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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 05-21390-B-7
10 JAMES/ESTRELLA KINCAID,)
11 Debtors.) Docket Control No. DNL-13
12) Date: November 7, 2006
Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
17 "Act"), a copy of the ruling is hereby posted on the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable
18 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 Neither the respondent within the time for opposition nor the
21 movant within the time for reply has filed a separate statement
22 identifying each disputed material factual issue relating to the
23 motion. Accordingly, both movant and respondent have consented to the
24 resolution of the motion and all disputed material factual issues
25 pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

26 The estate owns real property located at 2253 Penryn Rd., Penryn,
27 California (APNs 032-230-030 and 032-230-029). The trustee seeks to
28 sell the estate's interest in the property to Jeff Voracek for

1 \$160,000, to be paid from a \$10,000 non-refundable deposit already
2 paid to the Chapter 7 trustee and \$150,000 to be paid from a cashier's
3 check or transfer of immediately available funds within 30 days of the
4 entry of an order authorizing the sale.

5 Pursuant to 11 U.S.C. § 363(b)(1), the motion is granted and the
6 trustee is authorized to sell the property to Jeff and Tracy Oracek,
7 or an overbidder approved by the court at the hearing. The proceeds
8 of sale shall be administered as set forth in the motion.

9 The qualification and bidding procedures set forth in the notice
10 of hearing are approved. The initial bid shall be in the amount of
11 \$161,000, with subsequent bids in minimum \$1,000.00 increments.

12 No request for a finding of good faith has been made under 11
13 U.S.C. § 363(m) and the court makes no such finding.

14 The court notes that the debtors have filed opposition to this
15 motion on the grounds that the court does not have jurisdiction to
16 render a decision on this motion. The debtors argue that this court
17 is deprived of jurisdiction over this matter because the debtors filed
18 a notice of appeal with the district court. That notice appeals this
19 court's April 7, 2006, order denying the debtors' Motion for Full
20 Retroactive Disqualification of Judge and the Recusal of Judge to Hear
21 Instant Matter and all Subsequent Hearings, Etc. (Dkt. No. 524) In
22 their opposition to his motion, the debtors assert that because they
23 appealed that prior order, that this court no longer has jurisdiction
24 to render a decision on any matter related to their case.

25 That assertion is incorrect. The debtors rely on the general
26 rule that the filing of a notice of appeal divests the district court
27 of its jurisdiction over a case. Although the debtors have cited this
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1 general rule as the holding in the only bankruptcy case they cite, In
2 re Marino, 234 B.R. 767 (B.A.P. 9th Cir. 1999), they fail to recognize
3 the full extent of that holding. In particular, they fail to
4 recognize the applicability of the holding to situations in which a
5 party has filed a notice of appeal from a court's order in an ongoing
6 case. The Marino court stated the general rule for which the debtors
7 have cited its opinion, but went further to hold that the filing of a
8 notice of appeal divests the lower court of jurisdiction "over those
9 aspects of the case involved in the appeal." Id. at 769 (emphasis
10 added). The court went on to state that "while an appeal of an order
11 is pending, the trial court retains jurisdiction to implement or
12 enforce the order Courts thus distinguish between actions to
13 enforce the judgment, which are permissible, and actions to expand
14 upon or alter the judgment, which are prohibited." Id. at 770; see
15 also In re Padilla, 222 F.3d 1184, 1190 (9th Cir. 2001) ("Absent a stay
16 or supersedeas, the trial court also retains jurisdiction to implement
17 or enforce the judgment or order but may not alter or expand upon the
18 judgment."). "This principle serves to 'ensure the integrity of the
19 appellate process.' . . . This is true because in implementing an
20 appealed order, the court does not disrupt the appellate process so
21 long as its decision remains intact for the appellate court to
22 review." Marino, 234 B.R. at 769-70 (quoting In re Hagel, 184 B.R.
23 793, 798 (B.A.P. 9th Cir. 1995)).

24 The holdings in Marino and Padilla are not contradicted by the
25 other cases that debtors have cited for the general rule on which they
26 rely. Both Lewis v. Alexander, 987 F.2d 392, 394 (6th Cir. 1993) and
27 Norman v. Young, 422 F.2d 470 (10th Cir. 1970), involve facts and
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1 procedural postures that are distinguishable from this case. Each of
2 those cases raised the general rule asserted by the debtors in the
3 context of appeals taken from the final judgments of trial courts in
4 civil and criminal matters.

5 Here, the debtors appealed from the denial of a motion in their
6 case that did not constitute a final judgment in or disposition of
7 their bankruptcy case. The circumstances under which a bankruptcy
8 court may retain jurisdiction while an appeal from one of its orders
9 is pending as described in Marino and Padilla exist here. Since the
10 debtors filed their notice of appeal on July 27, 2006, the court has
11 proceeded to administer their case pursuant to and consistent with its
12 denial of the debtors' motion for disqualification and recusal.
13 Rendering a decision on the trustee's instant motion to sell real
14 property belonging to the estate does not alter or expand upon that
15 judgment. Therefore, the debtors' argument that this court lacks
16 jurisdiction to render a judgment on this motion is not supported by
17 law, and their objection is overruled.

18 Finally, the court notes that the debtors misquote the third case
19 they cite, United States v. Contents of Accounts Nos. 3034504504 and
20 144-07143, 971 F.2d 974 (3rd Cir. 1992). The court in that case stated
21 that "[t]he filing of a notice of appeal does not divest the district
22 court of jurisdiction to entertain a Rule 60(b) motion [relating to
23 the order or judgment on appeal]." Id. at 988 (initial emphasis
24 added). As such, the court in that case identified an exception to
25 the general rule upon which the debtors rely here. The case is
26 inapposite, as there is no Rule 60 motion currently before the court.