F.3d 703, 707 (7th Cir. 1999)). There must be more than a "mere possibility" of success on the merits. *Id.* The "probability of success is demonstrated when the petitioner seeking the stay has raised

'questions going to the merits so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation.'" *Morreale*, 2015 WL 429502, at *3 (quoting *Mainstream Mktg.*, 345 F.3d at 853).

The Debtor does not expressly contend that she is likely to succeed on the merits of her three new Appeals. However, the Court infers that the Debtor believes this to be the case. Nevertheless, the Court has already thoroughly examined the Debtor's legal arguments and has rejected them in the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order. The Court's ruling in the Turnover Order merely confirms what should be a noncontroversial proposition: that the Grand Lake Property is property of the Debtor's bankruptcy estate and that, as such, the Debtor must turn it over to the Trustee for administration. The Court's ruling in the Reconsideration Denial Order mainly recognizes that the District Court already denied the duplicate Reconsideration Motion filed the District Court Action and this Court cannot interfere in such matter. Finally, the Administrative Expense Order allows the Trustee an administrative expense for the Trustee's having to obtain an insurance policy to protect the bankruptcy estate's interest in the Grand Lake Property. None of the foregoing are particularly novel or complex issues. Instead, such matters sound in standard Chapter 7 administration.

In any event, the Debtor must be able to demonstrate that she likely will prevail on the merits of her Appeals of the Turnover Order, the Reconsideration Denial Order, and the Administrative Expense Order. As noted in *Morreale*, the Debtor bears a "heavy burden" of proof. *Morreale*, 2015 WL 429502, at *2-3 (debtor who sought a stay pending appeal did not meet its heavy burden to show likelihood of success on appeal given the record in the case and "particularly given the deferential standard of review" to be undertaken by the appellate court [factual findings of the trial court will not be overturned on appeal unless the reviewing court is left with the definite and firm conviction that a mistake has been committed]). In this Court's view, in the Stay Motion, the Debtor did not identify serious and substantial factual or legal arguments against the Turnover Order, the Reconsideration Denial Order, and the Administrative Expense Order. As such, the Debtor has failed to show that she likely will succeed on the three new Appeals.

Notwithstanding the foregoing, the Court briefly addresses a few of the new topics mentioned in the Stay Motion. The Debtor accuses the undersigned Bankruptcy Judge of "demonstrated bias." The Debtor states: "The Debtor has filed a motion for recusal due to demonstrated bias by the presiding judge. The judge's actions and decisions demonstrate a pattern of bias and partiality that undermines the Debtor's right to a fair trial." (Stay Motion at 2-3.) This is a new position articulated by the Debtor only after the entry on the Turnover Order. On July 22, 2024, the Debtor filed a "Motion for Permission to Bring Charges Against Trustee for Mismanagement and Unauthorized Actions, and for Recusal of the Presiding Judge." (Docket No. 490, the "Trustee Mismanagement and Recusal Motion.") The Trustee Mismanagement and Recusal Motion was the first motion to recuse the undersigned Bankruptcy Judge under 28 U.S.C. § 455(a). Thus, it

should not serve as a basis for a stay on appeal of the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order, in which the issue was not raised. In any event, the Court will adjudicate the new Trustee Mismanagement and Recusal Motion in due course providing a fair and full opportunity for the Trustee to respond and for the Debtor to present facts and evidence in support of her position.

In the Stay Motion, the Debtor asserts that the Court erred in applying the "incorrect homestead exemption." (Stay Motion at 3.) Although that issue had not been raised by the Debtor before or during the trial on the Turnover Motion, the Debtor did submit a post-trial brief wherein she noted that "SENATE BILL 22-086 was signed on April 7, 2022." In a single sentence in the middle of the brief, the Debtor stated: "The [homestead] disabled limit, which applies to McGann, was increased to $350,000 from the previous $105,000 for a dwelling, as defined in section 38-41-2017 including a farm consisting an numbers of acres." (*Id.*) The Debtor presented no legal analysis how or why Senate Bill 22-086 purportedly applied retroactively to the Debtor. It is true that the Court did not expressly address "Senate Bill 22-086" in the Turnover Order since, the Debtor's only operative claim of exemption on her Schedule C is for $105,000. The Debtor has never amended her Schedule C. But, furthermore, the Debtor's new argument is incorrect. The Debtor filed for Chapter 7 protection on December 22, 2020. A year and a half later, effective April 7, 2022, Colorado changed (increased) its homestead exemption. However, Colorado bankruptcy debtors are not entitled to the higher homestead exemption in cases which were filed prior to the new homestead law. *In re Gomez*, 646 B.R. 523 (Bankr. D. Colo. 2022) ("The law — including the Colorado Constitution, Colorado statutes, and directly apposite case law — dictates that SB 22-086 cannot be applied retroactively."). The Debtor's new argument is not a basis to stay the Turnover Orde under the likelihood of success prong.

In the Stay Motion, the Debtor also raised a new alleged "Violation of ADA Rights" argument. (Stay Motion at 4.) The Debtor states: The Debtor has suffered from violations of the ADA [Americans with Disabilities Act], including lack of accommodations for her medical conditions during the legal proceedings." (*Id.*) The Debtor did not identify her alleged disability in the Stay Motion, except that elsewhere (including in her Affidavit), the Debtor notes that she suffers "emotional distress," "stress and anxiety," and "PTSD" because of her bankruptcy case and the Court's rulings. The Court sympathizes with the Debtor (and all Chapter 7 debtors who may be forced to surrender assets under the requirements of the Bankruptcy Code). However, the Debtor's emotional distress, if any, does not establish a likelihood of success on the merits of the three new Appeals. Later, in the Stay Motion, to support the alleged ADA violation the Debtor asserted: "The presiding judge further intimidated and made the Debtor uncomfortable by addressing her service dog inappropriately, as documented in [Bankr. ECF No. 297, pg. 4 # 17, #18] and [Bankr. ECF No. 298, pgs. 5 & 6]." (Stay Motion at 5.) This seems to be the only specific information provided on the alleged ADA violation. However, the record citations do not establish that the Court ever addressed the Debtor's dog (inappropriately or otherwise).

The Court has already dealt with virtually all the other points raised through the Stay Motion in the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order. To the extent unaddressed, the Court already has implicitly rejected the Debtor's various other positions. The Court finally determines that the Debtor failed in her burden to show a probability of succeeding in the three new Appeals.

D. The Debtor Failed to Show Irreparable Harm.

The Supreme Court in *Nken* held that the showing of irreparable harm, like the showing required for the likelihood of success on the merits, must be more than simply showing some "possibility of irreparable injury." *Id.* at 434. "The 'possibility' standard is too lenient." *Id.* at 435. The movant must "demonstrate that irreparable injury is *likely* in the absence of an injunction." *In re Stewart*, 604 B.R. 900, 907 (Bankr. W.D. Okla. 2019) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008)) (emphasis in the original). The *Nken* Court also observed that there is "substantial overlap between [the standards used for stays pending appeal] and the factors governing preliminary injunctions; not because the two are one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined." *Nken*, 556 U.S. at 434.

The Tenth Circuit has interpreted the concept of "irreparable harm" in the context of that required for imposing a preliminary injunction under Fed. R. Civ. P. 65. *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). The Tenth Circuit stated:

> To constitute irreparable harm, an injury must be certain, great, actual 'and not theoretical.' . . . Irreparable harm is not harm that is 'merely serious or substantial.' '[T]he party seeking injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm."

Heideman, 348 F.3d at 1189 (quoting *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2002) (emphasis in the original) (internal citations omitted).

With respect to the Reconsideration Denial Order, the Debtor failed to show irreparable injury. The District Court already denied the Reconsideration Motion. And the District Court already dismissed the District Court action brought by the Debtor against the Trustee and her counsel. The Reconsideration Denial Order mainly recognized that the District Court already had rejected the Debtor's position and that the Reconsideration Motion was an improper duplicate attempt to present the same dispute to the Court. Similarly, the Debtor has not shown irreparable injury with respect to the Administrative Expense Order, which merely allowed the Trustee an administrative expense for the $1,040.00 the Trustee already paid plus $485.00 in monthly premiums

to insure, protect, and preserve the Grand Lake Property. Even if the Reconsideration Denial Order and Administrative Expense Order were entered in error, then the Tenth Circuit BAP may correct the errors during its appellate review of the Appeals. But there is no reason for a stay based upon irreparable injury with respect to such Orders.

The only conceivable irreparable injury asserted by the Debtor pertains to the Turnover Order in which the Court directed the Debtor to "surrender to the Trustee and vacate the Grand Lake Property" by August 19, 2024. Although this dispute has been pending for a long time, the Court allowed an additional month from the entry of the Turnover Order for the Debtor to comply so that she could make arrangements for alternative living accommodations and to move her exempt personal property.

The Court recognizes that surrendering the Grand Lake Property may cause some injury to the Debtor. She will be forced to leave real estate that she states she has occupied for some years. But, the Grand Lake Property is property of the estate. As such, and unless the Trustee abandons the Grand Lake Property, the Debtor can only use the Grand Lake Property to the extent she is allowed to do so by the Trustee. *See In re Cook v. Wells Fargo, N.A. (In re Cook)*, 2012 WL 1356490 (10th Cir. BAP 2012) (internal citations omitted), *aff'd*, 520 Fed Appx. 697 (10th Cir. 2012) (unpublished). ("Upon the filing of a bankruptcy petition, an estate is created, which is comprised of all legal or equitable interests of the debtor in property as of the commencement of the case. The Trustee is a representative of the estate in a Chapter 7 case. The Trustee shall collect and reduce to money the property of the estate. It is the Trustee to whom the obligation to turn over property of the estate runs. And it is the Trustee who has the right to use property of the estate. A Chapter 7 debtor has none of these rights."); *In re Trujillo*, 438 B.R. 238, 249-50 (Bankr. D. Colo. 2012) (recognizing that Chapter 7 debtors sometimes continue to use property of the estate post-petition, but noting that they have a duty to surrender estate property in light of trustee's superior right to it; further noting that a debtor who uses estate property may be required to compensate the estate for its use); *Irons v. Maginnis (In re Irons)*, 572 B.R. 877, 886 (Bankr. N.D. Ohio 2017) ("The right to 'use' property of the estate is a right held by the Chapter 7 Trustee.").

As the Tenth Circuit Court of Appeals recently explained:

> In Chapter 7 bankruptcies, debtors give up their property that is not entitled to an exemption in exchange for a discharge of their debts. A trustee liquidates the debtor's pre-petition, non-exempt property and then distributes the proceeds to the debtor's creditors. The debtor receives an immediate discharge and is therefore entitled to keep his future income and any assets acquired post-petition. But this action comes at a cost, as the debtor may lose a home and all other non-exempt assets.

Rodriguez v. Barrera (In re Barrera), 22 F.4th 1217, 1220 (10th Cir. 2022) (citations omitted); *see also Harris v. Viegelahn*, 575 U.S. 510, 513-14 (2015) (recognizing the "steep price" of Chapter 7 discharge, which is that a debtor "must forfeit virtually all his prepetition property").

Given the foregoing black-letter law, the Court assesses that being forced to surrender the Grand Lake Property (which is property of the bankruptcy estate which must be turned over to the Trustee under the Bankruptcy Code) cannot be a type of "irreparable injury" that legally justifies a stay of the Turnover Order. If it were otherwise, effective administration of Chapter 7 bankruptcy estates would come to a screeching halt as many debtors likely would assert that they do not wish to turnover their real and personal property because it would be injurious and then try to obtain a stay on appeal. In this Court's reasoned view, the Debtor has not shown that the Turnover Order is likely to result in irreparable harm justifying a stay. And, even if irreparable injury to the Debtor had been shown, the Court assesses that such irreparable injury would not outweigh all the other factors counseling against a stay during the pendency of the Appeals.

E. <u>The Debtor Failed to Address Harm to the Trustee</u>.

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest." *Nken*, 556 U.S. at 435. To establish this third factor of the test for stays pending appeal, the Debtor "must establish that the [Trustee] will not suffer substantial harm if the stay is granted. 'In other words, the moving party must show that the balance of harms tips in favor of granting the stay.'" *Stewart*, 604 B.R. at 908 (quoting *ACC Bondholder Grp. v. Adelphia Commc'n Corp. (In re Adelphia Commc'n Corp.)*, 361 B.R. 337, 349 (S.D. N.Y. 2007)).

The Debtor does not even mention the harm to the Trustee or the creditors whose interests the Trustee serves. The Debtor speaks only to the harm she herself may suffer. The Debtor argues that having to turnover the Grand Lake Property will be detrimental to her fragile emotional state. The Court accepts this as a possibility. But the Court cannot ignore the harm to the Trustee and creditors that will result from a stay. While the Court supposes that all debtors who file for bankruptcy and thereby agree to turnover property of the estate experience some psychological distress at the intrusion, that is the bargain that a debtor makes in order to discharge their debts and make a fresh start. It is the bargain the Debtor made here when she filed for relief under Chapter 7. That the Debtor continues to reside and work in the Grand Lake Property does not change the fact that the Grand Lake Property is property of the estate and therefore must be turned over to the Trustee for administration. While this may seem unjust to the Debtor, allowing the Debtor, who has already received her discharge, simply to retain the Grand Lake Property would certainly be unjust to creditors who have waited for more than three years to receive any payment from the Debtor's estate. Contrary to the Debtor's implicit argument, the Turnover Order does

not effect a manifest injustice — it is entirely consistent with the purposes of Chapter 7 and is necessary to enable the Trustee to meet her obligations to creditors. Because the harm to the estate and creditors is likely to outweigh any harm to the Debtor, the Debtor has not demonstrated her entitlement to a stay.

F. A Stay Is Not in the Public Interest.

The fourth factor courts must consider is where the public interest lies. The notion of the "public interest" in this context is one that transcends the interests of the parties in the case. *Revel AC*, 802 F.3d at 569. "[T]he public interest is furthered by the timely conclusion of legal disputes." *Board of Cty. Comm'r of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 2019 WL 4926764, at *7 (D. Colo. Oct. 7, 2019) (citing *Desktop Images v. Ames*, 930 F. Supp. 1450, 1452 (D. Colo. 1996)).

Once again, the Debtor makes no argument in support of this factor. This bankruptcy case has been pending since December 22, 2020, and comes on the heels of another case filed by the Debtor on October 17, 2019, and dismissed on September 1, 2020. While the cases were pending, creditors were barred from engaging in any collection efforts, the Debtor received her discharge, and creditors are now barred by the discharge injunction from collecting on their claims, though they have not yet received any payment from the estate. Meanwhile, the Debtor has continued to enjoy her use of the Grand Lake Property.

The Trustee has established that the Grand Lake Property has value for the bankruptcy estate. So, the Court granted the Turnover Motion. At this stage, the Debtor has been ordered to surrender the Grand Lake Property so that it can be marketed and sold. A stay would unnecessarily prolong administration of the estate. The public interest is best served by timely conclusion of the disputes applying the requirements of the Bankruptcy Code fairly and impartially. Thus, the Court finds that this fourth factor (public interest) weighs in favor of denying the Debtor's request for entry of a stay.

IV. Conclusion and Order.

The Debtor has not met her heavy burden to show that the Court should exercise its discretion and impose a stay of the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order. Accordingly, the Court:

ORDERS that the Motion to Stay is DENIED; and

FURTHER ORDERS that the Bankruptcy Court Clerk shall transmit a copy of this Order to the United States Bankruptcy Appellate Panel for the Tenth Circuit in BAP Case Nos. CO 24-4, CO 24-7, CO 24-12, CO 24-13, and CO 24-14.

DATED this 2nd day of August, 2024.

BY THE COURT:

Thomas B. McNamara

Thomas B. McNamara,
United States Bankruptcy Judge

EXHIBIT 10

(ORDER – DENYING AND DISMISSING APPEAL FOR JURISDICTION)

FILED
United States Court of Appeals
Tenth Circuit

August 14, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: SHERRY ANN MCGANN,

Debtor.

SHERRY ANN MCGANN,

Appellant,

v.

JEANNE Y. JAGOW, Chapter 7 Trustee,

Appellee.

No. 24-1314
(BAP No. 24-12-CO)
(Bankruptcy Appellate Panel)

ORDER

Before **MATHESON**, **EID**, and **CARSON**, Circuit Judges.

This matter comes before the court on pro se Appellant Sherry McGann's response to this court's show cause order regarding this court's jurisdiction over this appeal.

The bankruptcy court ordered Ms. McGann to vacate and turn over a property in Grand Lake, Colorado (the "Turnover Order"). Ms. McGann filed a motion to stay the order pending an appeal, which the bankruptcy court denied. Ms. McGann then appealed the Turnover Order to the Bankruptcy Appellate Panel ("BAP") and again filed a motion to stay the order pending appeal. The BAP denied the stay, and Ms. McGann now appeals the BAP's denial of stay to this court.

After Ms. McGann filed her appeal, this court issued an order to show cause questioning our appellate jurisdiction. Ms. McGann filed her response to our show cause order, asserting this court has jurisdiction under the collateral order doctrine and 28 U.S.C. § 158(a). Neither argument is compelling.

"The denial of a stay pending appeal is not an appealable order." *UCFW Loc. 880-Retail Food Emps. Joint Pension Fund v. Newmont Mining Corp.*, 276 F. App'x 747, 749 (10th Cir. 2008) (unpublished) (internal quotation marks omitted); *see also In re Atencio*, 913 F.2d 814, 816 (10th Cir. 1990) (when a court acting in its appellate capacity denies a stay of an underlying order of the bankruptcy court order pending appeal, the 10th Circuit lacks jurisdiction to review that interlocutory order). Ms. McGann argues that the Turnover Order and the BAP's order are effectively unreviewable from a final judgment. However, that does not cure the lack of finality of the BAP's order denying a stay, nor does it counter this court's precedent clearly stating that a denial of a stay pending appeal is not an appealable order. The BAP appeal remains pending and has not reached its conclusion. Thus, this court does not have jurisdiction to consider an appeal from the BAP's order denying her request for stay pending appeal.

APPEAL DISMISSED.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

August 14, 2024

RE: 24-1314, McGann, et al v. Jagow
Dist/Ag docket: 24-12-CO

Dear Appellant:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Sherry Ann McGann
David M. Miller

CMW/jjh

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Thomas B. McNamara

In re: SHERRY ANN MCGANN, Debtor.	Bankruptcy Case No. 20-18118 TBM Chapter 7

ORDER DENYING REQUESTS MADE IN "[NOTICE SENT TO DISTRIC [SIC] COURT 24-CV-727] EMERGENCY MOTION FOR JUDICIAL INTERVENTION AND REQUEST FOR APPOINTMENT OF COUNSEL"

This matter comes before the Court on the "[Notice Sent to Distric [sic] Court 24-CV-727] Emergency Motion for Judicial Intervention and Request for Appointment of Counsel" (Docket No. 480, the "Notice") filed by Debtor, Sherry Ann McGann (the "Debtor") on July 2, 2024.

On March 14, 2024, the Debtor filed a "Complaint Motion for Hearing and Jury Trial" in the United States District Court for the District of Colorado ("the "District Court") in the case captioned: *Sherry McGann v. Jeanne Jagow et al.*, Case No. 24-CV-727 (D. Colo.) (the "District Court Action"). (District Court Docket No. 1, the "Complaint.") In the Complaint, the Debtor asserted claims for abuse of process, civil conspiracy, fraud, intentional infliction of emotional distress, outrageous conduct, invasion of privacy, and negligent misrepresentation against Chapter 7 Trustee Jeanne Jagow (the "Chapter 7 Trustee") and her legal counsel ("Counsel"). Thereafter, the Chapter 7 Trustee and Counsel filed a "Motion to Dismiss" in the District Court Action requesting that the District Court Action be dismissed. (District Court Docket No. 9, the "Motion to Dismiss")

On June 20, 2024, United States Magistrate Judge Susan Prose issued a "Recommendation and Order on Several Motions" in the District Court Action wherein she stated:

> [T]he court respectfully RECOMMENDS that the Defendants' Motion to Dismiss (ECF No. 9) be granted and the case be dismissed for lack of subject matter jurisdiction. The Court FURTHER RECOMMENDS that the dismissal be without leave to amend, as it is plain that allowing amendment would be futile.

(District Court Docket No. 12, the "Magistrate Judge Recommendation.")

The Debtor apparently disagreed with the Magistrate Judge Recommendation. So, on later that same day, June 20, 2024, the Debtor filed the Motion for Reconsideration with the District Court. (District Court Docket No. 14.) As the title suggests, the Motion for Reconsideration requested mainly that the District Court reconsider the Magistrate Judge Recommendation.

Subsequently, on July 19, 2024, United States District Judge Nina Y. Wang entered an "Order Adopting Magistrate Judge's Recommendation" and "Judgment" whereby she "OVERRULED" the Debtor's Motion for Reconsideration (which she construed as an objection to the Magistrate Judge Recommendation) and "GRANTED" the Motion to Dismiss. (District Court Docket Nos. 25 and 26, the "Order Adopting Recommendation" and "Judgment.") The District Court Action "is closed and final judgment has been entered." (District Court Docket No. 29.)

Meanwhile, on July 1, 2024, during the interval between the Magistrate Judge Recommendation and the Order Adopting Recommendation and Judgment, the Debtor filed a an "Emergency Motion for Judicial Intervention and Request for Appointment of Counsel" with the District Court in the District Court Action. (District Court Docket No. 19, the "Emergency Motion.") In the Emergency Motion, the Debtor stated:

Motion for Judicial Intervention

Given the complexity and severity of the procedural and substantive issues at hand, and the demonstrable impact on my well-being and financial status, I urgently request this court's intervention. Specific actions requested are:

1. **Appointment of Counsel:** Immediate appointment of legal counsel to assist with navigating the complexities of these interconnected cases, ensuring that my procedural rights are preserved and that I can mount an effective defense and advocacy for my interests.
2. **Show Cause:** A directive for the Trustee and associated parties to show cause why I continue to be held within these bankruptcy proceedings under conditions that have proven prejudicial and detrimental to my interests.
3. **Review and Reconsideration:** A thorough review of all related proceedings and a reconsideration of all decisions made without proper consideration of my financial offers, the trustee's management, and the cumulative adverse effects on me.

All of the foregoing requested relief apparently was directed to the District Court. United States District Judge Nina Y. Wang denied the Emergency Motion in the Order Adopting Recommendation. (Docket No. 25 at 13.)

For reasons entirely unclear to this Court, the Debtor apparently elected to duplicate the proceedings and refile the Emergency Motion in this Court on July 2, 2024

under the caption: "[Notice Sent to Distric [sic] Court 24-CV-727] Emergency Motion for Judicial Intervention and Request for Appointment of Counsel." (Docket No. 480.) Since United States District Judge Nina Y. Wang already has denied the Emergency Motion, the Court cannot interject itself into such matters. The Notice is effectively moot and must therefore be denied because it already has been denied in the District Court Action.

However, the Court adds a few additional observations. The Notice is procedurally defective. The Debtor seems to be improperly asking two separate courts to adjudicate the same Emergency Motion. This Court will not oblige. In any event, with respect the Debtor's request "for appointment counsel," this Court has no statutory or other legal authorization to appoint counsel for the Debtor in this Chapter 7 liquidation case. *Cf. Muth v. Muth (In re Muth)*, 514 B.R. 719, 2014 WL 1712527, at *7 (10th Cir. BAP 2014) (slip op.) (noting that there is no constitutional right to appointed counsel in civil actions, including the underlying Chapter 11 case). *See also Nat'l City Bank v. Flowers (In re Flowers)*, 83 B.R. 953 (Bankr. N.D. Ohio 1988) (noting that that bankruptcy proceeding is civil in nature, that neither the Bankruptcy Code, Bankruptcy Rules, or Federal Rules of Civil Procedure authorize appointed counsel for individual debtors in bankruptcy matters, and holding that "[a]lthough the Debtor has a right to retain counsel, that right does not require the government to provide counsel for litigants in civil matters"). With respect to the Debtor's request for "[a] directive for the Trustee and associated parties to show cause why I continue to be held within these bankruptcy proceedings under conditions that have proven prejudicial and detrimental to my interests," the Court notes that the Debtor herself voluntarily commenced this Chapter 7 liquidation case. Years later, the Debtor requested dismissal. On January 31, 2024, the Court issued its "Order Denying Motion to Dismiss," wherein the Court explained in painstaking detail why this bankruptcy case was not dismissed. (Docket No. 371.) Finally, with respect to the Debtor's request for "review and reconsideration" of "all related proceedings" and "all decisions," the Court will not entertain such request. It is procedurally improper (by not identifying the "proceedings" and "decisions"). And, besides, the Court has carefully considered and adjudicated all motions in this Chapter 7 liquidation (except for a few more recent motions or notices which are still pending).

Accordingly, to the extent that the Notice asks that this Court to enter any relief (which is quite unclear on the face of the Notice), the Court DENIES such request.

DATED this 25th day of July, 2024.

BY THE COURT:

Thomas B. McNamara

Thomas B. McNamara,
United States Bankruptcy Judge

EXHIBIT 9

(ORDER DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Thomas B. McNamara

In re: SHERRY ANN MCGANN, Debtor.	Bankruptcy Case No. 20-18118 TBM Chapter 7

ORDER DENYING EMERGENCY MOTION FOR STAY PENDING APPEAL

I. Introduction.

Years ago, the Debtor, Sherry Ann McGann (the "Debtor"), filed for protection under Chapter 7 of the Bankruptcy Code.[1] As of the Petition Date, she owned real property and improvements located at 1535 Grand Avenue, Grand Lake, Colorado 80447 (the "Grand Lake Property"). The Grand Lake Property initially appeared to be over-encumbered with liens. However, the Chapter 7 Trustee Jeanne Y. Jagow (the "Trustee") reached a settlement agreement (approved by the Court) which resulted in several liens being removed. Since the Grand Lake Property then appeared to have value for the bankruptcy estate, the Trustee sought access to the Grand Lake Property. The Debtor refused. So, the Trustee asked the Court to compel the Debtor to provide the Trustee with access to the Grand Lake Property and prevent the Debtor from interfering with the Trustee's efforts to market and potentially sell the Grand Lake Property. The Debtor objected. After litigation and a trial on the topic (and other disputes), the Court issued an Oral Ruling (Docket No. 320, the "Access Oral Ruling")[2] granting the relief requested by the Trustee. The next day, the Court entered a confirming written "Order Requiring the Debtor to Turnover Property to the Trustee." (Docket No. 321, together with the Oral Access Ruling, the "Access Order.") Among other things, the Access Order directed that "the Debtor shall allow the Trustee, her agents and representatives reasonable access to the Grand Lake Property to inspect, market, repair, improve, monitor, visit, and sell it." The Debtor appealed the Access Order to the United States Bankruptcy Appellate Panel for the Tenth Circuit (the "Tenth Circuit BAP"), which eventually denied such appeal as moot. *McGann v. Jagow (In re McGann)*, BAP Appeal No. 23-24 (Docket No. 347.)

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[1] All references to the "Bankruptcy Code" are to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. Unless otherwise indicated, all references to "Section" are to sections of the Bankruptcy Code.

[2] The Court uses the convention "Docket No. ___" to refer to documents filed in the CM/ECF system in this bankruptcy case, *In re McGann*, Bankr. Case No. 20-18118 TBM (Bankr. D. Colo.).

After the Debtor's further intransigence and the Court's finding the Debtor in contempt of Court for failure to comply with the Access Order, the Trustee and her professionals eventually gained access to inspect the Grand Lake Property. Based upon such inspection and the Trustee's assessment of value, the Trustee filed a "Renewed Motion for Order Requiring the Debtor to Turnover Property (1535 Grand Avenue) to the Trustee" (Docket No. 403, the "Turnover Motion") under Section 542(a). This time, the Trustee asked for the Court to order the Debtor to surrender and vacate the Grand Lake Property "so that the Property may be prepared for sale, and marketed." The Debtor objected. (Docket No. 404, the "Turnover Objection.") The parties engaged in further litigation. The Court conducted another trial directed to the value of the Grand Lake Property and the amount of remaining encumbrances. **On July 19, 2024, the Court entered an "Order Granting Motion for Turnover. (Docket No. 488, the "Turnover Order.")** As the title suggests, the Court granted the Turnover Motion and ordered the Debtor "to surrender to the Trustee the Grand Lake Property" by August 19, 2024.

A few days later, **the Court entered an "Order Denying 'Combinded [Sic] Motion for Reconsideration and Conditional Request for Permission.'" (Docket No. 491, the "Reconsideration Denial Order.")** The Reconsideration Denial Order denied the Debtor's "Combinded [sic] Motion for Reconsideration and Conditional Request for Permission" (Docket No. 477, the "Motion for Reconsideration"), which appeared to be directed mainly toward the United States District Court for the District of Colorado in another case originated by the Debtor: *Sherry McGann v. Jeanne Jagow et al.*, Case No. 24-CV-727 (D. Colo.) (the "District Court Action."). The Debtor's filing of the Motion for Reconsideration with this Court appeared to duplicate the exact same Motion for Reconsideration filed in the District Court Action. United States District Judge Nina Y. Wang denied the Motion for Reconsideration in the District Court Action. In the Reconsideration Denial Order, the Court stated: "The Debtor seems to be improperly asking two separate courts to adjudicate the same Motion for Reconsideration. In any event, this Court has no statutory or other legal authorization to 'reconsider' the actions taken in the District Court Action by the United States Magistrate Judge and the United States District Judge."

Meanwhile, the Trustee filed the "Chapter 7 Trustee's Motion for Allowance of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)(1)(A)." (Docket No. 461, the "Administrative Expense Motion.") As set forth in the Administrative Expense Motion, the Trustee sought allowance of an administrative expense claim for her out-of-pocket costs incurred in connection with obtaining an insurance policy for the Grand Lake Property. The Debtor filed an Objection. (Docket No. 465, the "Administrative Expense Objection.") **On July 23, 2024, the Court entered an "Order Granting Trustee's Motion for Allowance of Administrative Expense Claim." (Docket No. 493, the "Administrative Expense Order.")**

The Debtor disagreed with all the foregoing. So, the next day (July 24, 2024), she filed a "Notice of Appeal." (Docket No. 495, the "Notice of Appeal.") **Through the single Notice of Appeal, the Debtor sought to appeal to the Tenth Circuit BAP three separate orders: (1) the Turnover Order; (2) the Reconsideration Denial Order; and (3) the Administrative Expense Order.** Subsequently, the Tenth Circuit BAP issued an "Order Construing Notice of Appeal as Multiple Notices of Appeal." *See* McGann v. Jagow (In re McGann), BAP Appeal Nos. CO-24-12, CO-24-13, and CO-24-14 (the "Appeals"). The Appeals are pending in the Tenth Circuit BAP.

Immediately after filing the Notice of Appeal, the Debtor filed an "Emergency Motion for Stay Pending Appeal." (Docket No. 496, the "Stay Motion.") As set forth in the Stay Motion, the Debtor has requested that the Court stay pending appeal three separate orders: (1) the Turnover Order; (2) the Reconsideration Denial Order; and (3) the Administrative Expense Order. The Trustee objected to the Stay Motion. (Docket No. 509, the "Stay Objection.") So, the Stay Motion is now ripe for decision by the Court. Meanwhile, to add a bit more confusion, the Debtor filed a variant of the Stay Motion styled "Notice Renewed Motion for Stay Pending Appeal of Turnover [Bankr. ECF No. 488], Notice of Additional Evidence, and Immediate Relief" with the Tenth Circuit BAP in two entirely different appellate proceedings: *McGann v. Jagow (In re Jagow)*, BAP Appeal No. CO 24-4 and *McGann v. Jagow (In re Jagow)*, BAP Appeal No. CO 24-7 (the "Renewed Motions for Stay"). Fed. R. Bankr. P. 8007(a)(1) states that "[o]rdinarily, a party must move first in the bankruptcy court for . . . a stay of a judgment, order, or decree of the bankruptcy court pending appeal . . . ." So, notwithstanding the parallel and duplicative Renewed Motions for Stay in the Tenth Circuit BAP, the Court determines that it must rule on the Stay Motion and Stay Objection in the first instance.

For the reasons set forth below, the Court denies the Stay Motion.[3]

II. Procedural Background.

The tortured procedural history of this case has been explained in detail by the Court in dozens of various Orders entered over the last year. Rather than restate it all again, the Court incorporates herein by reference the "Procedural Background" set forth in the Turnover Order and the "Background" set forth in the Administrative Expense Order. (Docket Nos. 488 at 1-8 and 493 at 1-4.) But, to summarize just a bit, the Debtor's most recent bankruptcy case was commenced on December 22, 2020 (the "Petition Date"), when the Debtor filed her petition for relief under Chapter 7 of the Bankruptcy Code. (Docket No. 1.) Since the Petition Date, the Debtor has enjoyed the

[3] The Debtor currently is proceeding in a *pro se* capacity. The Court construes the Stay Motion liberally due to the Debtor's *pro se* status. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, the Court cannot and does not act as the Debtor's advocate, *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991), and applies the same procedural rules and substantive law to the Debtor as to a represented party. *Murray v. City of Tahlequah*, 312 F.3d 1196, 1199 n. 2 (10th Cir. 2008); *Dodson v. Bd. of Cnty. Comm'rs*, 878 F. Supp. 2d 1227, 1236 (D. Colo. 2012).

protection of the automatic stay provided for in Section 362(a), received a discharge pursuant to Section 727, and enjoyed the benefits of the discharge injunction pursuant to Section 524.

The Grand Lake Property is the Debtor's most significant asset. On the Debtor's Schedule C (Docket No. 16), the Debtor claimed a homestead exemption in the amount of $105,000 against the Grand Lake Property (which she identified as a residence and "farm location") pursuant to Colo. Rev. Stat. § 34-54-102(1)(e). The Debtor has not amended her Schedule C.

On June 23, 2021, the Trustee commenced an Adversary Proceeding against 450 Oka Kope, LLC ("Oka Kope") and others: *Jagow v. 1450 Oka Kope, LLC et al. (In re McGann)*, Adv. Pro. No. 21-1132 (Bankr. D. Colo.) (the "Oka Kope Adversary Proceeding"). Subsequently, the Trustee settled the Oka Kope Adversary Proceeding and filed a "Motion to Approve Settlement Agreement." (Docket No. 93.) As part of the Settlement Agreement, Oka Kope agreed to withdraw certain liens against the Grand Lake Property. The Debtor objected to the Settlement Agreement between the Trustee and Oka Kope. On May 3, 2022, after an evidentiary hearing, the Court approved the Settlement Agreement which resolved the Oka Kope Adversary Proceeding and entered a confirming judgment. (Docket Nos. 146 and 147.) As a result of the Settlement Agreement, Oka Kope released its liens against the Grand Lake Property.

With Oka Kope's liens released, it appeared that there would be equity in the Grand Lake Property for the benefit of the bankruptcy estate. For the last two years, the Debtor has engaged in sustained litigation (in multiple courts) trying to stop the Trustee from accessing and selling the Grand Lake Property for the benefit of the bankruptcy estate. The most recent litigation sequence resulted in the Court's issuing the Turnover Order along with a series of other collateral orders on various disputed topics.

III. Legal Analysis and Conclusions of Law.

A. The Debtor's Request for Stay.

In the Stay Motion, the Debtor asks for a stay pending appeal of three separate orders: (1) the Turnover Order; (2) the Reconsideration Denial Order; and (3) the Administrative Expense Order. The Debtor invokes Fed. R. Bankr. P. 8007(a)(1)(A). Fed. R. Bankr. P. 8007(a)(1) states, in part: "Ordinarily, a party must move in the bankruptcy court for the following relief: (A) a stay of a judgment, order, or decree of the bankruptcy court pending appeal." So, the Stay Motion is properly presented to this Court in the first instance, and it is this Court which must decide the Stay Motion before the Debtor solicits the further involvement of the Tenth Circuit BAP.

B. The Legal Standard for a Stay on Appeal.

"The decision of whether to grant a stay pending appeal is left to the discretion of the bankruptcy court." *Lang v. Lang (In re Lang)*, 305 B.R. 905, 911 (10th Cir. BAP 2004). "However, '[a] stay is an intrusion into the ordinary process of administration of judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant.'" *Zzyym v. Pompeo*, 2019 WL 764577, at *1 (D. Colo. Feb. 21, 2019) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). The Debtor "bears the burden of showing that the circumstances justify an exercise of that discretion." *Zzyym*, 2019 WL 764577, at *1 (quoting *Nken*, 556 U.S. at 434). "[I]t is a heavy burden." *Morreale v. 2011-STP-1 CRE/CADC Venture, LLC (In re Morreale)*, 2015 WL 429502, at * 1 (D. Colo. Jan. 30, 2015).

In exercising the Court's discretion, the Court is guided by four well-established factors:

> (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; (3) whether granting the stay will result in substantial harm to the other parties to the appeal; and (4) the effect of granting the stay upon the public interest.

Lang, 305 B.R. at 911. *See also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (confirming similar standard for stay pending appeal under analogous Fed. R. Civ. P. 62(c)); *F.T.C. v. Mainstream Mktg. Servs., Inc.*, 345 F.3d 850, 852 (10th Cir. 2003) (utilizing similar factors to evaluate stay on appeal under Fed. R. App. P. 8 and 18).

As an overlay of the standard formulation, the Court also considers the importance and novelty of the issues being appealed. *See* Charles Alan Wright et al., 11 FEDERAL PRACTICE AND PROCEDURE § 2904 (West 2012) ("Many courts also take into account that the case raises substantial difficult or novel legal issues meriting a stay."). In any event, all the factors are "interconnected" and may be considered in sliding scale fashion. *In re Revel AC, Inc.*, 802 F.3d 558, 571 (3d Cir. 2015). *See also Mainstream Mktg.*, 345 F.3d at 852-53 (noting that "probability of success" factor may be relaxed if the other three factors tip decidedly in favor of stay).

C. The Debtor Failed to Establish Likelihood of Success on the Appeals.

"It is not enough that the chance of success on the merits be 'better than negligible.'" *Nken*, 556 U.S. at 434 (quoting *Sofinet v. INS*, 188 F.3d 703, 707 (7th Cir. 1999)). There must be more than a "mere possibility" of success on the merits. *Id.* The "probability of success is demonstrated when the petitioner seeking the stay has raised

'questions going to the merits so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation.'" *Morreale*, 2015 WL 429502, at *3 (quoting *Mainstream Mktg.*, 345 F.3d at 853).

The Debtor does not expressly contend that she is likely to succeed on the merits of her three new Appeals. However, the Court infers that the Debtor believes this to be the case. Nevertheless, the Court has already thoroughly examined the Debtor's legal arguments and has rejected them in the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order. The Court's ruling in the Turnover Order merely confirms what should be a noncontroversial proposition: that the Grand Lake Property is property of the Debtor's bankruptcy estate and that, as such, the Debtor must turn it over to the Trustee for administration. The Court's ruling in the Reconsideration Denial Order mainly recognizes that the District Court already denied the duplicate Reconsideration Motion filed the District Court Action and this Court cannot interfere in such matter. Finally, the Administrative Expense Order allows the Trustee an administrative expense for the Trustee's having to obtain an insurance policy to protect the bankruptcy estate's interest in the Grand Lake Property. None of the foregoing are particularly novel or complex issues. Instead, such matters sound in standard Chapter 7 administration.

In any event, the Debtor must be able to demonstrate that she likely will prevail on the merits of her Appeals of the Turnover Order, the Reconsideration Denial Order, and the Administrative Expense Order. As noted in *Morreale*, the Debtor bears a "heavy burden" of proof. *Morreale*, 2015 WL 429502, at *2-3 (debtor who sought a stay pending appeal did not meet its heavy burden to show likelihood of success on appeal given the record in the case and "particularly given the deferential standard of review" to be undertaken by the appellate court [factual findings of the trial court will not be overturned on appeal unless the reviewing court is left with the definite and firm conviction that a mistake has been committed]). In this Court's view, in the Stay Motion, the Debtor did not identify serious and substantial factual or legal arguments against the Turnover Order, the Reconsideration Denial Order, and the Administrative Expense Order. As such, the Debtor has failed to show that she likely will succeed on the three new Appeals.

Notwithstanding the foregoing, the Court briefly addresses a few of the new topics mentioned in the Stay Motion. The Debtor accuses the undersigned Bankruptcy Judge of "demonstrated bias." The Debtor states: "The Debtor has filed a motion for recusal due to demonstrated bias by the presiding judge. The judge's actions and decisions demonstrate a pattern of bias and partiality that undermines the Debtor's right to a fair trial." (Stay Motion at 2-3.) This is a new position articulated by the Debtor only after the entry on the Turnover Order. On July 22, 2024, the Debtor filed a "Motion for Permission to Bring Charges Against Trustee for Mismanagement and Unauthorized Actions, and for Recusal of the Presiding Judge." (Docket No. 490, the "Trustee Mismanagement and Recusal Motion.") The Trustee Mismanagement and Recusal Motion was the first motion to recuse the undersigned Bankruptcy Judge under 28 U.S.C. § 455(a). Thus, it

should not serve as a basis for a stay on appeal of the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order, in which the issue was not raised. In any event, the Court will adjudicate the new Trustee Mismanagement and Recusal Motion in due course providing a fair and full opportunity for the Trustee to respond and for the Debtor to present facts and evidence in support of her position.

In the Stay Motion, the Debtor asserts that the Court erred in applying the "incorrect homestead exemption." (Stay Motion at 3.) Although that issue had not been raised by the Debtor before or during the trial on the Turnover Motion, the Debtor did submit a post-trial brief wherein she noted that "SENATE BILL 22-086 was signed on April 7, 2022." In a single sentence in the middle of the brief, the Debtor stated: "The [homestead] disabled limit, which applies to McGann, was increased to $350,000 from the previous $105,000 for a dwelling, as defined in section 38-41-2017 including a farm consisting an numbers of acres." (*Id.*) The Debtor presented no legal analysis how or why Senate Bill 22-086 purportedly applied retroactively to the Debtor. It is true that the Court did not expressly address "Senate Bill 22-086" in the Turnover Order since, the Debtor's only operative claim of exemption on her Schedule C is for $105,000. The Debtor has never amended her Schedule C. But, furthermore, the Debtor's new argument is incorrect. The Debtor filed for Chapter 7 protection on December 22, 2020. A year and a half later, effective April 7, 2022, Colorado changed (increased) its homestead exemption. However, Colorado bankruptcy debtors are not entitled to the higher homestead exemption in cases which were filed prior to the new homestead law. *In re Gomez*, 646 B.R. 523 (Bankr. D. Colo. 2022) ("The law — including the Colorado Constitution, Colorado statutes, and directly apposite case law — dictates that SB 22-086 cannot be applied retroactively."). The Debtor's new argument is not a basis to stay the Turnover Orde under the likelihood of success prong.

In the Stay Motion, the Debtor also raised a new alleged "Violation of ADA Rights" argument. (Stay Motion at 4.) The Debtor states: The Debtor has suffered from violations of the ADA [Americans with Disabilities Act], including lack of accommodations for her medical conditions during the legal proceedings." (*Id.*) The Debtor did not identify her alleged disability in the Stay Motion, except that elsewhere (including in her Affidavit), the Debtor notes that she suffers "emotional distress," "stress and anxiety," and "PTSD" because of her bankruptcy case and the Court's rulings. The Court sympathizes with the Debtor (and all Chapter 7 debtors who may be forced to surrender assets under the requirements of the Bankruptcy Code). However, the Debtor's emotional distress, if any, does not establish a likelihood of success on the merits of the three new Appeals. Later, in the Stay Motion, to support the alleged ADA violation the Debtor asserted: "The presiding judge further intimidated and made the Debtor uncomfortable by addressing her service dog inappropriately, as documented in [Bankr. ECF No. 297, pg. 4 # 17, #18] and [Bankr. ECF No. 298, pgs. 5 & 6]." (Stay Motion at 5.) This seems to be the only specific information provided on the alleged ADA violation. However, the record citations do not establish that the Court ever addressed the Debtor's dog (inappropriately or otherwise).

The Court has already dealt with virtually all the other points raised through the Stay Motion in the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order. To the extent unaddressed, the Court already has implicitly rejected the Debtor's various other positions. The Court finally determines that the Debtor failed in her burden to show a probability of succeeding in the three new Appeals.

D. The Debtor Failed to Show Irreparable Harm.

The Supreme Court in *Nken* held that the showing of irreparable harm, like the showing required for the likelihood of success on the merits, must be more than simply showing some "possibility of irreparable injury." *Id.* at 434. "The 'possibility' standard is too lenient." *Id.* at 435. The movant must "demonstrate that irreparable injury is *likely* in the absence of an injunction." *In re Stewart*, 604 B.R. 900, 907 (Bankr. W.D. Okla. 2019) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008)) (emphasis in the original). The *Nken* Court also observed that there is "substantial overlap between [the standards used for stays pending appeal] and the factors governing preliminary injunctions; not because the two are one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined." *Nken*, 556 U.S. at 434.

The Tenth Circuit has interpreted the concept of "irreparable harm" in the context of that required for imposing a preliminary injunction under Fed. R. Civ. P. 65. *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003). The Tenth Circuit stated:

> To constitute irreparable harm, an injury must be certain, great, actual 'and not theoretical.' . . . Irreparable harm is not harm that is 'merely serious or substantial.' '[T]he party seeking injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm."

Heideman, 348 F.3d at 1189 (quoting *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2002) (emphasis in the original) (internal citations omitted).

With respect to the Reconsideration Denial Order, the Debtor failed to show irreparable injury. The District Court already denied the Reconsideration Motion. And the District Court already dismissed the District Court action brought by the Debtor against the Trustee and her counsel. The Reconsideration Denial Order mainly recognized that the District Court already had rejected the Debtor's position and that the Reconsideration Motion was an improper duplicate attempt to present the same dispute to the Court. Similarly, the Debtor has not shown irreparable injury with respect to the Administrative Expense Order, which merely allowed the Trustee an administrative expense for the $1,040.00 the Trustee already paid plus $485.00 in monthly premiums

to insure, protect, and preserve the Grand Lake Property. Even if the Reconsideration Denial Order and Administrative Expense Order were entered in error, then the Tenth Circuit BAP may correct the errors during its appellate review of the Appeals. But there is no reason for a stay based upon irreparable injury with respect to such Orders.

The only conceivable irreparable injury asserted by the Debtor pertains to the Turnover Order in which the Court directed the Debtor to "surrender to the Trustee and vacate the Grand Lake Property" by August 19, 2024. Although this dispute has been pending for a long time, the Court allowed an additional month from the entry of the Turnover Order for the Debtor to comply so that she could make arrangements for alternative living accommodations and to move her exempt personal property.

The Court recognizes that surrendering the Grand Lake Property may cause some injury to the Debtor. She will be forced to leave real estate that she states she has occupied for some years. But, the Grand Lake Property is property of the estate. As such, and unless the Trustee abandons the Grand Lake Property, the Debtor can only use the Grand Lake Property to the extent she is allowed to do so by the Trustee. *See In re Cook v. Wells Fargo, N.A. (In re Cook)*, 2012 WL 1356490 (10th Cir. BAP 2012) (internal citations omitted), *aff'd*, 520 Fed Appx. 697 (10th Cir. 2012) (unpublished). ("Upon the filing of a bankruptcy petition, an estate is created, which is comprised of all legal or equitable interests of the debtor in property as of the commencement of the case. The Trustee is a representative of the estate in a Chapter 7 case. The Trustee shall collect and reduce to money the property of the estate. It is the Trustee to whom the obligation to turn over property of the estate runs. And it is the Trustee who has the right to use property of the estate. A Chapter 7 debtor has none of these rights."); *In re Trujillo*, 438 B.R. 238, 249-50 (Bankr. D. Colo. 2012) (recognizing that Chapter 7 debtors sometimes continue to use property of the estate post-petition, but noting that they have a duty to surrender estate property in light of trustee's superior right to it; further noting that a debtor who uses estate property may be required to compensate the estate for its use); *Irons v. Maginnis (In re Irons)*, 572 B.R. 877, 886 (Bankr. N.D. Ohio 2017) ("The right to 'use' property of the estate is a right held by the Chapter 7 Trustee.").

As the Tenth Circuit Court of Appeals recently explained:

> In Chapter 7 bankruptcies, debtors give up their property that is not entitled to an exemption in exchange for a discharge of their debts. A trustee liquidates the debtor's pre-petition, non-exempt property and then distributes the proceeds to the debtor's creditors. The debtor receives an immediate discharge and is therefore entitled to keep his future income and any assets acquired post-petition. But this action comes at a cost, as the debtor may lose a home and all other non-exempt assets.

Rodriguez v. Barrera (In re Barrera), 22 F.4th 1217, 1220 (10th Cir. 2022) (citations omitted); *see also Harris v. Viegelahn*, 575 U.S. 510, 513-14 (2015) (recognizing the "steep price" of Chapter 7 discharge, which is that a debtor "must forfeit virtually all his prepetition property").

Given the foregoing black-letter law, the Court assesses that being forced to surrender the Grand Lake Property (which is property of the bankruptcy estate which must be turned over to the Trustee under the Bankruptcy Code) cannot be a type of "irreparable injury" that legally justifies a stay of the Turnover Order. If it were otherwise, effective administration of Chapter 7 bankruptcy estates would come to a screeching halt as many debtors likely would assert that they do not wish to turnover their real and personal property because it would be injurious and then try to obtain a stay on appeal. In this Court's reasoned view, the Debtor has not shown that the Turnover Order is likely to result in irreparable harm justifying a stay. And, even if irreparable injury to the Debtor had been shown, the Court assesses that such irreparable injury would not outweigh all the other factors counseling against a stay during the pendency of the Appeals.

E. <u>The Debtor Failed to Address Harm to the Trustee</u>.

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest." *Nken*, 556 U.S. at 435. To establish this third factor of the test for stays pending appeal, the Debtor "must establish that the [Trustee] will not suffer substantial harm if the stay is granted. 'In other words, the moving party must show that the balance of harms tips in favor of granting the stay.'" *Stewart*, 604 B.R. at 908 (quoting *ACC Bondholder Grp. v. Adelphia Commc'n Corp. (In re Adelphia Commc'n Corp.)*, 361 B.R. 337, 349 (S.D. N.Y. 2007)).

The Debtor does not even mention the harm to the Trustee or the creditors whose interests the Trustee serves. The Debtor speaks only to the harm she herself may suffer. The Debtor argues that having to turnover the Grand Lake Property will be detrimental to her fragile emotional state. The Court accepts this as a possibility. But the Court cannot ignore the harm to the Trustee and creditors that will result from a stay. While the Court supposes that all debtors who file for bankruptcy and thereby agree to turnover property of the estate experience some psychological distress at the intrusion, that is the bargain that a debtor makes in order to discharge their debts and make a fresh start. It is the bargain the Debtor made here when she filed for relief under Chapter 7. That the Debtor continues to reside and work in the Grand Lake Property does not change the fact that the Grand Lake Property is property of the estate and therefore must be turned over to the Trustee for administration. While this may seem unjust to the Debtor, allowing the Debtor, who has already received her discharge, simply to retain the Grand Lake Property would certainly be unjust to creditors who have waited for more than three years to receive any payment from the Debtor's estate. Contrary to the Debtor's implicit argument, the Turnover Order does

not effect a manifest injustice — it is entirely consistent with the purposes of Chapter 7 and is necessary to enable the Trustee to meet her obligations to creditors. Because the harm to the estate and creditors is likely to outweigh any harm to the Debtor, the Debtor has not demonstrated her entitlement to a stay.

F. A Stay Is Not in the Public Interest.

The fourth factor courts must consider is where the public interest lies. The notion of the "public interest" in this context is one that transcends the interests of the parties in the case. *Revel AC*, 802 F.3d at 569. "[T]he public interest is furthered by the timely conclusion of legal disputes." *Board of Cty. Comm'r of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 2019 WL 4926764, at *7 (D. Colo. Oct. 7, 2019) (citing *Desktop Images v. Ames*, 930 F. Supp. 1450, 1452 (D. Colo. 1996)).

Once again, the Debtor makes no argument in support of this factor. This bankruptcy case has been pending since December 22, 2020, and comes on the heels of another case filed by the Debtor on October 17, 2019, and dismissed on September 1, 2020. While the cases were pending, creditors were barred from engaging in any collection efforts, the Debtor received her discharge, and creditors are now barred by the discharge injunction from collecting on their claims, though they have not yet received any payment from the estate. Meanwhile, the Debtor has continued to enjoy her use of the Grand Lake Property.

The Trustee has established that the Grand Lake Property has value for the bankruptcy estate. So, the Court granted the Turnover Motion. At this stage, the Debtor has been ordered to surrender the Grand Lake Property so that it can be marketed and sold. A stay would unnecessarily prolong administration of the estate. The public interest is best served by timely conclusion of the disputes applying the requirements of the Bankruptcy Code fairly and impartially. Thus, the Court finds that this fourth factor (public interest) weighs in favor of denying the Debtor's request for entry of a stay.

IV. Conclusion and Order.

The Debtor has not met her heavy burden to show that the Court should exercise its discretion and impose a stay of the Turnover Order, Reconsideration Denial Order, and Administrative Expense Order. Accordingly, the Court:

ORDERS that the Motion to Stay is DENIED; and

FURTHER ORDERS that the Bankruptcy Court Clerk shall transmit a copy of this Order to the United States Bankruptcy Appellate Panel for the Tenth Circuit in BAP Case Nos. CO 24-4, CO 24-7, CO 24-12, CO 24-13, and CO 24-14.

DATED this 2nd day of August, 2024.

BY THE COURT:

Thomas B. McNamara

Thomas B. McNamara,
United States Bankruptcy Judge

EXHIBIT 10

(ORDER – DENYING AND DISMISSING APPEAL FOR JURISDICTION)

FILED
United States Court of Appeals
Tenth Circuit

August 14, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: SHERRY ANN MCGANN,

Debtor.

SHERRY ANN MCGANN,

Appellant,

v.

JEANNE Y. JAGOW, Chapter 7 Trustee,

Appellee.

No. 24-1314
(BAP No. 24-12-CO)
(Bankruptcy Appellate Panel)

ORDER

Before **MATHESON**, **EID**, and **CARSON**, Circuit Judges.

This matter comes before the court on pro se Appellant Sherry McGann's response to this court's show cause order regarding this court's jurisdiction over this appeal.

The bankruptcy court ordered Ms. McGann to vacate and turn over a property in Grand Lake, Colorado (the "Turnover Order"). Ms. McGann filed a motion to stay the order pending an appeal, which the bankruptcy court denied. Ms. McGann then appealed the Turnover Order to the Bankruptcy Appellate Panel ("BAP") and again filed a motion to stay the order pending appeal. The BAP denied the stay, and Ms. McGann now appeals the BAP's denial of stay to this court.

After Ms. McGann filed her appeal, this court issued an order to show cause questioning our appellate jurisdiction. Ms. McGann filed her response to our show cause order, asserting this court has jurisdiction under the collateral order doctrine and 28 U.S.C. § 158(a). Neither argument is compelling.

"The denial of a stay pending appeal is not an appealable order." *UCFW Loc. 880-Retail Food Emps. Joint Pension Fund v. Newmont Mining Corp.*, 276 F. App'x 747, 749 (10th Cir. 2008) (unpublished) (internal quotation marks omitted); *see also In re Atencio*, 913 F.2d 814, 816 (10th Cir. 1990) (when a court acting in its appellate capacity denies a stay of an underlying order of the bankruptcy court order pending appeal, the 10th Circuit lacks jurisdiction to review that interlocutory order). Ms. McGann argues that the Turnover Order and the BAP's order are effectively unreviewable from a final judgment. However, that does not cure the lack of finality of the BAP's order denying a stay, nor does it counter this court's precedent clearly stating that a denial of a stay pending appeal is not an appealable order. The BAP appeal remains pending and has not reached its conclusion. Thus, this court does not have jurisdiction to consider an appeal from the BAP's order denying her request for stay pending appeal.

APPEAL DISMISSED.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

August 14, 2024

RE: 24-1314, McGann, et al v. Jagow
Dist/Ag docket: 24-12-CO

Dear Appellant:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Sherry Ann McGann
David M. Miller

CMW/jjh

EXHIBIT 11

(ORDER DENYING EMERGENCY MOTION FOR TEMPORARY INJUNCTION)

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT

IN RE SHERRY ANN MCGANN, Debtor.	BAP No. CO-24-012
SHERRY ANN MCGANN, Appellant, v. JEANNE Y. JAGOW, Chapter 7 Trustee Appellee.	Bankr. No. 20-18118 Chapter 7 ORDER DENYING EMERGENCY MOTION FOR TEMPORARY INJUNCTION

Before **SOMERS**, **PARKER**, and **THURMAN**, Bankruptcy Judges.

On July 25, 2024, Appellant Sherry McGann filed a notice of appeal identifying several orders as the subject of the appeal, including the *Order Granting Motion for Turnover* (the "Turnover Order") [Bankr. Dkt. #488]. The Court construed the notice as multiple notices of appeal and assigned the Turnover Order appeal BAP Appeal No. 24-12. The Turnover Order required Appellant to surrender to the Trustee and vacate certain real property (the "Property") and remove her belongings by 12:00 noon on August 19, 2024.[1] Subsequently, Appellant sought a stay pending appeal in the Bankruptcy Court,

[1] Turnover Order at 22.

which the Bankruptcy Court denied determining that none of the relevant factors weighed in favor of granting a stay pending appeal. Appellant then filed a motion for stay pending appeal with the BAP, which this Court denied on August 8, 2024, also determining that none of the relevant factors weighed in favor of granting a stay pending appeal (the "Order Denying Stay"). Now before the Court is Appellant's *Emergency Motion for Temporary Injunction* (the "Motion").

In support of the Motion, Appellant now argues she has provided "substantial evidence of trustee misconduct, breach of fiduciary duty, and ADA violations."[2] And "that the trustee's actions . . .provide a strong basis for the Appellant's claims."[3] Finally, she generally references the legal arguments made in previous filings including her previously filed motion for a stay pending appeal.

An injunction is an "extraordinary and drastic remedy."[4] The Tenth Circuit adopted the preliminary injunction standard as the same standard for granting or denying a stay pending appeal.[5] Thus, a movant seeking an injunction must show (i) a likelihood of success on the merits of the appeal; (ii) the likelihood the movant will suffer irreparable injury unless the stay is granted; (iii) a stay will substantially harm other interested parties; and (iv) the public interest will be served by granting a stay.[6] In the

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[2] Motion at 3.
[3] *Id.*
[4] *Warner v. Gross*, 776 F.3d 721, 728 (10th Cir. 2015).
[5] *Id.*
[6] *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th. Cir. 1996).

Tenth Circuit, an applicant must make a strong showing that they are likely to succeed on the merits.[7]

Upon careful review of the Motion, we deny Appellant's request for the reasons explained herein. This Court has already analyzed the above factors in the Order Denying Stay and determined Appellant failed to demonstrate that she will succeed on the merits of this appeal or that any of the relevant factors weigh in favor of granting a stay pending appeal. To the extent Appellant again requests a stay of the Order Appealed, we construe such a request as a motion for reconsideration of the Order Denying Stay and deny that motion. Rehearing will be granted only if a significant issue has been overlooked or misconstrued by this Court. Here, Appellant has failed to establish any cause for reconsideration of the Order Denying Stay in that she has not shown this Court has overlooked, misapprehended, or misconstrued any point of law or fact.

To the extent Appellant's request for an injunction is a request for new relief, Appellant has not shown that an injunction is warranted. Specifically, she has again failed to demonstrate a likelihood of success on the merits of the appeal. Appellant argues she is

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[7] *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). The Tenth Circuit abrogated the relaxed standard for showing a likelihood of success on the merits when the other requirements for granting an injunction have been satisfied. *See New Mexico Dep't of Game & Fish v. U. S. Dep't of the Interior*, 854 F.3d 1236, 1246–47 (10th Cir. 2017) (abrogating that relaxed standard for satisfying the likelihood of success on the merits when granting or denying a preliminary injunction and replacing it with a requirement that "the movant is substantially likely to succeed on the merits"). *See also Diné Citizes Against Ruining Our Environment v. Jewell*, 839 F.3d 1276 (10th Cir. 2016) ("[A]ny modified test which relaxes one of the prongs for [a] preliminary [injunction] and thus deviates from the standard test is impermissible.").

likely to succeed because of the Trustee's misconduct but points to no error in fact or law made by the Bankruptcy Court.

We reiterate that the issue in this appeal is narrow: whether the Bankruptcy Court erred in entering the Turnover Order. To the extent Appellant asks the Court to review any other Bankruptcy Court rulings or to grant relief in her underlying bankruptcy case, this Court lacks jurisdiction and therefore denies such relief.

ACCORDINGLY, it is HEREBY ORDERED:

1. The Motion is DENIED.

For the Panel:

Anne Zoltani

Anne Zoltani
Clerk of Court

EXHIBIT 12

(ORDER DENYING EMERGENCY MOTION FOR TEMPORARY INJUNCTION TO HALT EVICTION PENDING APPEAL)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Thomas B. McNamara

In re: SHERRY ANN MCGANN, Debtor.	Bankruptcy Case No. 20-18118 TBM Chapter 7

ORDER DENYING EMERGENCY MOTION FOR TEMPORARY INJUNCTION TO HALT EVICTION PENDING APPEAL

This matter comes before the Court on the "Emergency Motion for Temporary Injunction to Halt Eviction Pending Appeal" filed by Debtor, Sherry Ann McGann (the "Debtor") on August 15, 2024. (Docket No. 532, the "Second Stay Motion.") The Second Stay Motion relates to property of the Debtor's Chapter 7 bankruptcy estate located at 1535 Grand Avenue, Grand Lake, Colorado 80447 (the "Grand Lake Property").

On July 19, 2024, the Court entered an "Order Granting Motion for Turnover. (Docket No. 488, the "Turnover Order.") In the Turnover Order, the Court ordered the Debtor "to surrender to the Trustee and vacate the Grand Lake Property" by August 19, 2024. The Debtor disagrees with the Turnover Order. So, the Debtor promptly appealed the Turnover Order to the United States Bankruptcy Appellate Panel for the Tenth Circuit (the "Tenth Circuit BAP"). *See McGann v. Jagow (In re McGann)*, BAP Appeal No. CO-24-12 (10th Cir. BAP) (the "BAP Appeal"). The BAP Appeal is pending.

Immediately after filing the BAP Appeal, on July 24, 2024, the Debtor filed an "Emergency Motion for Stay Pending Appeal" with the Court. (Docket No. 496, the "First Stay Motion.") As set forth in the First Stay Motion, the Debtor requested that the Court stay the Turnover Order pending appeal under Fed. R. Bankr. P. 8007(a)(1). (The Debtor also requested that the Court stay a few other recent Orders that the Debtor also appealed.) The Court carefully considered the First Stay Motion and, on August 2, 2024, entered an "Order Denying Emergency Motion for Stay Pending Appeal." (Docket No. 510, the "Order Denying Stay.")

Subsequently, the Debtor asked the Tenth Circuit BAP to stay the Turnover Order through the BAP Appeal. (BAP Appeal Docket No. 8.) On August 8, 2024, a unanimous three-judge appellate panel of the Tenth Circuit BAP entered an "Order

in BAP Case Nos. CO 24-4, CO 24-7, and CO 24-12.

DATED this 16th day of August, 2024.

BY THE COURT:

Thomas B. McNamara

Thomas B. McNamara,
United States Bankruptcy Judge

EXHIBIT 13

(ORDER DENYING EMERGENCY MOTION FOR CLARIFICATION AND RECONSIDERATION ON ORDER DENYING TEMPORARY INJUCTION)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Thomas B. McNamara

In re: SHERRY ANN MCGANN, Debtor.	Bankruptcy Case No. 20-18118 TBM Chapter 7

ORDER DENYING EMERGENCY MOTION FOR CLARIFICATION AND RECONSIDERATION OF ORDER DENYING TEMPORARY INJUNCTION

This matter comes before the Court on the "Emergency Motion for Clarification and Reconsideration of Order Denying Temporary Injunction" filed by Debtor, Sherry Ann McGann (the "Debtor") on August 16, 2024. (Docket No. 536, the "Third Stay Motion.") The Third Stay Motion relates to property of the Debtor's Chapter 7 bankruptcy estate located at 1535 Grand Avenue, Grand Lake, Colorado 80447 (the "Grand Lake Property").

On July 19, 2024, the Court entered an "Order Granting Motion for Turnover. (Docket No. 488, the "Turnover Order.") In the Turnover Order, the Court ordered the Debtor "to surrender to the Trustee and vacate the Grand Lake Property" by August 19, 2024. The Debtor disagrees with the Turnover Order. So, the Debtor promptly appealed the Turnover Order to the United States Bankruptcy Appellate Panel for the Tenth Circuit (the "Tenth Circuit BAP"). *See McGann v. Jagow (In re McGann)*, BAP Appeal No. CO-24-12 (10th Cir. BAP) (the "BAP Appeal"). The BAP Appeal is pending.

Immediately after filing the BAP Appeal, on July 24, 2024, the Debtor filed an "Emergency Motion for Stay Pending Appeal" with the Court. (Docket No. 496, the "First Stay Motion.") As set forth in the First Stay Motion, the Debtor requested that the Court stay the Turnover Order pending appeal under Fed. R. Bankr. P. 8007(a)(1). (The Debtor also requested that the Court stay a few other recent Orders that the Debtor also appealed.) The Court carefully considered the First Stay Motion and, on August 2, 2024, entered an "Order Denying Emergency Motion for Stay Pending Appeal." (Docket No. 510, the "Order Denying First Stay Motion.")

Subsequently, the Debtor asked the Tenth Circuit BAP to stay the Turnover Order through the BAP Appeal. (BAP Appeal Docket No. 8.) On August 8, 2024, a unanimous three-judge appellate panel of the Tenth Circuit BAP entered an "Order

Denying Emergency Motion for Stay," wherein the Tenth Circuit BAP denied a stay of the Turnover Order. (BAP Appeal Docket No. 15, the "BAP Order Denying Stay.") Thereafter, the Debtor appealed the BAP Order Denying Stay to the United States Court of Appeals for the Tenth Circuit (the "Tenth Circuit"). *See McGann v. Jagow (In re McGann)*, Tenth Circuit Appeal No. 24-1314 (10th Cir.) (the "Tenth Circuit Appeal"). In the Tenth Circuit Appeal, the Debtor asked the Tenth Circuit to stay the Turnover Order and/or possibly the BAP Order Denying Stay. (Tenth Circuit Appeal Docket Entry 8/9/24.) On August 13, 2024, a unanimous panel of Tenth Circuit Judges entered an "Order," wherein the Tenth Circuit denied a stay of the Turnover Order upon finding that "Ms. McGann has not demonstrated her entitlement to a stay." (Tenth Circuit Appeal Docket Entry 8/13/24.) The Debtor did not agree. So, the Debtor filed another "Emergency Motion" and two "Notices" with the Tenth Circuit, effectively asking a few more times for a stay. (Tenth Circuit Appeal Docket Entries 8/14/24.) However, the Tenth Circuit dismissed the Tenth Circuit Appeal for lack of jurisdiction. (Tenth Circuit Appeal Docket Entry 8/14/24.)

Three separate Courts (the Bankruptcy Court, the Tenth Circuit BAP, and the Tenth Circuit) have all already addressed and rejected the Debtor's request for a stay of the Turnover Order. The Turnover Order remains in full force and effect and requires the Debtor to turnover to the Chapter 7 Trustee the Grand Lake Property which is property of the bankruptcy estate by August 19, 2024.

However, the Debtor, undeterred, continues to contest the matter. On August 15, 2024, the Debtor filed an "Emergency Motion for Temporary Injunction to Halt Eviction Pending Appeal" (Docket No. 532, the "Second Stay Motion.") Creating more duplication and confusion, the Debtor filed a verbatim duplicate of the Second Stay Motion with the Tenth Circuit BAP too changing only the caption and the title to "Emergency Motion for Temporary Injunction." (BAP Appeal Docket No. 22, the "BAP Second Stay Motion.") On August 16, 2024, a unanimous panel of the Tenth Circuit BAP denied the BAP Second Stay Motion stating:

> Upon careful review of the [Second Stay] Motion, we deny Appellant's request for the reasons explained herein. This Court has already analyzed the above factors in the Order Denying Stay and determined Appellant failed to demonstrate that she will succeed on the merits of this appeal or that any of the relevant factors weigh in favor of granting a stay pending appeal. To the extent Appellant again requests a stay of the Order Appealed, we construe such a request as a motion for reconsideration of the Order Denying Stay and deny that motion. Rehearing will be granted only if a significant issue has been overlooked or misconstrued by this Court. Here, Appellant has failed to establish any cause for reconsideration of the Order Denying Stay in that she has not shown this Court has overlooked,

> misapprehended, or misconstrued any point of law or fact. To the extent Appellant's request for an injunction is a request for new relief, Appellant has not shown that an injunction is warranted. Specifically, she has again failed to demonstrate a likelihood of success on the merits of the appeal. Appellant argues she is likely to succeed because of the Trustee's misconduct but points to no error in fact or law made by the Bankruptcy Court.

(BAP Appeal Docket No. 25.)

After the Tenth Circuit BAP denied the BAP Second Stay Motion, the Court issued its own "Order Denying Emergency Motion for Temporary Injunction to Halt Eviction Pending Appeal." (Docket No. 534, the "Order Denying Second Stay Motion.") As set forth in the Order Denying Second Stay Motion, the Court construed the Second Stay Motion as another attempt by the Debtor to stay the Turnover Order. In this Court's assessment, the Debtor's new characterization of her request as a "temporary injunction" (a phrase that does not appear in the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure) in the Second Stay Motion was nothing more than a procedurally improper effort to rehash the same points asserted by the Debtor in the First Stay Motion. This Court, the Tenth Circuit BAP, and the Tenth Circuit all already have denied a stay of the Turnover Order. In any event, the Court observes that the Debtor did not cite any statute, Federal Rule of Civil Procedure, or Federal Rule of Bankruptcy Procedure governing injunctions in the Second Stay Motion. And, Fed. R. Bankr. P. 7001(7) requires the commencement of an adversary proceeding "to obtain an injunction or other equitable relief." So, the Court correctly denied the Second Stay Motion on the same basis the Court denied the First Stay Motion. (Docket Nos. 510 and 534.)

Now, through the Third Stay Motion, the Debtor asks for the same thing — a third time (just minutes after the Court entered the Order Denying Second Stay Motion). Although the title to the pleading refers to "clarification," "reconsideration," and "temporary injunction," it is just another attempt to stay the Turnover Order. For example, in the Introduction to the Third Stay Motion, the Debtor states:

> This motion corrects specific errors in the Court's application of legal standards and emphasizes the irrefutable evidence that **supports the necessity of granting a stay. The failure to grant this stay** will render both my upcoming Adversary hearing and my BAP appeal moot, causing sever and irreparable harm.

(Docket No. 536 at 1 (emphasis added).) So, now for the third time the Debtor is asking for "a stay," which is the same relief this Court already rejected twice. (And, as already

explained, the Tenth Circuit BAP and Tenth Circuit also already denied a stay of the Turnover Order.)

The Court denies the Third Stay Motion for the same reasons set forth in the Order Denying First Stay Motion and the Order Denying Second Stay Motion. (Docket Nos. 510 and 534.) There is no need for "clarification." Both prior Orders are quite clear and plain.

"Reconsideration" of the Order Denying Second Stay Motion also is not warranted. As a strict technical matter, "[t]he Federal Rules of Civil Procedure recognize no motion for reconsideration." *Hawkins v. Evans*, 64 F.3d 543, 546 (10th Cir.1995) (internal quotation omitted). However, when a motion for reconsideration is filed within 14 days of a bankruptcy court's entry of a final order, the motion generally is treated as a motion to alter or amend the order under Fed. R. Civ. P. 59(e), incorporated by Fed. R. Bank. P. 9023. *See Hawkins*, 64 F.3d at 546 (interpreting earlier version of Rule 59, which provided a ten-day period for parties to ask a district court to alter or amend a final order or judgment). There are three major grounds that justify reconsideration under Fed. R. Civ. P. 59(e): (1) an intervening change in the controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice. *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); *Brumark Corp. v. Samson Res. Corp.*, 57 F.3d 941, 944 (10th Cir. 1995); *Mantle Ranches, Inc. v. U.S. Park Serv.*, 950 F. Supp. 299, 300 (D. Colo. 1997). Put another way, "[a] motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law." *Servants of the Paraclete*, 204 F.3d at 1012. But, a motion for reconsideration "is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Id.*; *See also Mantle Ranches*, 950 F. Supp. at 300 ("a motion for reconsideration is not a license for a losing party to get a 'second bite at the apple' and make legal arguments that could have been raised before"). Applying the foregoing rubric, there is no basis for the Court to "reconsider" and change the Order Denying Second Stay Motion. There has been no intervening change in the controlling law. There is no new evidence which has come to light after the Order Denying Second Stay Motion. And, there is no need to correct clear error or prevent manifest injustice. The Court assesses that the Order Denying Second Stay Motion is correct as a matter of fact and law.

Notwithstanding the foregoing, the Courts adds a few additional observations. In the Third Stay Motion, the Debtor complains that the Court did not apply the correct legal standard when assessing the Second Stay Motion. (Docket No. 536.) But, in the Second Stay Motion, the Debtor asked the Court to consider: (1) likelihood of success on the merits; (2) irreparable harm; (3) the balance of harms; and (4) public interest. (Docket No. 532 at 2.) Those are the exact same standards for a stay on appeal. The Court already carefully analyzed each of the foregoing factors (as requested by the Debtor). (Docket Nos. 510 and 532.)

To the extent that the Debtor is trying to change nomenclature and invoke an "injunction," that effort fails. As the Tenth Circuit BAP already explained:

> . . . a movant seeking an injunction must show (i) a likelihood of success on the merits of the appeal; (ii) the likelihood the movant will suffer irreparable injury unless the stay is granted; (iii) a stay will substantially harm other interested parties; and (iv) the public interest will be served by granting a stay.

(BAP Docket No. 25 at 2-3 citing *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10th. Cir. 1996).) And, the appellate court confirmed that "[i]n the Tenth Circuit, an applicant must make a strong showing that they are likely to succeed on the merits." (*Id.* citing *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).) The Tenth Circuit BAP provided more guidance:

> The Tenth Circuit abrogated the relaxed standard for showing a likelihood of success on the merits when the other requirements for granting an injunction have been satisfied. *See New Mexico Dep't of Game & Fish v. U.S. Dep't of Interior*, 854 F.3d 1236, 1246-47 (10th Cir. 2017) (abrogating that relaxed standard for satisfying the likelihood of success on the merits when granting or denying a preliminary injunction and replacing it with a requirement that "the movant is substantially likely to succeed on the merits"). *See also Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276 (10th Cir. 2016) ("[A]ny modified test which relaxes one of the prongs for [a] preliminary [injunction] and thus deviates from the standard test is impermissible.").

(BAP Appeal Docket No. 24 at 3 n.7.) The point is that the legal standards are not materially different. Whether couched as an request for a "stay" or an "injunction," the Court (as well as the Tenth Circuit BAP and the Tenth Circuit) already evaluated all the foregoing and ruled that the Debtor failed to establish entitlement to relief. And, again, even if the Debtor were asking for an "injunction" and not a "stay," the Debtor is pursuing the wrong path. See Fed. R. Bankr. P. 7001(7).

The Court DENIES the Third Stay Motion for the same reasons already explained in detail in the Order Denying First Stay Motion and Order Denying Second Stay Motion. (Docket Nos. 510 and 532.)[1] The Debtor is not entitled to a stay or injunction against the Turnover Order. **To be very clear, the Turnover Order**

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[1] The Court is ruling on the Third Stay Motion promptly (before a response from the Trustee) because the Debtor has invoked an "emergency." The Trustee opposed the First Stay Motion (Docket No. 509), so the Trustee's position is clear.

remains in full effect and is not stayed. The Debtor has been ordered to vacate the Grand Lake Property and to surrender the Grand Lake Property to the Chapter 7 Trustee, Jeanne Y. Jagow, by August 19, 2024. The Court directs the Debtor to comply with the Turnover Order. Meanwhile, the Court also encourages the Debtor to refrain from filing more duplicative motions, notices, or other pleadings with the Court asking the Court to stay (or enjoin) the Turnover Order again and again and again. That issue already has been fully litigated and decided by this Court, the Tenth Circuit BAP, and the Tenth Circuit.

The Court FURTHER ORDERS that the Bankruptcy Court Clerk shall transmit a copy of this Order to the United States Bankruptcy Appellate Panel for the Tenth Circuit in BAP Case Nos. CO 24-4, CO 24-7, and CO 24-12.

DATED this 19th day of August, 2024.

BY THE COURT:

Thomas B. McNamara

Thomas B. McNamara,
United States Bankruptcy Judge