FILED
U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
November 1, 2005
Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE ROBERT JAMES SCHUBERT, Officer, Director and Shareholder of the Law Office RJ Schubert, PC, Member of Schubert & Associates, LLC, Debtor.	BAP No. CO-05-023
ROBERT JAMES SCHUBERT, Appellant, v. JOANNE BAUM, Appellee.	Bankr. No. 04-27003-SBB Chapter 7 ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Colorado

Before McFEELEY, Chief Judge, BOHANON, and MICHAEL, Bankruptcy Judges.

BOHANON, Bankruptcy Judge.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

Background

The Appellee is a creditor of the Appellant-Debtor ("Debtor") by virtue of representing his minor children in state court divorce proceedings as a "parenting evaluator" and "special advocate." The Debtor appeared pro se although he is a trained lawyer, but no longer practices.

The Debtor has filed a series of bankruptcy petitions; however, this episode began when he filed a motion pursuant to 11 U.S.C. § 362(h) seeking to hold the Appellee in contempt for an alleged violation of the automatic stay. The Appellee opposed the contempt motion.

In his contempt motion, the Debtor alleged that the Appellee had willfully violated the automatic stay by attempting to collect her fees in the state court by filing a Motion for Reduction to Judgment ("Appellee's Motion"). The Appellee defended the contempt motion by pointing out that the Appellee's Motion was not filed in the state court action while the Debtor was in bankruptcy. Instead, it was filed shortly before he filed this petition. The record supports this timeline of events leading to the Debtor's contempt motion:

1. April 13, 2004 – Debtor's prior Chapter 13 petition dismissed for failure to make payments.
2. July 27, 2004 – Appellee filed Motion for Reduction to Judgment
3. August 6, 2004 – Debtor files the instant Chapter 7 bankruptcy petition.
4. September 13, 2004 – Judgment entered by state court.[1]

It is obvious that the judgment was entered post-petition; however, the Appellee proffered that she did not take any action for entry of the judgment.

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[1] The Debtor did not present evidence at the hearing even though he was the moving party, but he conceded that the Appellee's motion was filed pre-petition. He further admitted that he had "misread" the date it was filed in state court. (See Appellant's Corrected App. at 43).

Rather, it was apparently entered by the state court as a matter of course when no objection was filed by the Debtor. (See Appellant's Corrected App. at 40-41).

Our reading of the hearing transcript shows that the Debtor did not realize that the Appellee's motion had been filed pre-petition. However, that fact was glaringly obvious by simply looking at the file-stamped date of the Appellee's state court motion.

At the conclusion of hearing, the bankruptcy court denied the Debtor's contempt motion, and counsel for the Appellee inquired about seeking sanctions against the Debtor. The bankruptcy court set deadlines for briefing the motion for sanctions against the Debtor and took the matter under advisement. Upon conclusion of briefing, the bankruptcy court entered a summary order granting the motion for sanctions and awarding the Appellee her costs and attorney's fees incurred in connection with defending against the contempt motion. This appeal followed.

Standard of Review

The applicable standard of review is the abuse of discretion standard. See Cooter & Gell v. Hartmax Corp., 496 U.S. 384, 405 (1990) ("Rather, an appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's Rule 11 determination. A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."). Accord Burkhart ex rel. Meeks v. Kinsley Bank, 852 F.2d 512, 515 (10th Cir. 1988) (holding that "this Circuit is committed to an 'abuse of discretion' standard of review" on motions for sanctions).

Discussion

The Debtor appeals the bankruptcy court's order awarding the Appellee

attorney's fees and costs associated with defending against his contempt motion.[2] In his brief, the Debtor also argues that the bankruptcy court's decision should be reversed because the bankruptcy court was biased against him. We need not address this argument since he never sought to disqualify the bankruptcy court.[3]

Rule 9011(b) of the Federal Rules of Bankruptcy Procedure provides that:

> By presenting to the court . . . a petition, pleading, written motion, or other paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances–
>
> (1) it is not being presented for any improper purpose . . . ;
>
> . . .
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Fed. R. Bankr. P. 9011(b).

Its purpose is to deter frivolous litigation and filings. See In re Lemons, 285 B.R. 327, 332-33 (Bankr. W.D. Okla. 2002) (Jackson, J.). Collier on Bankruptcy explains that the following factors are relevant in deciding a motion for sanctions:

- whether the improper conduct was willful or negligent;
- whether it was part of a pattern of activity or an isolated event;
- whether it infected the entire pleading or only one particular count or defense;
- whether the person has engaged in similar conduct in other litigation;
- whether it was intended to injure;

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[2] Specifically, the bankruptcy court awarded the Appellee attorney's fees in the amount of $1966.50 and costs in the amount of $49.05.

[3] The Debtor has also filed a motion to supplement the record to which there has been no objection. The proposed supplemental materials were never submitted to the bankruptcy court in any attempt to seek recusal or other relief. Therefore, we deny the Debtor's motion to supplement the record.

- what effect it had on the litigation process in time or expense;
- whether the responsible person is trained in the law;
- what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case;
- what amount is needed to deter similar activity by other litigants.

10 Collier on Bankruptcy ¶ 9011.07[1] (15th ed. rev.). See also In re Lemons, 285 B.R. at 333 (quoting Collier on Bankruptcy).

Here, the bankruptcy court did not set forth specific findings of fact for imposing sanctions. Rule 9011(c)(3) explicitly requires that a bankruptcy court describe the conduct that caused the imposition of sanctions and provide an explanation for the sanctions. See Fed. R. Bank. P. 9011(c)(3). Regardless of whether we believe the sanctions were appropriate, we are bound by the plain language of the rule to reverse and remand this matter to the bankruptcy court to set forth what conduct caused it to impose the sanctions and to explain its reasons.

Conclusion

Accordingly, the Court hereby REVERSES and REMANDS this matter for further proceedings consistent with this order and judgment.