

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

LETCHER BURGESS ELLIS, SR. and)	
LORI LYNN ELLIS,)	
)	
Appellants,)	
)	
v.)	3:13CV690-PPS
)	
J. RICHARD RANSEL, Trustee,)	
)	
Appellee.)	

OPINION AND ORDER

Bankruptcy debtors Letcher Ellis, Sr. and his wife Lori appeal from the bankruptcy judge's grant of the Trustee's Motion to Sell Real Estate. The real estate at issue is a parcel contiguous to the property on which the Ellises' home sits. The two parcels were purchased separately by the Ellises but were treated together as their residential property. More than a year after the Trustee filed his Report of No Distribution and the Chapter 7 proceedings were closed, the Ellises attempted to sell the second parcel and the Trustee learned that the property consisted of separate parcels. The Trustee petitioned to reopen the Chapter 7 case and moved to sell the second parcel for the benefit of the bankruptcy estate. That motion was granted over the Ellises' objection, and the Ellises filed this appeal. The Ellises asked the bankruptcy judge to stay his order allowing the sale of the property pending their appeal. But that request was denied, and the Ellises have not appealed the denial of the stay, nor did they ask this court to stay the sale.

In reviewing the appeal in this matter the first question in my mind was whether the property in question has already been sold. For if the sale is final, the appeal may be moot. So I ordered the parties to file supplemental briefing addressing those questions. I am now in receipt

of the Ellises' memorandum and the Trustee's response. The Ellises have not filed a reply though they were invited to do so.

The Trustee reports that the property was sold on July 22, 2013, and that the Ellises' attempt thereafter to exempt the value of the real estate by amending their bankruptcy schedules was rejected by the bankruptcy court, a ruling that the Ellises have not appealed. [DE 8 at 2; DE 8-2.] The Ellises argue that the proceeds of the sale are now the subject of this appeal, and that with those funds they would hope to buy the property back from the neighbors who purchased the parcel. [DE 7 at 2.] The Ellises' brief cites no legal authority.

On these established facts, this appeal must be dismissed as moot. Mootness is an issue arising from Article III of the United States Constitution, which restricts the federal courts' jurisdiction to live cases and controversies. *Damasco v. Clearwire Corp.*, 662 F.3d 891, 894 (7th Cir. 2011). Because mootness is a threshold jurisdictional question, the court must address it even when it is not raised by the parties. *Wernsing v. Thompson*, 423 F.3d 732, 745 (7th Cir. 2005); *Worldwide St. Preachers' Fellowship v. Peterson*, 388 F.3d 555, 558 (7th Cir. 2004). A case is moot when it "no longer presents a live case or controversy." *Tobin for Governor v. Illinois State Board of Elections*, 285 F.3d 517, 528 (7th Cir. 2001).

Congress has granted finality to bankruptcy sales, providing in 11 U.S.C. §363(m) that reversal on appeal of the Trustee's authorization to sell property does not affect the validity of the sale to a good faith purchaser unless the sale was stayed pending appeal. Construing this provision, the Seventh Circuit has repeatedly held that "when a party challenges the bankruptcy court's order approving the sale of estate property to a good faith purchaser, it must obtain a stay

of that order pending appeal, lest the sale proceed and the appeal become moot.” *In re CGI Industries*, 27 F.3d 296, 299 (7th Cir. 1994) (collecting cases). *See also In re River West Plaza-Chicago, LLC*, 664 F.3d 668, 671 (7th Cir. 2011). Where the property has been sold, and “there is no possible relief which the court could order that would benefit the party seeking it,” the appeal must be declared moot. *In re Envirodyne Industries*, 29 F.3d 301, 303 (7th Cir. 1994) (citation omitted), cited in *River West*, 664 F.3d at 671.

The Ellises cite no case supporting any assertion that on this appeal they could properly be awarded relief in the form of the real estate sale proceeds. The Seventh Circuit rejects such attempts, noting that “[c]ourts take a dim view of arguments that attempt to craft any sort of ‘end run around the appeal and stay requirements of §363(m)’” in the form of requests on appeal to “rearrange the distribution of the sale proceeds.” *River West*, 664 F.3d at 672, quoting *In re Vlasek*, 325 F.3d 955, 962 (7th Cir. 2003). A claim to the sale proceeds cannot be used to stave off a determination of mootness: “courts hearing appeals from sale orders...reject attempts to attack the distribution of proceeds if no stay was obtained.” *River West*, 664 F.3d at 673.

Upon filing for bankruptcy relief, the Ellises’ property became that of the bankruptcy estate, subject only to exemptions allowed by the bankruptcy court. 11 U.S.C. §§541 & 542(b). The Ellises’ belated effort to exempt the real property from the bankruptcy estate failed, and they have not separately appealed that ruling, for whatever relief might have been available by that means. *River West*, 664 F.3d at 672 (a notice of appeal cannot encompass orders that postdate it). The Trustee correctly asserts that the proceeds of the sale are property of the bankruptcy estate and subject to administration by the Trustee. The sale has taken place, the property has

not been exempted from the bankruptcy estate, and the appeal challenging the order granting the Trustee's motion to sell the real estate is moot.

ACCORDINGLY:

The Ellises' appeal from the bankruptcy judge's grant of the Trustee's Motion to Sell Real Estate is MOOT, and this appeal must be DISMISSED FOR LACK OF JURISDICTION.

The Clerk shall enter judgment accordingly.

ENTERED: January 30, 2014

s/ Philip P. Simon
CHIEF JUDGE
UNITED STATES DISTRICT COURT