UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
CIVIL 4-93-490

IN THE MATTER OF:

N. Walter Goins,

Appellant,

v. REPORT AND RECOMMENDATION

Committee of Unsecured Creditors, Sonlight Television, Donald R. Johnston, Trustee, and Wesley B. Husinga, United States Trustee,

Appellees.

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This bankruptcy appeal was referred to the undersigned United States Magistrate Judge for Report and Recommendation pursuant to 28 U.S.C. Section 636(b)(1)(B). The appeal is from a March 16, 1993 Order issued by United States Bankruptcy Chief Judge Robert J. Kressel, which imposed a total of $10,000.00 in sanctions on appellant N. Walter Goins under Rule 9011, Fed.R.Bankr.Pro.. See Order, Docket No. 1, at 53-124.

Appellant appeared pro se. Appellees submitted a joint brief and were represented by Thomas J. Lallier, Esquire; Larry Ricke, Esquire; and Steven Freeman, Esquire.

Based upon the record before the Court, it is recommended that the Order be affirmed.

BACKGROUND

The underlying proceedings in the Bankruptcy Court were extensive, and are set forth at pages 2-16 of Chief Judge Kressel's Order. See Docket No. 1 at 54-68. Additional background facts are found in appellee's brief. See Docket No. 8 at 2-5.

To summarize, appellant interposed himself in a bankruptcy proceeding filed by KTMA Acquisition Corporation on July 28, 1989. Appellant's involvement in the bankruptcy proceedings was based solely upon the fact that he had been a minority shareholder in Halcomm, Inc., a corporation that at one time had explored the possibility of merging with KTMA and several other entities. Although Halcomm and KTMA signed a letter agreement regarding the proposed merger on November 30, 1988, the transaction was later abandoned by mutual agreement of the parties.

On December 30, 1989, Halcomm's majority shareholder and largest creditor, Dale W. Lang, foreclosed on its assets, thereby substantially reducing the value of appellant's minority position.(FN1)

Appellant's frustration with these events apparently led him to file a Proof of Claim and numerous other documents in the KTMA

bankruptcy proceedings, and assert a claim against debtor KTMA based upon the 1988 letter agreement. See Order, Docket No. 1, at 55-66. Appellant's theory that he had a claim based upon the 1988 letter agreement was rejected by the Bankruptcy Court and by the District Court on appeal. See Goins v. Johnston, Civil 4-89-353 (D.Minn.) (Order of Judge David S. Doty dated April 27, 1992).

Appellees subsequently filed motions for sanctions under Rule 9011, Federal Rules of Bankruptcy Procedure. See Docket No. 1 at 177-213, 258-78. After an evidentiary hearing on November 4, 1992, at which appellant appeared and testified, Chief Judge Kressel entered the Order from which appellant now appeals.(FN2)

In the Order, Chief Judge Kressel made detailed findings concerning appellant's ability and experience in legal matters. Id. at 78-83. Chief Judge Kressel then reviewed each of the various pleadings and claims for relief filed by appellant in the Bankruptcy Court; as to each document, Chief Judge Kressel found that appellant had failed to make any reasonable inquiry into the relevant facts and applicable laws before filing the document. Id. at 84-113. Chief Judge Kressel found that "[e]ach and every piece of paper that was signed and filed by Goins violated Rule 9011." Id. at 114. Chief Judge Kressel further found that appellant filed a motion to quash a deposition subpoena for the improper purpose of harassing appellees. Id. at 117-18. Chief Judge Kressel found that appellant filed several documents for the improper purpose of delaying the bankruptcy proceedings. Id. at 119-121. Chief Judge Kressel concluded that appellant's behavior violated Rule 9011, and that sanctions were therefore required. id. at 121.

In considering an appropriate sanction, Chief Judge Kressel first noted that the primary purpose of Rule 9011 is to deter the filing of meritless claims, such as those filed by appellant, which unnecessarily delay and complicate litigation. Id. at 121-22. Chief Judge Kressel observed that "no litmus test" exists for determining an appropriate sanction, which is within a court's discretion. Id. at 123. Faced with a request from appellees for a sanction of $53,898.85, the amount of attorneys' fees they claimed they expended in defending against appellant's pleadings, the Court stated:

> The trustee's and the committee's fees and expenses are paid by the estate which reduces the distribution of unsecured creditors. Unfortunately, then, it is the creditors who bear the brunt of the of the cost of the Goins' lititgation. It is a cost which is forever mounting as Goins pursues various appeals as well as the separate civil action he brought against the trustee and his attorney in the district court.
>
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I consider the series of violations to be severe. However, other than [my] observation regarding Goins obvious education, intelligence, articulateness and his status as an owner of two television stations I know little about his ability to pay. Thus, I am in no position to award full compensatory sanctions.

However, it is essential that sanctions be sufficient to act as a deterrent to future violations. I am

therefore granting the trustee's and the committee's motions by awarding them a total of $8,000 in sanctions to be paid to the trustee to be added to the estate for distribution under the trustee's plan. I am also granting Sonlight's motion by awarding it $2,000 in sanctions.

Id. at 124.

DISCUSSION

Appellant designated ten issues on appeal. See Appellant's Statement of Issues, Docket No. 1, at 137-38. While appellant has proposed ten issues, this Court believes his appeal actually boils down to a single issue: whether the Bankruptcy Court abused its discretion when it sanctioned appellant under Rule 9011 based upon the motions and other pleadings he filed in the KTMA bankruptcy proceedings. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 401-05 (1990) (abuse of discretion standard applies to review of award of sanctions under Rule 11, Fed.R.Civ.P..); In re Coones Ranch, Inc., 7 F.3d 740, 743 (8th Cir. 1993) (applying Cooter to appeal from a bankruptcy order imposing sanctions).

In considering this appeal, this Court must also keep in mind that a Bankruptcy Court's findings of fact "shall not be set aside unless clearly erroneous ...." Bankruptcy Rule 8013; see also Coones, 7 F.3d at 743. In order to overturn the Bankruptcy Court's factual findings, whether based upon oral or documentary evidence, this Court must be firmly convinced that a mistake has been made. See In re Minnesota Utility Contracting, Inc., 110 B.R. 414, 416 (D.Minn. 1990) (MacLaughlin, J.).

Based upon a review of all the evidence presented and the arguments of the parties, this Court concludes that appellant has not shown any of the Bankruptcy Court's findings are "clearly erroneous." The evidence fully supports the Bankruptcy Court's findings that appellant repeatedly violated Rule 9011 by filing numerous unfounded pleadings for the improper purposes of delaying the bankruptcy proceedings and harassing appellees. It necessarily follows that the Bankruptcy Court did not abuse its discretion when it imposed monetary sanctions on appellant.

Appellant argues in his brief that the Bankruptcy Court failed to make adequate findings concerning his ability to pay $10,000.00 in sanctions. See Docket No. 6 at 19. This argument is meritless. Chief Judge Kressel considered appellant's obvious experience and ability, and his status as the past owner of two television broadcasting stations. See Docket No. 1 at 123. Chief Judge Kressel used his broad discretion and declined to award the full amount of sanctions suggested by appellees, which would otherwise have been justified by appellant's conduct, because he did not know whether appellant had the resources to pay such an award.(FN3) Id. The amount of the sanctions actually imposed by Chief Judge Kressel was reasonable. See, e.g., Coones, 7 F.3d at 742-44 (upholding award of $10,000 in sanctions against debtor and his attorney under Rule 9011 as "reasonable" even where debtor was about to lose his ranch through foreclosure; the bankruptcy court below had declined to order a requested award of $39,972.56 in attorneys' fees on the grounds that it was "too burdensome.").

Because appellant has not shown that the Bankruptcy Court abused its broad discretion under Rule 9011, the March 16, 1993 Order imposing monetary sanctions on appellant should be affirmed.

Appellees' Motion for Sanctions

Appellees have filed a motion for an additional award of sanctions on this appeal. See Motion, Docket No. 8, at 16-17. While this Court would appear to have the discretion to award sanctions for a frivolous or abusive bankruptcy appeal under Rule 11, Fed.R.Civ.P., the Court should decline to do so for the reasons discussed in Cooter, 496 U.S. at 405-09.

Appellant's Motion to Enlarge Time for Filing Brief

Appellant filed a motion to extend the time for filing his brief until a transcript was prepared and filed. See Motion, Docket No. 3. The Court has since accepted appellant's brief and considered his appeal on the merits. The motion is therefore moot.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the March 16, 1993 Order of the Bankruptcy Court be affirmed; that appellees' motion for additional sanctions (Docket No. 8) be denied; and that appellant's motion for an extension (Docket No. 3) be denied as moot.

FLOYD E. BOLINE
UNITED STATES MAGISTRATE JUDGE

DATED: March 28, 1994

Pursuant to D. Minn. Local Rule 72.1(c)(2) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by April 11, 1994, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

(FN1) Appellant filed suit against Lang and others in Goins v. Lang, et al., Civil 4-92-154 (D.Minn.). Judge MacLaughlin granted defendants' motion for summary judgment, and the ruling was upheld on appeal. See Goins v. Lang, 996 F.2d 1221 (8th Cir. 1993).

(FN2) Appellant did not designate the transcript of the November 4, 1992 hearing as part of the record on appeal. See Appellant's Designation of Record, Docket No. 1, at 135; see also Transcript of Hearing on September 2, 1992, Docket No. 4; Motion to Enlarge Time, Docket No. 3 (referencing only the transcript of the September 2, 1992 hearing). At the September 2, 1992 hearing, appellee's motions for sanctions were continued. See Docket No. 4.

(FN3) In a situation involving abusive conduct by an apparently sophisticated and resourceful party, the Bankruptcy Court should consider allowing limited discovery directed at determining the offending party's ability to pay sanctions. In this case, the sanctions imposed by the Bankruptcy Court were not so large that they would be unduly burdensome to the vast majority of litigants, and there is no evidence that appellant is in fact unable to pay

those sanctions. On the other hand, a resourceful party bent on frustrating judicial proceedings might consider a $10,000.00 sanction to be a mere cost of litigation, thereby completely frustrating the deterrent purpose of Rule 9011. Absent evidence that a party falls into this category, imposition of a greater sanction than was applied in this case might well be an abuse of the Bankruptcy Court's discretion. It is, of course, incumbent on the party seeking sanctions to obtain and present evidence to the Court which will fully support the Court's determination of an appropriate monetary sanction.