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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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| <p>IN RE: CHADWICK C. COLLINS,</p> <p style="text-align: right;">Debtor.</p> <hr/> <p>CHARLES G. COLLINS; JANELLE L. COLLINS; CHADWICK C. COLLINS,</p> <p style="text-align: right;">Appellants,</p> <p>v.</p> <p>NANCY L. WOLF, Chapter 7 Trustee,</p> <p style="text-align: right;">Appellee.</p> |
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Case No.: 3:16-cv-03112-BEN-WVG
Bankruptcy No. 13-05478-MM7

**ORDER GRANTING MOTION TO
DISMISS FOR LACK OF
JURISDICTION**

Appellants Charles G. Collins (“Charles”) and Janelle L. Collins (“Janelle”), and Appellant-Debtor Chadwick C. Collins (“Chadwick,” collectively “Appellants”) filed this appeal from a December 13, 2016 “Order for Turnover of Property to Chapter 7 Trustee” (“Turnover Order”) issued by Chief Bankruptcy Judge Laura S. Taylor of the Bankruptcy Court for the Southern District of California (hereinafter “Bankruptcy Court”). (Docket No. 1.) The Turnover Order ordered Appellants to turn over the real property located at 1480 Beechtree Road, San Marcos, California 92078 (the “Beechtree Road Property”)

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1 and made findings concerning the chain of title and ownership interest in the Beechtree
2 Road Property. (Docket No. 1-2.)

3 Appellee Nancy L. Wolf, Chapter 7 Trustee, moves to dismiss the appeal for lack
4 of jurisdiction. (Docket No. 14.)¹ The motion is fully briefed. The Court finds the
5 motion suitable for determination on the papers without oral argument, pursuant to Civil
6 Local Rule 7.1.d.1. For the reasons set forth below, Wolf's motion to dismiss is
7 **GRANTED.**

8 **BACKGROUND AND PROCEDURAL HISTORY**

9 On December 7, 2011, Appellant-Debtor Chadwick filed his Chapter 7 bankruptcy
10 case. (Docket No. 1-2.) On March 7, 2013, Wolf filed an adversary complaint in the
11 Bankruptcy Court against Appellants seeking declaratory relief pursuant to 11 U.S.C. §
12 541 that the Beechtree Road Property was part of Chadwick's bankruptcy estate, and an
13 order under 11 U.S.C. § 542 for turnover of said property to Wolf for sale pursuant to 11
14 U.S.C. § 363. (Docket No. 5-1 at pp. 11-23.)

15 During the course of the adversary proceedings, Judge Taylor bifurcated the issues
16 for trial into two phases; Phase I was conducted on February 1, 2, and 3, 2016. (Docket
17 No. 1-2.) Thereafter, the parties submitted post-Phase 1 trial-related briefings, and Judge
18 Taylor heard oral arguments before issuing the December 13, 2016 Turnover Order. (*Id.*)
19 The Turnover Order found that the Beechtree Road Property is the property of
20 Chadwick's bankruptcy estate, and that the property was Chadwick and Janelle's
21 community property at the time Chadwick filed his Chapter 7 bankruptcy case on
22 December 7, 2011. (*Id.*) The Turnover Order further found that Charles did not hold any
23 interest or estates in the Beechtree Road Property, was not entitled to a lien, and did not
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26 ¹ The docket reflects that Wolf filed a Motion to Dismiss and an Amended Motion to
27 Dismiss, which are identical except that the Amended Motion removed the contention
28 that the Appellants' appeal was untimely filed. (*Compare* Docket Nos. 13 & 14.) The
Court's ruling in this Order shall resolve both motions.

1 have a lien against the property. (*Id.*) Judge Taylor ordered Appellants to turn over the
2 Beechtree Road Property, and reserved “for further determination and entry of final
3 judgment” the issue of Wolf’s claim against Charles for monetary damages pursuant to
4 11 U.S.C. § 542. (*Id.*)

5 On December 27, 2016, Appellants filed the instant appeal to the Turnover Order.
6 On March 27, 2016, Appellee filed the pending Amended Motion to Dismiss for lack of
7 jurisdiction. (Docket No. 14.)

8 LEGAL STANDARD

9 Federal district courts generally have jurisdiction over appeals of “final judgments,
10 orders, and decrees” of bankruptcy courts. *See* 28 U.S.C. § 158(a)(1).² In contrast, with
11 limited exceptions not relevant here, district courts lack appellate jurisdiction over
12 appeals from interlocutory orders of bankruptcy judges except where the district court
13 grants leave to appeal under 28 U.S.C. § 158(a)(3).

14 In considering whether to grant leave to appeal, a district court “looks to the
15 standards set forth in 28 U.S.C. § 1292(b), which concerns the taking of interlocutory
16 appeals from the district court to the court of appeals.” *In re Roderick Timber Co.*, 185
17 B.R. 601, 604 (B.A.P. 9th Cir. 1995); *see also In re Belli*, 268 B.R. 851, 858 (B.A.P. 9th
18 Cir. 2001) (“We look for guidance to the standards developed under 28 U.S.C. § 1292(b)
19 to determine if leave to appeal should be granted [under section 158(a)(3)].”).

20 Additionally, “[i]nterlocutory appeals are generally disfavored and should only be
21 granted where extraordinary circumstances exist.” *In re Cameron*, No. C 13-02018 SI,
22 2014 WL 1028436, at *4 (N.D. Cal. Mar. 17, 2014).

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27 ² Unless otherwise noted, all section references in the remainder of this Order are to Title
28 28 of the United States Code.

1 order in an ordinary federal civil action under 28 U.S.C. § 1291. *See In re King City*
2 *Transit Mix, Inc.*, 738 F.2d 1065, 1066 (9th Cir. 1984) (explaining that in an adversary
3 proceeding “even the unique nature of a bankruptcy proceeding does not warrant a
4 departure from final order jurisprudence developed in the context of 28 U.S.C. § 1291”);
5 *see also Belli*, 268 B.R. at 855 (“Finality for purposes of jurisdiction over ‘as of right’
6 appeals under 28 U.S.C. § 158(a)(1) in adversary proceedings does not differ from
7 finality in ordinary federal civil actions under 28 U.S.C. § 1291.”).

8 As the Ninth Circuit Bankruptcy Appellate Panel explained in *Belli*:

9 Adversary proceedings are merely federal civil actions under
10 another name, and do not ordinarily present the types of
11 uncertainties that necessitate “flexible finality” analysis.
12 Adversary proceedings are a “single judicial unit.” The parties
13 are named in the pleadings; the claims are those presented in
14 the respective counts of the complaint. The litigation is
15 conducted under the Federal Rules of Civil Procedure . . . and
follows the ordinary pattern of summons and complaint,
answer, discovery, pretrial, trial, and judgment[.]

16 *Id.* at 854-55. “Under this analysis, the ordinary standards of 28 U.S.C. § 1291 and
17 Federal Rule of Civil Procedure 54(b) control the determination of finality for the
18 purposes of appeals from adversary proceedings, not flexible finality.” *Brady v. Otton*,
19 No. 15-CV-00757-WHO, 2015 WL 1906204, at *4 (N.D. Cal. Apr. 27, 2015) (citing
20 *Belli*, 268 B.R. at 855-57; *King City*, 738 F.3d at 1066.

21 Here, Appellants acknowledge that the Turnover Order arises from an adversary
22 proceeding related to Chadwick’s bankruptcy. (Appellants’ Opp’n at 2) (“The subject
23 order was entered in an adversary proceeding in the bankruptcy case filed by the Trustee
24 against Appellants.”) As explained above, the flexible finality approach is not applicable
25 to adversary proceedings. Moreover, Appellants do not offer any persuasive explanation
26 why “traditional finality rules are [in]adequate” for purposes of this case. *Belli*, 268 B.R.
27 at 854. Accordingly, the Court shall proceed to determine whether the Turnover Order is
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1 a final order applying the traditional analysis under 28 U.S.C. § 1291 and Federal Rule of
2 Civil Procedure 54(b).

3 Under Rule 54(b),⁴ a trial court may enter an early final order that disposes of
4 fewer than all the claims or fewer than all the parties.⁵ Fed. R. Civ. P. 54(b). “The court
5 does so by making an *express* determination that there is no just reason for delay,
6 together with an *express* direction that judgment be entered.” *Belli*, 268 B.R. at 855
7 (emphasis added). An order that fails to expressly use this “mandated express language”
8 is interlocutory and not appealable as a final order. *Id.* at 855-56. Moreover, “such an
9 order may be revised ‘at any time before the entry of judgment adjudicating all the claims
10 and the rights and liabilities of all the parties.’” *Id.* at 856 (quoting Fed. R. Civ. P. 54(b)).

11 When an order is issued in an adversary proceeding that does not resolve all claims
12 against all parties, a district court’s jurisdiction “depends on whether the requisite Rule
13 54(b) certification appears on the face of the record.” *Belli*, 268 B.R. at 856. “If there is
14 a Rule 54(b) certification, it is treated as a final order over which appellate jurisdiction
15 exists ‘as of right’ under 28 U.S.C. § 158(a)(1).” *Id.* On the other hand, “[i]f there is no
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18 ⁴ Unless otherwise noted, all references to rules in the remainder of this Order are to the
Federal Rules of Civil Procedure.

19 ⁵ Rule 54(b) provides:

20 When an action presents more than one claim for relief –
21 whether as a claim, counterclaim, crossclaim, or third-party
22 claim – or when multiple parties are involved, the court may
23 direct entry of a final judgment as to one or more, but fewer
24 than all, claims or parties only if the court expressly determines
25 that there is no just reason for delay. Otherwise, any order or
26 other decision, however designated, that adjudicates fewer than
27 all the claims or the rights and liabilities of fewer than all the
parties does not end the action as to any of the claims or parties
and may be revised at any time before the entry of a judgment
adjudicating all the claims and all the parties’ rights and
liabilities.

28 Fed. R. Civ. P. 54(b), *incorporated* by Fed. R. Bankr. P. 7054(a).

1 Rule 54(b) certification, then the order is interlocutory, and appellate jurisdiction depends
2 on whether the appellate court grants leave to appeal under 28 U.S.C. § 158(a)(3).” *Id.*

3 Applying the traditional concept of finality to this case, it is clear that the Turnover
4 Order is not a final order. Nowhere in the Turnover Order is there an express direction
5 for entry of final judgment and statement that there is no just reason for delay an appeal.
6 Thus, the Turnover Order lacks the requisite Rule 54(b) certification on its face. In fact,
7 the Turnover Order expressly states its reservation of one the issues for later
8 determination and entry of final judgment. (Docket No. 1-2.) (“The issue of the [Wolf’s]
9 claim against [Appellant] Charles G. Collins, for monetary damages pursuant to 11
10 U.S.C. § 542, is reserved for further determination and entry of a final judgment by the
11 Court.”)

12 Appellants’ argument that the remaining issue was not properly pled in the
13 adversary complaint may have been relevant if the Court applied the flexible finality
14 approach. (*See* Appellants’ Opp’n at 2-4.) However, under traditional finality principles,
15 this argument is not relevant because in any event, the Bankruptcy Court did not
16 expressly provide Rule 54(b) certification to the portions of the Turnover Order that are
17 the gravamen of Appellants’ appeal. As a result, until such time that the Bankruptcy
18 Court resolves the remaining issue or expressly enters judgment on the issues for which
19 Appellants seek appellate review, it remains free under Rule 54(b) “to change its mind”
20 about the other findings. *Belli*, 268 B.R. at 857. Therefore, Appellants’ are not entitled
21 to an appeal as of right under 28 U.S.C. § 158(a)(1), and the Court must determine
22 whether to grant them leave to appeal under 28 U.S.C. § 158(a)(3).

23 There are “[f]our judge-made exceptions to the final judgment rule – the collateral
24 order, practical finality, death knell, and pragmatic finality doctrines.” *Belli*, 268 B.R. at
25 857 (citing 18 James Wm. Moore, *Moore's Fed. Prac.* 3d §§ 202.07 – 202.10 (2001)),
26 none of which apply to this appeal. *Id.* (“The collateral order doctrine is inapplicable
27 because the issue is neither separate from the merits of the appeal nor effectively
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1 unreviewable after final judgment. . . . The practical finality doctrine requires irreparable
2 injury that is not entailed by this appeal. . . . The death knell doctrine, to the extent it
3 retains vitality, requires that the appellant have been put effectively out of court, which
4 has not happened here. . . . The pragmatic finality doctrine requires, among other
5 elements, an unsettled issue of national significance.”) (internal citations omitted).
6 Consequently, the Court declines to exercise jurisdiction under 28 U.S.C. § 158(a)(3).

7 Finally, in their opposition Appellants request leave to file an appeal to the
8 Turnover Order if the Court finds the Turnover Order is interlocutory. The Court finds
9 interlocutory review is not warranted here. First, Appellants have not even attempted to
10 explain why there is no just reason to delay hearing of their appeal until the bankruptcy
11 judge has entered final judgment. *See Cameron, supra*, 2014 WL 1028436, at *4
12 (“Interlocutory appeals are generally disfavored and should only be granted where
13 extraordinary circumstances exist.”) Second, it does not appear to the Court that denying
14 leave to appeal now would result in “wasted litigation and expense,” that the appeal
15 “involves a controlling question of law as to which there is a substantial ground for
16 difference of opinion,” or that “an immediate appeal would materially advance the
17 ultimate termination of the litigation.” *See In re NSB Film Corp.*, 167 B.R. 176, 180
18 (B.A.P. 9th Cir. 1994) (citing *In re Caribbean Tubular Corp.*, 44 B.R. 283, 285 (D.P.R.
19 1984)). In short, the Court “decline[s] to intermeddle with the [Bankruptcy Court’s]
20 handling of the adversary proceeding until it has completed the task.” *Belli*, 268 B.R. at
21 858.

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1 **CONCLUSION**

2 For the reasons stated above, the Court finds the Turnover Order is an interlocutory
3 order, interlocutory review is not warranted, and Appellants have not identified another
4 basis for jurisdiction. Accordingly, Appellee's motion to dismiss the appeal for lack of
5 jurisdiction is **GRANTED**, and Appellants' request for leave to file an appeal to the
6 Turnover Order is **DENIED**.

7 **IT IS SO ORDERED.**

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9 DATED: September 18, 2017

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12 HON. ROGER T. BENITEZ
13 United States District Court Judge
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