

Appeal
Dismissal of appeal-Equitable grounds
Dismissal of appeal-Mootness
Mootness

In re Smith; Dist. Ct. Misc. No. 08-7020-AA
Bankruptcy Case No. 97-62183-aer7

3/3/09

Aiken

A Chapter 7 Debtor appealed to the District Court the Bankruptcy Court's order approving the Chapter 7 Trustee's final account and authorizing distribution. By the terms of that order, distribution by the Chapter 7 Trustee was delayed for 30 days to allow the Debtor to seek a stay pending appeal. Debtor did not timely seek a stay. The estate was distributed. Debtor then sought a stay, which the Bankruptcy Court denied. The Chapter 7 Trustee then moved to dismiss the appeal as moot.

The District Court granted the motion. Because some of the estate had been distributed to a non-party, neither the District Court nor the Bankruptcy Court could fashion effective relief related to Debtor's legal challenges. Further, because Debtor failed to timely seek a stay, even if the distribution of the estate did not render the appeal moot, the appeal would be dismissed on equitable grounds.

E09-2(3)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:

GERALDINE K. SMITH,
Debtor.

Misc. No. 08-7020-AA

Bankruptcy Case No.
97-62183-aer7

AIKEN, Judge:

Appellant Geraldine Smith, appearing *pro se*, appeals a final order of the bankruptcy court. Trustee Eric. T. Roost moves for an order dismissing the appeal on grounds that the appeal is moot. The motion is granted.

On July 23, 2008, the bankruptcy court issued an Order Approving Final Report, Final Fees and Authorizing Distribution. The Order directed Trustee Roost to distribute the estate thirty days after entry of the order, provided no stay of the order was granted. Similarly, in a previous letter opinion, the bankruptcy court ordered the Trustee to wait thirty days before distributing

the estate to allow "any party in interest to obtain a stay of the Distribution Order." Letter Opinion, p. 17. On August 4, 2008, appellant filed a Notice of Appeal; however, appellant did not seek a stay of the Order Approving Final Report. Accordingly, Trustee Roost distributed the estate and disbursed funds as ordered by the bankruptcy court.

On September 2, 2008, Trustee Roost informed the bankruptcy court that the estate had been distributed. On the same day, appellant filed an emergency motion to stay the Order Approving Final Report pending appeal. However, the bankruptcy court denied the motion, finding that it appeared to be moot because the estate had been distributed and that appellant was not entitled to a stay pending appeal regardless. On September 29, 2008, Trustee Roost filed a Final Account, and on September 30, 2008, the bankruptcy court issued an Order Approving Trustee's Account, Discharging Trustee, and Closing Estate.

Trustee Roost now moves for dismissal of appellant's appeal. Trustee Roost confirms that the estate was distributed according to the bankruptcy court's order and argues that this court can no longer fashion any effective relief. I agree.

The Trustee distributed the estate in accordance with the bankruptcy court's order of July 23, 2008, and appellant herself received funds in the amount of \$19,350.73. Because some funds of the estate were disbursed to a non-party, neither this court nor

the bankruptcy court can fashion effective relief related to appellant's legal challenges, such as they are, to the Order Approving Final Report. See In re Schafler, 280 Fed. Appx. 648 (9th Cir. May 28, 2008) (citing In re Nat'l Mass Media Telecomm. Sys., Inc., 152 F.3d 1178, 1180 (9th Cir.1998)).

Moreover, appellant failed to seek a stay of the order until September 2, 2009, despite the fact that the bankruptcy court allowed her thirty days, until August 23, 2008, in which to do so. Given the litigious nature of these bankruptcy proceedings, it strains credulity that appellant was unaware of the Order Approving Final Report or her right to seek a stay pending appeal. Therefore, even if the distribution of the estate does not render her appeal moot, I dismiss her appeal on equitable grounds.

CONCLUSION

The Trustee's Motion to Dismiss Appeal as Moot (Bankruptcy Case No. 97-62183-aer7, doc. 1024) is GRANTED. Appellant's appeal is HEREBY DISMISSED, and all pending motions are denied as MOOT. IT IS SO ORDERED.

DATED this 3 day of March, 2009.



Ann Aiken

United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

In Re:

GERALDINE K. SMITH,

Debtor.

Misc. No. 08-7020-AA

**Bankruptcy Case No.
97-62183-aer7**

JUDGMENT

Appellant's appeal is hereby dismissed.

Dated: March 3, 2009.

MARY L. MORAN, ACTING CLERK OF COURT

by: /s/ Leslie Engdall
Leslie Engdall, Deputy

JUDGMENT

DOCUMENT NO: _____