

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION**

IN RE:

CASE NO. 10-50172

TROY KEITH RUCKER

Debtor

**ORDER**

This matter is before the court upon the motion of debtor to reinstate a homestead exemption in real property located at 2825 Tatum Lane, Bradfordsville, Kentucky 40009, pursuant to 11 U.S.C. § 522(d)(1).

On March 10, 2010, the trustee, J. James Rogan, filed an objection to the debtor's homestead exemption (Doc #11). No response was filed by the debtor, and the trustee's objection was sustained via court order on April 14, 2010 (Doc #20). Three months later, on July 28, 2010, the debtor filed an Application to Reinstate Homestead Exemption under 11 U.S.C. § 522(d)(1). The debtor's counsel claimed he had failed to notice the trustee's notice of opportunity to object and hence made no filing. The debtor's counsel asks that the court not punish the debtor for the inadvertence and error of counsel and order the reinstatement of the debtor's homestead exemption.

Although the debtor's counsel makes no legal argument to excuse his inadvertence, Rule 60(b)(1) of the Federal Rules of Civil Procedure, made applicable by Rule 9024 of the Federal Rules of Bankruptcy Procedure, governs the setting aside of orders based upon an attorney's failure to act. Rule 60(b)(1) provides in relevant part that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1).

Whether neglect is excusable is an equitable inquiry, "taking account of all the relevant circumstances surrounding the party's omission." *Pioneer Inv. Serv. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Relevant factors include "the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the

reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.*

The Sixth Circuit has held that a Rule 60(b)(1) motion is "intended to provide relief in *only* two situations: (1) when a party has made an excusable mistake or an attorney has acted without authority, or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order." *U.S. v. Reyes*, 307 F.3d 451, 455 (6th Cir. 2002) (emphasis added). Furthermore, the Sixth Circuit has stated that it does not "endorse a liberal application of Rule 60(b) where counsel has failed to carefully review pleadings, motions or other documents filed with the court." *In re Salem Mortgage Co.*, 791 F.2d 456, 460 (6th Cir. 1986). The Supreme Court has also held that in the context of Rule 609(b)(1), clients "must be held accountable for the acts and omissions of their attorneys." *Pioneer* 507 U.S. at 396.

The Sixth Circuit has taken a hard-line stance regarding attorneys failing to act: "[T]he case law consistently teaches that out-and-out lawyer blunders—the type of action or inaction that leads to successful malpractice suits by the injured client—do not qualify as 'mistake' or 'excusable neglect' within the meaning of [Rule 60(b)(1)]." *McCurry ex rel. Turner v. Adventist Health System/Sunbelt, Inc.*, 298 F.3d 586, 595 (6th Cir. 2002) (quoting *Helm v. Resolution Trust Corp.*, 161 F.R.D. 347, 348 (N.D. Ill. 1995), *aff'd*, 84 F.3d 874 (7th Cir. 1996)).

The debtor's counsel failed to act because he did not notice the trustee's notice providing an opportunity to object. In essence, the debtor's counsel did not act because he did not carefully review the documents filed with the court. This alone is insufficient to warrant the setting aside of the court's previous order under Rule 60(b)(1). For the foregoing reasons, the debtor's Application to Reinstate Homestead Exemption is hereby DENIED.

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Friday, September 24, 2010**  
**(jms)**