

In re Stein, Case No. 392-33885-rld7

7/10/00* 9th Cir, dismissing appeal Unpublished

The Ninth Circuit dismissed this appeal based on appellants' lack of standing to appeal a bankruptcy court order, entered pursuant to BR 9019, which approved a settlement between the State of Oregon and the bankruptcy trustee. The district court previously had affirmed the bankruptcy court's order.

The State had been allowed to intervene in a district court action in which the trustee, as plaintiff, had obtained punitive damage awards against Appellants in the aggregate amount of \$1,456,000. The State sought to amend the August 7, 1997, judgment to include the State as a judgment creditor as to the punitive damages as contemplated by O.R.S. 18.540. The State and the trustee entered an agreement with respect to the division of the punitive damage award proceeds. The effect of the settlement would be to resolve the dispute without amending the judgment. Appellants, who had not received notice of disposition of post-judgment motions in time to make a timely appeal of the judgment, opposed the settlement on the basis that the judgment must be amended to effectuate O.R.S. 18.540.

Because the order approving the agreement had no pecuniary effect on Appellants, whose liability as judgment debtors was fixed by the underlying judgment, Appellants lacked standing in the appeal. Appellants were legally obligated to satisfy the judgment irrespective of the settlement between the trustee and the State.

P00-1(7)

See Summary re District Court action at P93-20(20).
See also P96-21(13), P97-25(18), P97-26(6), P97-27(3),
P98-12(10), and P99-6(8).

*Petition for rehearing denied 8/9/00.

JUDGMENT

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AUG 22 2000

LODGED _____ REC'D _____
PAID _____ DOCKETED _____

NO. 99-35826
CT/AG#: CV-99-00786-FR

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON
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FILED

In re: Alexander V. Stein, Debtor

BURTON & GORDON, P.C. aka BURT VETTERLEIN & BUSHNELL, P.C.
aka BURT & VETTERLEIN, P.C. ; ROBERT G. BURT

Appellants

v.

JOHN MITCHELL, as trustee for the bankruptcy estate of
Alexander Stein

Trustee - Appellee

and

STATE OF OREGON, Crime Victims Assistance;

Appellee

Certified to be a true and correct
copy of original filed in my office.
Dated 8/17/00
Donald M. Cinnamon, Clerk
By e. ruddy Deputy

APPEAL FROM the United States District Court for the
District of Oregon (Portland) .

ON CONSIDERATION WHEREOF, It is now here ordered and
adjudged by this Court, that the APPEAL in this cause
be, and hereby is dismissed. Costs taxed against Appellants

Filed and entered JULY 10, 2000

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
AUG 17 2000
by: [Signature]
Deputy Clerk

318
236

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG - 9 2000

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

In re ALEXANDER V. STEIN,

Debtor.

BURT & GORDON, P.C. aka BURT
VETTERLEIN & BUSHNELL, P.C. aka
BURT & VETTERLEIN, P.C.; ROBERT G.
BURT,

Plaintiffs-Appellants,

v.

JOHN MITCHELL, as trustee for the
bankruptcy estate of Alexander Stein,

and

STATE OF OREGON, Crime Victims
Assistance,

Defendants-Appellees.

No. 99-35826

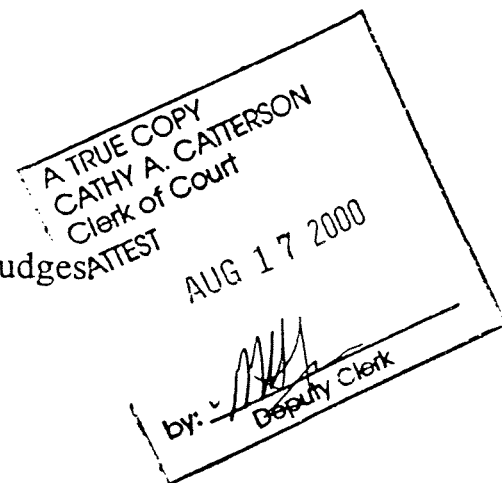
D.C. No. CV-99-00786-HJF

B.C. No. 392-33885-RLD

ORDER

Before: LAY,¹ TASHIMA, and McKEOWN, Circuit Judges

The petition for rehearing is DENIED.



¹ Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit Court of Appeals, sitting by designation.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 10 2000

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

In re ALEXANDER V. STEIN,

Debtor.

BURT & GORDON, P.C. aka BURT
VETTERLEIN & BUSHNELL, P.C. aka
BURT & VETTERLEIN, P.C.; ROBERT G.
BURT,

Plaintiffs-Appellants,

v.

JOHN MITCHELL, as trustee for the
bankruptcy estate of Alexander Stein,

and

STATE OF OREGON, Crime Victims
Assistance,

Defendants-Appellees.

No. 99-35826

D.C. No. CV-99-00786-HJF
B.C. No. 392-33885-RLD

MEMORANDUM¹

Appeal from the United States District Court
for the District of Oregon
Helen J. Frye, District Judge, Presiding

¹ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Submitted May 5, 2000²
Portland, Oregon

Before: LAY,³ TASHIMA, and McKEOWN, Circuit Judges.

Appellants Burt & Gordon and Robert G. Burt (collectively “Burt & Gordon”) appeal the district court’s decision affirming the bankruptcy court’s approval of a settlement agreement between appellees trustee John Mitchell and the State of Oregon. We have jurisdiction under 28 U.S.C. § 1291.

Mitchell, as trustee for the bankruptcy estate of Alexander Stein, brought an adversary action in federal district court against Burt & Gordon, the debtor’s law firm, in August 1992. The action ended in a judgment in Mitchell’s favor which included an award of punitive damages totaling \$1,456,000.

Oregon law provides that the State “shall become” a judgment creditor as to the punitive damage portion of a judgment in certain proceedings. O.R.S. § 18.540(1). The statute establishes a formula that allocates the punitive component of the award between the prevailing party and the State. Id. The State was not named in the caption of the trustee’s judgment as a judgment creditor and therefore

² The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

³ Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit Court of Appeals, sitting by designation.

filed a motion to intervene in the action and a motion to amend the judgment to include the State as a judgment creditor in accord with § 18.540(1). While the State's motions were pending, the State and the trustee entered into a settlement agreement that divided the punitive damage portion of the judgment largely along the lines of the allocation formula set forth in the statute.

The trustee petitioned the bankruptcy court for approval of the agreement. See Fed. R. Bank. Proc. 9019(a) ("On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."). Burt & Gordon filed objections to the settlement. The bankruptcy court "considered the argument of counsel, its file herein," and approved the settlement. Burt & Gordon appealed, and the district court affirmed. Because neither Burt nor Burt & Gordon has standing to appeal the bankruptcy court's order, we dismiss the appeal. See Fondiller v. Robertson (In re Fondiller), 707 F.2d 441 (9th Cir. 1983) (dismissing appeal for lack of standing).

"Only those persons who are directly and adversely affected pecuniarily by an order of the bankruptcy court . . . have standing to appeal that order." Fondiller, 707 F.2d at 442. A person is "aggrieved" if the bankruptcy court's order diminishes his property, increases his burdens, or detrimentally affects his rights. Id.; see also Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C.), 177 F.3d 774, 777

(9th Cir. 1999). Although the district court did not make a specific finding as to whether Burt & Gordon were “aggrieved” for standing purposes, we may determine the issue ourselves because the relevant facts and evidence are before us. See McClellan Fed. Credit Union (In re Parker), 139 F.3d 668, 670 (9th Cir. 1998).

The State and the bankruptcy trustee elected to settle their respective claims to the punitive damage award by compromise. The bankruptcy court’s order approving that agreement has no pecuniary effect on Burt & Gordon, whose liability as the judgment debtor is fixed by the underlying judgment. Nothing about the agreement approved by the bankruptcy court diminishes Burt & Gordon’s property, increases its burdens, or detrimentally affects its rights. Burt & Gordon are legally obligated to satisfy the judgment irrespective of the trustee’s settlement agreement with the State.

APPEAL DISMISSED.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
AUG 17 2000
