



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
May 27, 2025

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re: ) Case No.: 23-13680-MKN  
) Chapter 7  
HEATH ROBERT WILLS and PATRICIA )  
ANNE WILLS, )  
) Date: January 22, 2025  
Debtors. ) Time: 2:30 p.m.  
)

**ORDER ON DEBTOR'S MOTION TO RECONSIDER, ALTER, AND/OR AMEND  
NOVEMBER 22, 2024, ORDER ON MOTION FOR TURNOVER OF REAL PROPERTY  
[ECF NO. 599]<sup>1</sup>**

On January 22, 2025, a hearing was conducted on the "Debtor's Motion to Reconsider, Alter, and/or Amend November 22, 2024, Order on Motion for Turnover of Real Property [ECF No. 599]." Contemporaneously, a telephonic hearing was held on the "Debtors' Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522(f)." The appearances of counsel were noted on the record. After arguments were presented, both matters were taken under submission.

**BACKGROUND**

On August 29, 2023, Heath Robert Wills ("Heath") and Patricia Anne Wills ("Patricia") (jointly "Debtors") voluntarily filed a joint Chapter 7 petition ("Petition") along with their

<sup>1</sup> In this Order, all references to "ECF No." are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to "AECF No." are to the documents filed in any Adversary Proceeding commenced during this case that are identified in this Order. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "NRS" are to provisions of the Nevada Revised Statutes. All references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure. All references to "Civil Rule" are to the Federal Rules of Civil Procedure.

schedules of assets and liabilities (“Schedules”), statement of financial affairs (“SOFA”), and other information. (ECF No. 1). The Chapter 7 case was commenced on the Debtors’ behalf by the Law Offices of Timothy P. Thomas (“Attorney Thomas”). The case was assigned for administration to Chapter 7 panel trustee Robert E. Atkinson (“Trustee”). On their property Schedule “A/B,” Debtors listed interests in separate parcels of residential real property located at 6033 Silvalde Lane, Las Vegas, Nevada 89135 (“6033 Silvalde Property”) and at 6009 Silvalde Lane, Las Vegas, Nevada 89135 (“6009 Silvalde Property”).<sup>2</sup> On their exemption Schedule “C,” Heath and Patricia claimed separate Nevada homestead exemptions of \$650,000<sup>3</sup> in each of the Silvalde Lane residences allegedly under Nevada law.<sup>4</sup> On their secured creditor Schedule “D,” Debtors listed Nevada State Bank (“NSB”) as having an undisputed claim in the amount of \$396,126 secured by the 6033 Silvalde Property. In Part 4 of their SOFA, Debtors disclosed, *inter alia*, a receivership proceeding in the Eighth Judicial District Court, Clark County, brought by Single Helix Investment Technology, LLC and other plaintiffs (“Single Helix Creditors”) against the Debtors and other defendants, denominated Case No. A-20-814263-B (“State Court Action”).

On August 29, 2023, a Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline<sup>5</sup> was issued by the court, initially scheduling a meeting of creditors for October 6,

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<sup>2</sup> Debtors also listed on Schedule “A/B” another residential property located at 5716 Logan Heights Court, Las Vegas, Nevada 89135 (“Logan Heights Property”).

<sup>3</sup> The Nevada homestead exemption under NRS 115.010 is limited to \$605,000 of equity in a personal dwelling occupied by the claimant.

<sup>4</sup> Debtors also claimed a Nevada “wildcard” exemption in the Logan Heights Property in the amount of \$19,000 allegedly under NRS 21.090(1)(z). The Nevada wildcard exemption under that provision is limited to \$10,000 in any property.

<sup>5</sup> On September 8, 2023, the Trustee filed a notice of assets setting forth a deadline of December 12, 2023, for creditors to file proofs of claim. (ECF No. 26).

2023, and a deadline of December 5, 2023, for interested parties to object to the Debtors' Chapter 7 discharge or to object to the discharge of a particular debt. (ECF No. 7).<sup>6</sup>

On September 7, 2023, the Single Helix Creditors filed a motion for relief from stay and supporting declaration seeking to proceed with their State Court Action for the sole purpose of liquidating the amount of their claims ("Single Helix MRAS").<sup>7</sup> (ECF Nos. 22 and 23). The motion was noticed to be heard on October 11, 2023. (ECF No. 24).

On September 12, 2023, the Trustee filed a notice of non-opposition to the Single Helix MRAS. (ECF No. 32).

On September 27, 2023, Debtors filed an opposition to the Single Helix MRAS. (ECF No. 47).

On October 4, 2023, the Single Helix Creditors filed a reply in support of their motion ("MRAS Reply").<sup>8</sup> (ECF No. 49).

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<sup>6</sup> On November 20, 2023, a Stipulated/Agreed Order was entered granting an extension of time to February 5, 2024, for which any creditors or parties in interest could file a motion to dismiss the Chapter 7 proceeding or to file a complaint objecting to the Debtors' discharge. (ECF No. 132). On December 5, 2023, the Single Helix Creditors timely commenced Adversary Proceeding No. 23-01156 against Heath Wills and Patricia Wills to determine dischargeability of debts under Sections 523(a)(2) and 523(a)(6). (ECF No. 141). On April 26, 2024, the Single Helix Creditors filed a motion for judgment on the pleadings which was noticed to be heard on May 29, 2024. (AECF Nos. 22 and 23). On May 2, 2024, the motion was re-noticed to be heard on June 27, 2024. (AECF No. 30). On July 8, 2024, an order was entered granting the motion for judgment on the pleadings. (AECF Nos. 40 and 41). On July 16, 2024, Findings of Fact, Conclusions of Law and Judgment were entered in favor of the Single Helix Creditors and against Heath Wills and Patricia Wills. (AECF No. 44 and 46).

<sup>7</sup> In their motion, the Single Helix Creditors stated: "After conclusion of the prove-up evidentiary hearing, Creditors will return to this Court with a judgment to lodge with the Bankruptcy Court, in a proof of claim and for further proceedings under the supervision of the Bankruptcy Court and pursuant to the Bankruptcy Code and Rules of Procedure." Single Helix MRAS at 9:10-13. "To be clear, there is no request at this time for any enforcement actions against the Debtors, the Debtors estate, or any assets. Creditors intend to return to the Bankruptcy Court upon liquidation of Creditors' claim to a sum certain, for further proceedings under this Courts supervision." Id. at 10:6-9 (emphasis added).

<sup>8</sup> In support of their motion, the Single Helix Creditors reiterated: "Creditors only seek to liquidate their claims in State court to a sum certain and there is no ulterior motive. Once liquidated, Creditors will return to this Court for further proceedings, including non-dischargeability determinations and sharing in claim distribution proceedings." MRAS Reply at

On October 17, 2023, an order was entered granting the Single Helix MRAS (“Single Helix RAS Order”). (ECF No. 67). That order specifically grants relief from stay so that the Single Helix Creditors “can proceed to an evidentiary hearing in the State Court Action starting on October 26, 2023, to liquidate their claim *only*, subject to further proceedings in this Court after a determination is made by the State Court at the evidentiary hearing.” Single Helix RAS Order at 2:18-20 (emphasis added).

On December 8, 2023, Debtors filed amended schedules. (ECF No. 148). On their amended Schedule “A/B,” Debtors again listed both the 6033 Silvalde Property and the 6009 Silvalde Property. On their amended Schedule “C,” Debtors again claimed a homestead exemption under Nevada law in both residential properties.

On December 12, 2023, the meeting of creditors was concluded.<sup>9</sup> (ECF No. 151).

On January 9, 2024, the Trustee filed an objection to the Debtors’ claims of homestead exemptions in both the 6033 Silvalde Property as well as the 6009 Silvalde Property (“Trustee Homestead Objection”), along with the Declaration of Robert E. Atkinson.<sup>10</sup> (ECF Nos. 207 and 208). The objection was noticed to be heard on February 14, 2024. (ECF No. 209). On the same date, a Certificate of Service was filed attesting that the exemption objection, supporting declaration and notice of hearing were electronically served on the Debtors’ counsel. (ECF No. 210).

On January 29, 2024, PennyMac Loan Services filed a separate motion for relief from stay as to the 6009 Silvalde Property (“PennyMac MRAS”). The motion was noticed to be heard on April 10, 2024. (ECF Nos. 268 and 340).

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2:15-17 (emphasis added). “Judge Williams will only be liquidating the claims to a sum certain, there will be no enforcement action taken in the State Court.” *Id.* at 4:12-13 (emphasis added).

<sup>9</sup> Under Bankruptcy Rule 4003(b)(1), any objections to the Debtors’ exemptions were due no later than 30 days after conclusion of the meeting of creditors. That deadline would have elapsed on or about January 11, 2024.

<sup>10</sup> No other party in interest or creditor filed an objection to the Debtors’ exemptions.

1 On February 6, 2024, Debtors filed a further amended Schedule “A/B” and an amended  
2 Schedule “C.” (ECF No. 275). Debtors again listed both the 6033 Silvalde Property and 6009  
3 Silvalde Property and continued to claim a homestead in both residences.

4 On February 7, 2024, Debtors filed another amended Schedule “A/B” and an amended  
5 Schedule “C.” (ECF No. 276). Both Silvalde Lane residences were listed, and both were  
6 claimed as exempt under the Nevada homestead statute.

7 On February 12, 2024, Debtors filed an opposition to the Trustee Homestead Objection.  
8 (ECF No. 287).

9 On February 22, 2024, an order was entered sustaining the Trustee Homestead Objection.  
10 (ECF Nos. 318 and 319). The order denied Debtors’ attempt to claim both residences as their  
11 homestead, but set a status hearing for April 10, 2024, to provide time for the Debtors to select  
12 one of the residences as their homestead. In other words, Trustee no longer objects to a  
13 homestead claim under Nevada law so long as it is limited to either the 6033 Silvalde Property or  
14 the 6009 Silvalde Property, and not both.

15 On March 18, 2024, Attorney Thomas filed a motion to withdraw as counsel for the  
16 Debtors (“Thomas Withdrawal Motion”). (ECF No. 358).

17 On March 22, 2024, the Trustee filed a motion for an order requiring the Debtors to  
18 turnover the 6033 Silvalde Property as well as the 6009 Silvalde Property (“First Turnover  
19 Motion”). (ECF No. 375). The First Turnover Motion was supported by a declaration from the  
20 Trustee. (ECF No. 376). The First Turnover Motion was noticed to be heard on shortened time  
21 on April 3, 2024. (ECF Nos. 383 and 384).

22 On March 26, 2024, a Certificate of Service was filed on behalf of the Trustee attesting  
23 that the First Turnover Motion and supporting documents were served by first class mail to  
24 Heath at the 6033 Silvalde Property, Patricia at the 6009 Silvalde Property, and to Attorney  
25 Thomas at his law office address. (ECF No. 385). On the same date, a separate Certificate of  
26 Service was filed by the Trustee attesting that the order shortening time as well as the First  
27 Turnover Motion were served by first class mail to Heath at the 6033 Silvalde Property, Patricia  
28 at the 6009 Silvalde Property, and to Attorney Thomas at his law office address. (ECF No. 386).

1 On March 26, 2024, the Trustee filed opposition to the PennyMac MRAS. (ECF No.  
2 390). On the same date, Attorney Thomas filed an ex parte motion to shorten time to hear his  
3 withdrawal request, along with his supporting declaration.<sup>11</sup> (ECF Nos. 391 and 392).

4 On March 27, 2024, an order was entered allowing the Thomas Withdrawal Motion to be  
5 heard on April 10, 2024. (ECF No. 399).

6 On April 4, 2024, the Trustee Exemption Objection was finally resolved when the  
7 Trustee stipulated with the Debtors that the 6033 Silvalde Property would constitute the Debtors'  
8 homestead, and that the 6009 Silvalde Property would not be the subject of a homestead  
9 exemption ("Homestead Stipulation"). (ECF No. 415). Because the matter had been resolved,  
10 the stipulation further provided that the April 10, 2024, status hearing would be vacated.

11 On April 5, 2024, an order was entered granting the First Turnover Motion consistent  
12 with the Homestead Stipulation ("First Turnover Order"). (ECF No. 417). That order provided  
13 that the Debtors must vacate the 6009 Silvalde Property no later than April 10, 2024, that any  
14 personal property remaining on the premises be deemed abandoned, and that the First Turnover  
15 Motion was withdrawn without prejudice as to the 6033 Silvalde Property. On the same date, a  
16 Certificate of Service was filed by the Trustee attesting the notice of entry of the First Turnover  
17 Order was served by first class mail to Heath at the 6033 Silvalde Property, Patricia at the 6009  
18 Silvalde Property, and to Attorney Thomas at his law office address. (ECF No. 422).

19 On April 11, 2024, an order was entered denying the PennyMac MRAS. (ECF No. 428  
20 and 429).

21 On June 30, 2024, the Trustee filed a motion to sell the 6009 Silvalde Property free and  
22 clear of liens ("6009 Sale Motion"), along with another Declaration of Robert E. Atkinson.  
23 (ECF Nos. 494 and 496). The 6009 Sale Motion was noticed to be heard on July 10, 2024  
24 pursuant to an order shortening time. (ECF Nos. 500 and 501).

25 On July 8, 2024, a limited response to the 6009 Sale Motion was filed on behalf of  
26 Vistara Homeowner's Association. (ECF No. 509).

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27 <sup>11</sup> In his declaration, Attorney Thomas attests, *inter alia*, that the Debtors "ceased to  
28 provide information or document in response to emails and communication attempt from the  
Thomas Firm since February 21, 2024." Thomas Declaration at ¶ 5.

1 On July 8, 2024, the Trustee filed a “Notice of Consent to Sale of Real Property”  
2 indicating that Wells Fargo Bank, N.A. does not object to the 6009 Sale Motion. (ECF No. 510).

3 On July 12, 2024, an order was entered granting the 6009 Sale Motion. (ECF Nos. 513  
4 and 514).

5 On August 1, 2024, the Trustee filed a report that a sale of the 6009 Silvalde Property had  
6 been completed on July 30, 2024. (ECF No. 521).

7 On October 18, 2024, an order was entered granting the Thomas Withdrawal Motion.  
8 (ECF No. 574).

9 On October 21, 2024, the Trustee filed a motion requiring the Debtors to turnover the  
10 6033 Silvalde Property (“Second Turnover Motion”). (ECF No. 578). The motion was  
11 supported by the declarations of the Trustee, Robert E. Atkinson (“Atkinson Turnover  
12 Declaration”) as well as Ryan J. Works, one of counsel for the Single Helix Creditors (“Works  
13 Declaration”).<sup>12</sup> (ECF Nos. 579 and 580). The Trustee maintained that the 6033 Silvalde  
14 Property is subject to a scheduled secured claim by NSB in the amount of \$396,126 as well a  
15 post-petition judicial lien in favor of the Single Helix Creditors in the amount of \$3,533,469.04.  
16 Trustee also asserted that the estimated value of the 6033 Silvalde Property is no more than  
17 \$1,055,300. Because the total amount of the asserted liens far exceeds the value of the 6033  
18 Silvalde Property, the Trustee maintained that there is no equity in the real property to which the  
19 Debtors’ homestead claim could attach. Thus, he sought to compel the Debtors to turnover the  
20 6033 Silvalde Property so that he could sell the residence and use the agreed bankruptcy release  
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22 <sup>12</sup> Counsel for the Single Helix Creditors attests, *inter alia*, that on January 12, 2024, a  
23 judgment was entered against Heath in the State Court Action in the total amount of  
24 \$3,533,469.04 (“Single Helix Judgment”). See Works Declaration at ¶ 3. Counsel also attests  
25 that “On August 30, 2024, the Nevada Judgment was recorded in the land records of Clark  
26 County, Nevada as instrument no. 20240830-0000024.” *Id.* at ¶ 4 (emphasis added). Upon  
27 recordation of the Single Helix Judgment, it became “a lien upon all real property of the  
28 judgment debtor not exempt from execution in that county, owned by the judgment debtor at the  
time.” NEV.REV.STAT. 17.150(2) (emphasis added). Under Nevada law, the Single Helix  
Creditors therefore obtained a judicial lien (“Single Helix Judgment Lien”) against the Debtors’  
real property in Clark County.



1 fee to pay unsecured creditors.<sup>13</sup> The Second Turnover Motion was noticed to be heard on  
 2 November 20, 2024. (ECF Nos. 582).

3 On November 22, 2024, an order was entered granting the Second Turnover Motion  
 4 inasmuch as no opposition was filed by or on behalf of the Debtors and no one appeared at the  
 5 hearing (“Second Turnover Order”). (ECF No. 599). The Second Turnover Order requires the  
 6 Debtors to vacate the 6033 Silvalde Property and to remove all personal property no later than 14  
 7 days after entry of the order. Similar to the First Turnover Order, the Second Turnover Order  
 8 provided for any personal property remaining in the 6033 Silvalde Property after 14 days to be  
 9 deemed abandoned, and providing Trustee authority to remove or otherwise dispose of the  
 10 personal property.

11 On December 16, 2024, a Limited Notice of Appearance by Nevada Bankruptcy  
 12 Attorneys LLC, through attorney Matthew Knepper (“Attorney Knepper”), was filed on behalf of  
 13 Heath. (ECF No. 620).

14 On December 18, 2024, Heath filed a Motion for Order Shortening Time on Motion to  
 15 Reconsider, Alter, and/or Amend November 22, 2024, Order on Motion for Turnover of Real  
 16 Property [ECF No. 599] that included an attached Declaration of Heath Robert Wills. (ECF No.  
 17 621). On the same date, Heath also filed another motion for order shortening time to have the  
 18 matter heard on an expedited basis. (ECF No. 622).

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 20  
 21 <sup>13</sup> Counsel for the Single Helix Creditors further attests that “The Trustee has reached a  
 22 deal with the Single Helix Creditors whereby the Single Helix Creditors will subsequently remit  
 23 25% of the net proceeds it receives on a short sale to the Trustee, as a **bankruptcy release fee**,  
 24 with such money to be unencumbered and nonexempt property of the state.” See Works  
 25 Declaration at ¶ 5 (emphasis added). Absent the “deal” reached with the Trustee, the 6033  
 26 Silvalde Property would have to be sold for more than the \$396,126 amount owed to NSB plus  
 27 the \$3,533,469.04 owed to the Single Helix Creditors before ever netting any funds that could be  
 28 distributed to allowed unsecured claims. Even though the sale price would be short of the  
 amount owed to the Single Helix Creditors, the “bankruptcy release fee” assured that the sale  
 would result in funds available for distribution to creditors of the Chapter 7 estate. Without such  
 an agreement, abandonment of the 6033 Silvalde Property under Section 554 otherwise might  
 result.



On December 18, 2024, Heath filed a Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522(f) (“Lien Avoidance Motion”) along with an attached Declaration of Heath Robert Wills. (ECF No. 624). The motion seeks to avoid the judicial lien that apparently affixed to the 6033 Silvalde Property when the Single Helix Creditors recorded their judgment obtained in the State Court Action.<sup>14</sup> Heath maintains that recognition and enforcement of the judicial lien impairs the homestead that the Debtors have claimed under Nevada law. A request to have the Lien Avoidance Motion heard on shortened time also was filed. (ECF No. 625).

On December 19, 2025, orders were entered allowing both the anticipated motion to reconsider as well as the Lien Avoidance Motion to be heard on January 15, 2025. (ECF Nos. 628 and 629).

On December 20, 2024, Heath filed the Motion to Reconsider, Alter, and/or Amend November 22, 2024, Order on Motion for Turnover of Real Property [ECF No. 599] (“Heath Reconsideration Motion”) to which is attached the supporting Declaration of Heath Robert Wills (“Heath Reconsideration Declaration”).<sup>15</sup> (ECF No. 634).

On January 8, 2025, the Trustee filed his oppositions to both the Lien Avoidance Motion and the Heath Reconsideration Motion. (ECF Nos. 649 and 650). An “amended” opposition to the Heath Reconsideration Motion also was filed by the Trustee (“Trustee’s Reconsideration Opposition”). (ECF No. 651).<sup>16</sup>

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<sup>14</sup> Because the Single Helix Judgment was not recorded until August 30, 2024, relief under Section 522(f)(1) to avoid the resulting judicial lien could not have been sought prior to that date. Only after the Single Helix Judgment Lien arose did Trustee file the Second Turnover Motion premised on a valid judgment lien being held by the Single Helix Creditors.

<sup>15</sup> Heath attests that he has resided in the 6033 Silvalde Property since December 14, 2017, and that on August 23, 2023, he recorded a Nevada homestead declaration with respect to the residence. See Heath Reconsideration Declaration at ¶¶ 5 and 6. He also acknowledges that the Single Helix Judgment was recorded on August 30, 2024, that would result in a judgment lien totaling \$3,533,469.04. Id. at ¶¶ 9 and 10.

<sup>16</sup> As is often the case, the “amended” document does not specify the difference from the original document, thereby requiring the reading audience to search for the amended language. It appears, however, that the amendment inserted a new ¶ 10 to Trustee’s argument and then renumbered the subsequent paragraphs.

1 On January 8, 2025, the Single Helix Creditors filed opposition to the Lien Avoidance  
2 Motion as well as a joinder to the Trustee's Reconsideration Opposition. (ECF Nos. 652 and  
3 653).

4 On January 13, 2025, Heath filed his reply briefs in support of both the Heath  
5 Reconsideration Motion and the Lien Avoidance Motion. (ECF Nos. 655 and 656).

6 On January 15, 2025, the scheduled hearings were continued to January 22, 2025. (ECF  
7 Nos. 663 and 664).

8 After arguments were presented on January 22, 2025, both the Lien Avoidance Motion as  
9 well as the Heath Reconsideration Motion were taken under submission.<sup>17</sup>

### 10 **DISCUSSION**<sup>18</sup>

11 The First Turnover Order required the Debtors to move out of the 6009 Silvalde Property  
12 no later than April 10, 2024, so that the Trustee could market the residence for sale. After the  
13 6009 Silvalde Property was vacated, the Trustee marketed the residence and completed its sale  
14 on July 30, 2024.

15 The Second Turnover Order requires the Debtors to vacate the 6033 Silvalde Property so  
16 that the Trustee can market that residence for sale. Proceeds from the sale would be distributed  
17 to fully satisfy the residential loan owed to NSB as well as to partially satisfy the liquidated  
18 amount owed to the Single Helix Creditors secured by a judgment lien recorded against the  
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21 <sup>17</sup> A separate order on the Lien Avoidance Motion has been entered concurrently with the  
22 instant order.

23 <sup>18</sup> On May 6, 2024, the United States Trustee ("UST") commenced Adversary Proceeding  
24 No. 24-01034 against the Debtors to deny a Chapter 7 discharge pursuant to Sections 727(a)(2),  
25 (3), (4A), (5), (6), and (7). (ECF No. 461). On September 12, 2024, an order was entered  
26 granting the UST's motion for default judgment. (AECF No. 23). On the same date, separate  
27 judgments were entered against Heath and against Patricia. (AECF No. 21 and 22). As a result,  
28 Debtors' personal liability for any of their debts, including the amounts owed to the Single Helix  
Creditors, has not been discharged. As a further result, the effects of a discharge identified in  
Section 524(a) do not apply, including the provision voiding judgments, see 11 U.S.C. §  
524(a)(1), and the provision for enjoining collection activity. Id. at § 524(a)(2).

1 residence.<sup>19</sup> If the 6033 Silvalde Property is sold by the Trustee, Debtors who originally claimed  
 2 a Nevada homestead in both Silvalde residential properties would end up with neither property.  
 3 In other words, as a result of the Second Turnover Order, Debtors would be required to vacate  
 4 the residence and remove all of their personal belongings.

5 Seeking to avoid this series of events, Heath retained Attorney Knepper who filed the  
 6 instant motions.

7 **I. Arguments Presented on the Heath Reconsideration Motion.**

8 Heath seeks relief from the Second Turnover Order under Civil Rule 60(b).<sup>20</sup> If he  
 9 obtains relief from the Second Turnover Order, Heath would rely on the Lien Avoidance Motion  
 10 seeking to vacate the Single Helix Judgment Lien against the 6033 Silvalde Property. If Heath  
 11 can avoid that judgment lien, he likely would assert that the Trustee cannot sell the 6033 Silvalde  
 12 Property for an amount sufficient to satisfy both the allowed secured debt owed to NSB and the  
 13 allowed Nevada homestead amount of \$605,000. If the property cannot be sold for an amount  
 14 sufficient to provide net funds for distribution to allowed unsecured claims, Heath might seek to  
 15 compel the Trustee to abandon any interest in the 6033 Silvalde Property under Section 554.<sup>21</sup>

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 18 <sup>19</sup> As previously discussed at note 13, supra, the Trustee and the Single Helix Creditors  
 19 agreed that a portion of the funds received from the eventual sale of the 6033 Silvalde Property  
 20 would be remitted to the bankruptcy estate as a “bankruptcy release fee” rather than being  
 21 applied entirely to the liquidated claim in favor of the Single Helix Creditors.

22 <sup>20</sup> Although Health partially frames his request as a motion to “reconsider,” the federal  
 23 rules of civil practice do not recognize such motions. See In re Walker, 332 B.R. 820, 826  
 24 (Bankr. D. Nev. 2005). Instead, Bankruptcy Rule 9024(a) permits Civil Rule 60, entitled “Relief  
 25 from Judgment or Order,” to be applied in bankruptcy proceedings. Id. at 829. Thus, litigants  
 26 may not seek reconsideration from the court but may request relief from a prior judgment order  
 27 or a prior order on the grounds specified in Civil Rule 60.

28 <sup>21</sup> “On the request of a party in interest and after notice and a hearing, the court may order  
 the trustee to abandon any property of the estate that is burdensome to the estate or that is of  
inconsequential value and benefit to the estate.” 11 U.S.C. § 554(b) (emphasis added). If the  
 6033 Silvalde Property cannot be sold for an amount sufficient to make a distribution to  
 unsecured creditors, it likely would be of inconsequential value and benefit to the Chapter 7  
 estate.

Civil Rule 60(b) provides six different grounds for relief from a prior judgment or order; Heath relies on subparts (b)(1), (b)(5) and (b)(6). As relevant here, Civil Rule 60(b) allows for relief to a party or legal representative from a judgment or an order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

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(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED.R.CIV.P. 60(b)(1), (b)(2) and (b)(6) (emphasis added).

Heath concedes that the Second Turnover Motion was properly served, but argues that the Debtors' failure to file or present objections was the result of excusable neglect under Civil Rule 60(b)(1). He maintains that a finding of excusable neglect is warranted because: (1) there is minimal prejudice to the Chapter 7 trustee from allowing the Second Turnover Motion to be contested, (2) that he diligently sought relief shortly after receiving a notice to vacate the 6033 Silvalde Property on December 10, 2024,<sup>22</sup> (3) that his minimal delay was based on a reasonable belief that his interest in the property was fully exempt under the Nevada homestead statutes,<sup>23</sup> and (4) that he is acting in good faith in seeking relief to respond to the Second Turnover Motion. See Heath Reconsideration Motion at 6:8 to 8:10 & n.29, citing, inter alia, Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

Heath also contends that applying the Second Turnover Order prospectively would no longer be equitable within the meaning of Civil Rule 60(b)(5) inasmuch as the Lien Avoidance Motion has not been resolved. See Heath Reconsideration Motion, supra, at 8:12 to 10:25. He

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<sup>22</sup> See Heath Reconsideration Declaration at ¶ 12.

<sup>23</sup> In particular, Heath argues that under NRS 17.150(2), the lien that arose when the Single Helix Judgment Lien was recorded, see note 12, supra, applied only to "real property of the judgment debtor not exempt from execution." Heath maintains that 6033 Silvalde Property was fully exempt at the time the judgment was recorded and therefore the lien never attached to the property. See Heath Reconsideration Motion at 8:3-10, citing In re Contrevo, 153 P.3d 652, 653 (Nev. 2007).

argues that if the Single Helix Judgment Lien is avoided under Section 522(f)(1) as a judicial lien impairing the Debtors' homestead exemption, then the factual basis for the Second Turnover Motion evaporates: the 6033 Silvalde Property would be encumbered only by the NSB lien, leaving substantial equity to support the Debtors' homestead. As a result, requiring turnover of the real property for the purposes of a sale would no longer be equitable absent evidence that the proceeds of sale could satisfy the full amount owed to NSB and the full amount of the Debtors' homestead.

Heath finally maintains that there are extraordinary circumstances warranting relief under Civil Rule 60(b)(6).<sup>24</sup> See Heath Reconsideration Motion, supra, at 11:2 to 13:10. The alleged extraordinary circumstances essentially are that the Debtors were unrepresented at the time the Second Turnover Motion was brought by the Trustee, and that they will lose their principal residence because of a judgment lien that can be avoided under Section 522(f)(1).

Not surprisingly, the Trustee contends that relief from the Second Turnover Order is unwarranted under any of the grounds asserted by Heath. He maintains that excusable neglect does not exist under Civil Rule 60(b)(1) because: (1) creditors will be prejudiced if the bankruptcy release fee from sale of the 6033 Silvalde Property is not available for distribution, (2) that Heath was not diligent because he did not seek new counsel until after he was told to vacate the property, (3) that Heath had no credible basis for believing the property would be protected because his Chapter 7 discharge was denied, and (4) that Heath failed to demonstrate any circumstances beyond his reasonable control. See Trustee's Reconsideration Opposition at ¶¶ 1, 2, 3, and 4.

The Trustee also offers, *inter alia*, that for a reasonable amount of time he will not pursue enforcement of the Second Turnover Order until the Lien Avoidance Motion is decided. In other words, there is no immediate threat of the Debtors being forced out of the 6033 Silvalde Property. Thus, the Trustee argues that there is no prospective application of the Second

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<sup>24</sup> By specifically providing for "any other reason that justifies relief," Civil Rule 60(b)(6) must be based on some ground not encompassed by Civil Rule 60(b)(1) through (b)(5). See Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847, 863 n.11 (1986); Lyon v. Agusta S.P.A., 252 F.3d 1078, 1088 (9th Cir. 2001).

Turnover Order warranting relief under Civil Rule 60(b)(5).<sup>25</sup> See Trustee’s Reconsideration Opposition at ¶¶ 5, 6, 7, 8, 9, and 10.

Finally, Trustee argues that Heath’s lack of legal counsel in connection with the Second Turnover Motion is not a sufficient basis for relief under Civil Rule 60(b)(6). He apparently does not dispute that the Debtors would lose the 6033 Silvalde Property as their principal residence, but disputes there are extraordinary circumstances warranting relief from the Second Turnover Order. See Trustee’s Reconsideration Opposition at ¶¶ 13, 14, 15, and 16.

## **II. Determinations on the Heath Reconsideration Motion.**

The court has reviewed and considered all of the declarations and exhibits filed by the parties, as well as the record in connection with the instant motion and the Second Turnover Order for which relief is sought. The court also has considered the written and oral arguments presented by counsel. Based on that record and arguments presented, the court concludes that the Heath Reconsideration Motion should be granted. Several considerations require this result.

First, there is no dispute that the 6033 Silvalde Property is property of the bankruptcy estate under Section 541(a)(1) for which the Nevada homestead exemption was claimed by the Debtors under Section 522(b). Under Section 522(l), property of a bankruptcy estate that is scheduled by a debtor and claimed as exempt is exempt absent a timely filed objection. There is no dispute that only the Trustee objected to the exemptions claimed by the Debtors.

Second, there is no dispute that the Debtors claimed an exemption in the 6033 Silvalde Property in the amount of \$650,000 even though the maximum amount available under the Nevada exemption statute is \$605,000. See NEV.REV.STAT. 115.010(2) (the homestead exemption “extends only to that amount of equity held by the claimant which does not exceed \$605,000 in value...”). The Trustee Homestead Objection did not dispute that Heath could claim an exemption in the 6033 Silvalde Property but only that the Debtors could not claim an exemption in both Silvalde Properties. Absent the objection of the Trustee, the 6033 Silvalde

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<sup>25</sup> The parties’ arguments under Civil Rule 60(b)(5) are akin to those raised if Heath had sought to appeal the Second Turnover Order and requested a stay pending appeal.

1 Property would have been deemed exempt under Section 522(l) notwithstanding the inaccurate  
2 amount of the exemption claimed.

3 Third, in addition to being property of the bankruptcy estate that could be claimed as  
4 exempt, the 6033 Silvalde Property was protected by the automatic stay that arose when the joint  
5 Chapter 7 petition was filed. See 11 U.S.C. § 362(a). There is no dispute that continuation of  
6 the State Court Action by the Single Helix Creditors was precluded by the automatic stay. See  
7 11 U.S.C. § 362(a)(1). Likewise, there is no question that the automatic stay resulting from the  
8 Debtors' bankruptcy petition operated as a stay of "any act to create, perfect, or enforce any lien  
9 against property of the bankruptcy estate." 11 U.S.C. § 362(a)(4) (emphasis added).

10 Fourth, there is no dispute that the Single Helix Creditors sought relief from stay for  
11 cause under Section 362(d)(1) for the specific purpose of continuing prosecution of the State  
12 Court Action. There is no dispute that the Single Helix MRAS was filed on September 7, 2023.  
13 There is no dispute that the Debtors filed opposition and the Single Helix Creditors filed a reply  
14 in support of their request. There is no dispute that on October 17, 2023, the Single Helix RAS  
15 Order, prepared by counsel for the moving party, was entered.

16 Fifth, there is no dispute that relief from stay to proceed with the State Court Action was  
17 granted to the Single Helix Creditors "to liquidate their claims *only*." Single Helix RAS Order  
18 at 2:19. There is no dispute that the Single Helix RAS Order includes no language authorizing  
19 the State Court Judgment to be recorded in the Clark County records and no language  
20 authorizing the Single Helix Creditors to take any action to create, perfect or enforce a judgment  
21 lien.<sup>26</sup>

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24 <sup>26</sup> In seeking relief from stay to continue with the State Court Action, the Single Helix  
25 Creditors specifically represented to this bankruptcy court that they were not requesting "any  
26 enforcement actions against the Debtors, the Debtors estate, or any assets," see discussion at note  
27 7, supra, and that the judge presiding in the State Court Action "will only be liquidating the  
28 claims to a sum certain" and that "there will be no enforcement action taken in the State Court."  
Id. at note 8, supra. While the language of the Single Helix RAS Order is consistent with those  
representations, the act of recording the Single Helix Judgment to create a judicial lien against  
the 6033 Silvalde Property is not consistent.



Sixth, it is well established that an act taken in violation of the automatic stay is void and of no effect. See U.S. v. Schwartz (In re Schwartz), 954 F.2d 569, 571-72 (9th Cir. 1992). As a result, for example, a party that purchases an asset owned by a bankruptcy estate in violation of the automatic stay receives title that is legally void. See 40235 Washington St. Corp. v. Lusardi (In re Washington St. Corp.), 329 F.3d 1076, 1080 (9th Cir. 2003) (purchase of estate property at a county tax sale in violation of the automatic stay was without effect). Because acts in violation of the automatic stay are void rather than merely voidable, creditors are discouraged from simply violating Section 362(a) and taking the risk that the stay will not be enforced. Id. at 571-75.<sup>27</sup> See also 3 COLLIER ON BANKRUPTCY, ¶ 362.12[1] (Richard Levin and Henry J. Sommer, eds. 16th Ed. 2024) (“Most courts have held that actions taken in violation of the stay are void and without effect.”)

Seventh, under the Single Helix RAS Order, the Single Helix Creditors obtained relief from stay to liquidate the amount of their claims and to obtain the Single Helix Judgment that was entered on January 12, 2024. Nothing in the Single Helix RAS Order granted relief from stay to the Single Helix Creditors to take any action to create, perfect or enforce a lien against the 6033 Silvalde Property. By recording the Single Helix Judgment in the Clark County records on August 30, 2024, however, the Single Helix Creditors did precisely that: they created a judicial lien against the Debtors’ real property pursuant to NRS 17.150(2). Recording the Single Helix Judgment was not authorized by the Single Helix RAS Order but was an act in violation of the automatic stay. The Single Helix Judgment Lien against the 6033 Silvalde Property therefore is void and without effect.

## CONCLUSION<sup>28</sup>

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<sup>27</sup> “Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law, provided it goes undiscovered for a sufficient period of time. This may be an acceptable risk to some creditors when measured against a delayed prorata distribution.” Id. at 572, quoting In re Garcia, 109 B.R. 335, 340 (N.D. Ill. 1989).

<sup>28</sup> To the extent required, this Order constitutes the court’s findings of fact and conclusions of law under Bankruptcy Rule 7052 and Civil Rule 52.

1 Relief from the Second Turnover Order is required. Civil Rule 60(b)(1) supports relief to  
2 the Debtors whose bankruptcy counsel already had withdrawn before the Trustee chose to file  
3 the Second Turnover Motion.<sup>29</sup> The Trustee questions but does not refute Heath's testimony that  
4 the Debtors had no understanding of the impact of the Trustee's requested relief until a notice to  
5 vacate was posted on the 6033 Silvalde Property on December 10, 2024. There is no dispute that  
6 Attorney Knepper was retained shortly thereafter and entered his limited appearance on behalf of  
7 the Debtors on December 16, 2024. Although the Trustee emphasizes that the Debtors have  
8 been denied a Chapter 7 discharge, the Trustee does not explain how a default judgment under  
9 Section 727(a), see discussion at note 18, supra, is material to whether pro se litigants should  
10 have the opportunity to contest the merits of other claims. On this record, the court concludes  
11 that the Debtors' failure to respond to the Second Turnover Motion was the result of excusable  
12 neglect.

13 Civil Rule 60(b)(5) supports relief because the Trustee's agreement to delay enforcement  
14 of the Second Turnover Order pending the outcome of the Lien Avoidance Motion does not  
15 change the effect of the subject order. The Trustee still seeks to enforce the order prospectively  
16 but does not dispute that if the Single Helix Judicial Lien is avoided, the factual basis for the  
17 Second Turnover Motion was erroneous. On this record, the court concludes that enforcement of  
18 the Second Turnover Order would no longer be equitable.

19 Civil Rule 60(b)(6) also supports relief because the Single Helix Judgment was recorded  
20 without authorization by the Single Helix RAS Order and inconsistent with the request made in  
21 the Single Helix MRAS. As a matter of law, the Single Helix Judicial Lien is void. As a result,  
22 the basis for the Second Turnover Motion as well as the Second Turnover Order was factually  
23 and legally erroneous. These extraordinary circumstances constitute independent reasons  
24 requiring relief from the Second Turnover Order.

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27 <sup>29</sup> See Heath Reconsideration Declaration at ¶ 12 ("I do not dispute that I was properly  
28 served with the Turnover Motion. However, I was unrepresented by counsel and believed that  
previously claiming the homestead exemption on my petition and then recording a homestead  
declaration protected my exempt equity in the Property.")

1           **IT IS THEREFORE ORDERED** that the Debtor's Motion to Reconsider, Alter, and/or  
2 Amend November 22, 2024, Order on Motion for Turnover of Real Property [ECF No. 599],  
3 Docket No. 634, be, and the same hereby is, **GRANTED**.

4           **IT IS FURTHER ORDERED** that the Order on Motion for Turnover of Real Property,  
5 and Related Relief, Docket No. 599, be, and the same hereby is, **VACATED**.

6  
7 Copies sent via CM/ECF ELECTRONIC FILING

8 Copies sent via BNC to:  
9 HEATH ROBERT WILLS  
10 PATRICIA ANNE WILLS  
11 6033 SILVALDE LANE  
12 LAS VEGAS, NV 89135

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