APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 18-14776

In re: SAMUEL C, MOHORNE,
Debtor.

SAMUEL C. MOHORNE,

Plaintiff – Appellant,

verses

BEAL BANK,
BROWARD COUNTY SHERIFF,

Defendants – Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(June 12, 2019)

Before WILLIAM PRYOR, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant is **DENIED**.
ENTERED FOR THE COURT:

_____
UNITED STATES CIRCUIT JUDGE

ORD-41

(June 12, 2019)

Before WILLIAM PRYOR, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

Samuel Mohorne, a former debtor proceeding *pro se*, appeals the district court's order affirming the bankruptcy court's denial of his motions to reopen his Chapter 13 bankruptcy proceedings, to stay state-court proceedings, and to take judicial notice of several prior court orders. We affirm.

I. The relevant facts, in brief, are as follows. In 2001, Mohorne executed a promissory note secured by a mortgage on certain real property. After Mohorne defaulted; Beal Bank ('Beal") moved to foreclose the mortgage. A Florida state court entered a final judgement of foreclosure in favor of Beal Bank in 2005, and Beal purchased the property at a court-ordered sale. After the sale, Mohorne filed several motions arguing that his property consisted of two lots—a vacant lot and a lot with a dwelling unit—and that the mortgage attached to the "partial-mortgage theory"-and held that the

mortgage covered both lots. That decision was upheld on appeal.

Later in 2005, Mohorne filed for Chapter 13 bankruptcy. The bankruptcy court granted Beal Bank relief from the automatic stay to allow it to complete the foreclosure process. Seeking to vacate the stay-relief order, Mohorne advanced his partial-mortgage theory in the bankruptcy court, but to no avail. Mohorne eventually received his Chapter 13 bankruptcy discharge in 2010, and the bankruptcy court closed his case in 2013.

In April 2017, Mohorne filed the instant motions to reopen the bankruptcy proceeding and stay the original foreclosure proceeding. The gist of these motions appears to be that, in prior bankruptcy proceedings, a bankruptcy court had ruled in his favor on the partial-mortgage theory, so subsequent courts should have been bound by that ruling.

II. In bankruptcy cases, "we independently examine the factual and legal determinations of the bankruptcy court and employ the same standards of review as the district court." *IBT Int'l, Inc. v. Northern (In re Int'l Admin. Servs., Inc.)*, 408 F.3d 689, 698 (11th Cir. 2005). We review a bankruptcy's grant or denial of a motion to reopen for an abuse of discretion. *See Slater v. United States Steel Corp.*, 871 F.3d 1174, 1186-87 (11th Cir. 2017) (*en banc*) (explaining that under 11 U.S.C. § 350(b), "the bankruptcy court retains broad discretion to reopen a closed case on a motion of the debtor or another party in interest"). We will not set aside a discretionary decision by the bankruptcy court unless the decision represents a clear error of

judgement. *Rasbury v. internal Revenue Serv.* (*In re Rasbury*), 24 F.3d 159, 168 (11th Cir. 1994).

A bankruptcy case may be reopen to administer assets, to accord relief to the debtor, or for "other cause." 11 U.S.C. § 350(b). in terms of "other cause," the bankruptcy code incorporates the standards of Rule 60(b), Fed. R. Civ.P. *See* Fed. R. Bankr. P. 9024. Under Rule 60(b), a party may relieved from a final judgement or order for several reasons. Among these are the following: newly discovered evidence, fraud or misrepresentation, the judgement is void or has been discharged or vacated, and "any other reason that justifies relief." Fed. R. Civ. P. 60(b).

Here, the bankruptcy court did not abuse its discretion by denying Mohorne's motion to reopen. Mohorne claims that rulings in prior bankruptcy proceedings (in 1999 and 2002) adopted his partial-mortgage theory, but the orders he references appear to involved the judgement liens of different creditors, not Beal's mortgage lien. Mohorne also asserts violations of a 2006 order of the bankruptcy court, but that order simply continued a hearing on a matter in the bankruptcy proceeding. None of the referenced orders provide any reason to reopen the bankruptcy proceeding. None of the referenced orders provide any reason to reopen the bankruptcy proceeding in 2017 for the apparent purpose of relitigating matters that having long since been resolved. The bankruptcy court therefore acted well within
its discretion by refusing to reopen the case. And because the motion to reopen was properly denied, so

too was the related motion to stay and take judicial notice.

The bulk of Mohorne's briefing is devoted to attacking the original state-court judgement and other orders in prior proceedings. But these matters are not at issue in this appeal. "It is well settled that an appeal from denial of Rule 60(b) relief does not bring up the underlying judgement for review." *Jackson v. Seaboard Coast Line R. Co.*, 678 F2d. 992, 1021 (11th Cir. 1982) (quotation marks omitted). "This is true even if the underlying judgement is erroneous." *Gibbs v. Maxwell House*, 738 F.2d 1153, 1155 (11th Cir. 1984). The only matter properly before us is the bankruptcy court's order denying Mohorne's motions to reopen and stay.

Mohorne also raises a few challenges to the district court's handling of his appeal of the bankruptcy court's order. In particular, Mohorne takes issue with the district court's denial of his request to proceed *in forma pauperis*, its authorization of Beal's filing of an untimely appellee's brief, its determination of the appeal without a hearing, and its alleged violation of our mandate in an earlier appeal. Any errors are harmless, however, because we have independently reviewed the bankruptcy court's order and concluded that the bankruptcy court did not abuse its discretion. *See In re Int'l Admin. Servs.*, 408 F.3d at 698For these reasons, the bankruptcy court's order is **AFFIRMED**.

July 18, 2019
MEMORANDUM TO COUNSEL OR PARTIES
Appeal Number: 18-14776-AA
Case Style: Samuel Mohorne v. Beal Bank, et al

District Court Docket No: 0:17-cv-61007-KMM
Secondary Case Number: 0:05-bkc-25836-JKO
The enclosed order has been entered on petition(s) for rehearing.
See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.
Sincerely,
DAVID J. SMITH, Clerk of Court
Reply to: T.L. Searcy, AA/It
Phone # (404) 335-6180

REHG-1 Ltr Order Petition Rehearing

APPENDIX B

District Court Docket Nos.
0:17-cv-61007-KMM; 05-bkc-25836-JKO

In re: SAMUEL C, MOHORNE,

Debtor.

SAMUEL C. MOHORNE,
Plaintiff – Appellant,

Verses

BEAL BANK,
BROWARD COUNTY SHERIFF,
Defendants – Appellees.

Appeal from the United States District Court for the Southern District of Florida

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JUDGEMENT
It is hereby ordered, adjudge, and decreed that the opinion issued on this date in this appeal is entered as the judgement of this Court.
Entered: February 12, 2018
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

ISSUED AS MANDATE 07/13/2018

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13534
Non-Argument Calendar

D.C. Docket Nos. 0:17-cv-61007-KMM; 05-bkc-25836-JKO

In re: SAMUEL C. MOHORNE,
Debtor.

SAMUEL C. MOHORNE,

Plaintiff-Appellant,

verse

BEAL BANK,
BROWARD COUNTY SHERRIFF,

Defendants - Appellees.

Appeal from the United States District Court
For the Southern District of Florida

(February 12, 2018)

Case: 17-13534 Date Filed 02/12/2018

Before WILSON, JORDAN, and ROSENBAUM, Circuit Judges,
PER CURIAM:

Samuel Mohorne appeals *pro se* from the district court's dismissal of his appeal from the bankruptcy court for failure to timely file his initial brief after he was denied an extension of time to file that brief. After careful review, we vacate and remand.

This appeal relates to Mohorne's bankruptcy case, which was closed in 2013. In April 2017, Mohorne filed a motion to reopen the bankruptcy case. The bankruptcy court denied that motion, and Mohorne appealed to the district court. Shortly after his appeal was docketed in the district court, Mohorne moved for an extension of time to file his brief, which Appellee Beal Bank opposed. On July 24, 2017, the day before Mohorne's brief was due, the district court denied the extension motion without prejudice because Mohorne did not indicate the length of extension sought. Three days later, when Mohorne failed to file his brief, in addition to a notice of appeal to this Court.

We review for an abuse of discretion the district court's dismissal of a bankruptcy appeal for

failure to prosecute. *See Pyramid Mobile Homes, Inc. v. Speake (in re Pyramid Mobile Homes, Inc.),* 531 F.2d 743, 746 (5th Cir. 1976). Likewise, we review a district court's decision to deny a request for an extension of a filing deadline for an abuse of discretion. *See Young v. City of Palm Bay, Fla.,* 358.F.3d 859, 863 (11th Cir. 2004).

The abuse-of-discretion standard is deferential and affords a range of choice to the district court. *Heffner v. Blue Cross & Blue Shield of Ala., Inc.,* 443 F.3d 1330, 1337 (11th Cir. 2006). Nevertheless, an abuse of discretion occurs if the court does not apply the proper legal standard, does not follow proper procedures in making the determination, or relies on clearly erroneous factual findings. *Id.*

In a bankruptcy appeal to the district court, the appellant has thirty days to file a brief "after the docketing of notice that the record has been transmitted or is available electronically." Fed. R. Bankr. P. 8018(a)(1). "[I]n its discretion," the district court may extend this time "for cause shown" either (1) with or without motion before the time to act has expired, or (2) on motion made after the time to act has expired "where the failure to act was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1). If the appellant fails to file a brief on time or within an extended time authorized by the district court, the court may dismiss the appeal, either on motion of the appellee or, "after notice," on the court's own motion. Fed. R. Bankr. P. 8018(a)(4).

In general, dismissal for failure to prosecute a bankruptcy appeal "is discretionary and should be considered in light of the prejudicial effect of delay on the appellee and the bona fides of the appellant." *In re Pyramid Mobile Homes. Inc., 531* F.2d at 746. While Rule 8018(a)(4) authorizes dismissal for failure to file a brief on time, we have concluded that "routine dismissal for failure to timely file briefs" is not appropriate. *Brake v. Tavormina (in re Beverly Mfg. Corp.)*, 778 F.2d 666,667 (11th Cir. 1985) (declining to adopt a "flexible standard requiring bad faith, negligence or indifference" before dismissal. *Id.*

Here, the district court abused its discretion by applying "a stringent rule of dismissal for failure to timely file briefs" that is inconsistent with the "flexible standard" we adopted in *In re Beverly Manufacturing. See Heffner,* 443 F.3d at 337. We see nothing in the record that indicates bad faith, negligence, or indifference on Mohorne's part. Mohorne timely asked for additional time to file his brief, citing "medical testing" and the need to "find new counsel," but the court did not deny his motion until the day before his brief was due. Then, two days after his brief was due, the court dismissed the appeal on its own motion without providing Mohorne [1]notice under Rule 8018(a)(4) and an opportunity to respond. Consequently, we conclude that the court abused its discretion by dismissing Mohorne's appeal. Beal Bank argues that Mohorne has

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[1] This Court adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. *Bonner v. City of Prichard,* 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*).

abandoned any challenge to the district court's decisions by failing to address the substance of those decisions in his briefing to this Court. It is well-established that, "[w]hile we read briefs filed by *pro se* litigants liberally, issues not briefed on appeal by a *pro se* litigant are deemed abandoned." *Timson v. Samoson,* 518 F.3d 870, 874 (11th Cir. 2008) (citations omitted). Here, however, we conclude that Mohorne's brief, liberally construed, adequately raises a challenge to the denial of his extension motion and the dismissal of his appeal. Mohorne asserted that the court erred in waiting nearly 30 days to rule on his extension motion, denying that motion, and then dismissing the case without providing him notice or additional time to file his brief. *See, e.g.,* Appellant's Br. At iv. ("The Court should have notified the pro se[,] permitting him ... time to file ... his brief[,] in writing prior to closing the case.").

Beal Bank also contends that the district court's *sua sponte* dismissal under Rule 8018 was proper. Specifically, Beal Bank argues that the court satisfied Rule 8018(a)(4)'s notice requirement for *sua sponte* dismissals, citing a district court decision, *Fohrmeister v. Puckett,* No. 8:17-cv-516, 2017 WL 2958919 (M.D. Fla. July 11, 2017). But *Fohrmeister* did not address Rule 8018(a)(4)'s notice requirement, as the appellee in that case had filed a motion to dismiss. *Id.*, *1; *see* Fed. R. Bankr. P. 8018(a)(4) (stating that dismissal must be "after notice" only is the court acts on its own motion). Plus, the appellant in that case had not moved for extension of time, as Mohorne did here, and the court expressly found that the appellant was

"either acting negligently or indifferently" under the standard announced in *In re Beverly Manufacturing Corp. See Fohrmeister, 2017 WL 2958919, *2.* The district made know similar findings in this case. Accordingly, *Fohrmeister* is clearly distinguishable.

Finally, Beal Bank argues that Mohorne's appeal is frivolous, in any event, se we should affirm the district court on that basis. It claims that we may look to the "the bona fides of the appellant" under *In re Pyramid Mobile Homes, Inc.'s* reference to the bona fides of the appellant" to mean the appellant's proffered reasons for her case. *See* 531 F.2d at 746 (measuring the appellant behavior in prosecuting the appeal against the prejudice to the appellee). And while we possess the power to affirm on any ground supported by the record, we conclude that the more prudent course of action in this case is simply remand this case is simply to remand this case back to the district court for further proceedings as appropriate under the circumstances.

For these reasons, we vacate the dismissal of Mohorne's appeal from the bankruptcy court and remand to the district court for further proceedings.

VACATED AND REMANDED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14776-FF

In re: SAMUEL MOHORNE,

Debtor.

SAMUEL C. MOHORNE,

Plaintiff - Appellant,

versus

BEAL BANK,
BROWARD COUNTY SHERIFF,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

BEFORE: WILLIAM PRYOR, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

ORD-41

Additional material from this filing is available in the Clerk's Office.