

In re Sam Jeffries

Dist. Ct. Case # 95-28
Bankr. Case # 692-65237-fra7

In re James Jeffries

Dist. Ct. Case # 95-29
Bankr. Case # 692-65238-fra7

8/29/96

Hogan, CJ

Unpublished

Sam and James Jeffries filed separate appeals in District Court on October 1, 1993, challenging the bankruptcy court's order approving the trustee's sale of stock in Jeffries Development Corp.(JDC), 3-J's, Inc., and Bar J Forest Products, Inc. No stay pending appeal was obtained with regard to the JDC and 3-J's stock and it was conveyed to Harvey and Clarice Denison. The Denisons filed a motion to dismiss the appeal based on appellants' failure to file a timely appellant brief and excerpt of record and to dismiss in part based on their purchase of the JDC and 3-J's stock. The District Court granted the motion to dismiss and the bankruptcy court dismissed the complaint on the ground that the District Court had dismissed the appeal.

Appellants thereafter filed a motion to vacate the order dismissing appeal arguing that dismissal of the Bar-J portion of the appeal was the result of clerical error. In denying the motion to vacate, the District Court stated that under local rules the appellants had 40 days to file their opening brief and excerpt of record after entry of the appeal on the court docket; they were filed, however, 42 days after that date. As there was no error or mistake, there were no grounds under FRCP 60(a) or 60(b)(1) to vacate the order dismissing appeal.

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

AUG 23 1996

TERENCE H. DUNN, CLERK

BY *R* DEPUTY.

Rec'd 9-10-96

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CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
EUGENE, OREGON

BY

92-65237-7
F2A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re	)	
	)	Case No. 95-28
SAM SCOTT JEFFRIES,	)	
	)	ORDER
Debtor.	)	
_____	)	

Debtor Sam Jeffries (appellant) has filed a Motion (#7) to Vacate this court's January 4, 1993 Order (#6) dismissing his appeal. Harvey and Clarice Denison (the Denisons), creditors who purchased property of appellant's estate subsequent to the January 4, 1994 Order, have filed a Motion (#12) to Dismiss in the event appellant's appeal is reinstated.

BACKGROUND

On October 1, 1993, Sam Jeffries (appellant) filed an appeal in this court challenging the bankruptcy court's order approving the trustee's sale of stock in Jeffries

Debtor's motion was filed on November 4, 1994, but has been stayed pending related federal and state proceedings.

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Development Corporation (JDC), 3-J's, Inc. (3-J's), and Bar-J Forest Products, Inc. (Bar J). Appellant did not obtain a stay of the bankruptcy court's Order approving the sale of JDC and 3J's stock, and the trustee conveyed this stock to the Denisons in September, 1993. Appellant did obtain a stay with regard to the Bar-J stock.

In October, 1993, the Denisons filed a Motion (#1) to Dismiss the Appeal based on appellant's failure to file a timely appellate brief and excerpt of record and a Motion (#2) to Dismiss in Part based on their purchase of the JDC and 3-J's stock from the trustee. Appellant filed a Response (#4) to Motion to Dismiss stating that he did not oppose the Motion (#2) to Dismiss in Part but did oppose dismissal of the appeal in its entirety.

A telephone argument was held on January 4, 1994, during which the court stated its "initial inclination is to deny the appeal filed on procedural grounds." #7 in 93-29. After argument, the court entered a minute order granting both the Denisons' Motion (#1) to Dismiss and Motion (#2) to Dismiss in Part. #6. On October 24, 1994, the bankruptcy court dismissed the Complaint with prejudice on the ground that this court had dismissed the appeal. On November 3, 1994, the trustee assigned the estate's Bar-J stock to the Denisons.

On November 4, 1994, appellant filed a Motion (#7) to Vacate the Order Dismissing Appeal, arguing that the

dismissal of the Bar-J portion of the appeal was the result of clerical error. The Denisons filed a Motion (#12) to Dismiss the Bar-J portion of the appeal in the event it is reinstated.

DISCUSSION

Federal Rule of Civil Procedure 60(a) permits a court to correct clerical errors in judgments or orders on its own initiative or upon motion by a party. Federal Rule of Civil Procedure 60(b)(1) allows a court to relieve a party of a judgment predicated on mistake, inadvertence, surprise, or excusable neglect.

In this case, there is no evidence that the dismissal of the appeal was predicated on mistake, neglect or inadvertence by either clerk or party. Under Local Rule 2200-6, appellant's opening brief and excerpt of record were due 40 days after entry of the appeal on the court docket.

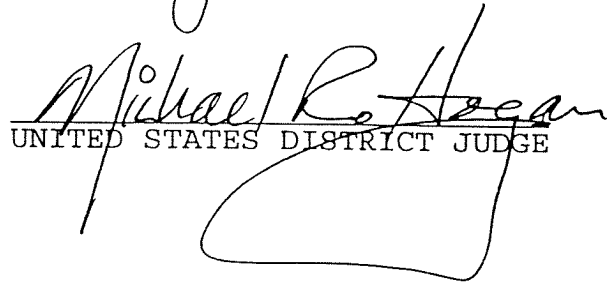
The appeal was docketed on August 20, 1993. See #103 in Case No. 92-65237. Appellant's Opening Brief and Excerpt of Record were filed October 1, 1993, 42 days after docketing of the appeal. See #s 113 and 114 in Case No. 92-65237. Because the court's Order dismissing the appeal was based on a procedural ground rather than a mistake, appellant's Motion (#7) to Vacate the Order of Dismissal is denied.

CONCLUSION

October 1, 1993 was a Friday, and neither September 29 nor 30 was a holiday.

Appellant's Motion (#7) to Vacate the Order of Dismissal is denied. The Denisons' Motion to Dismiss (#12) is denied as moot.

DATED this 29th day of August, 1996


UNITED STATES DISTRICT JUDGE

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

AUG 29 1996

TERENCE H. DUNN, CLERK

BY *hr* DEPUTY.

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FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
EUGENE, OREGON

BY

92-65238-7

FRA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re

JAMES W. JEFFRIES,

Debtor.

Case No. 95-29

ORDER

Debtor James Jeffries (appellant) has filed a Motion (#8) to Vacate this court's January 4, 1993 Order (#6) dismissing his appeal. Harvey and Clarice Denison (the Denisons), creditors who purchased property of appellant's estate subsequent to the January 4, 1994 Order, have filed a Motion (#11) to Dismiss in the event appellant's appeal is reinstated and a Motion (#27) to Strike based on the alleged untimeliness of appellant's Motion (#8) to Vacate the Order of Dismissal.

BACKGROUND

On October 1, 1993, James Jeffries (appellant) filed an

Debtor's motion was filed on November 4, 1994, but has been stayed pending related federal and state proceedings.

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appeal in this court challenging the bankruptcy court's order approving the trustee's sale of stock in Jeffries Development Corporation (JDC), 3-J's, Inc. (3-J's), and Bar-J Forest Products, Inc. (Bar J). Appellant did not obtain a stay of the bankruptcy court's Order approving the sale of JDC and 3J's stock, and the trustee conveyed this stock to the Denisons in September, 1993. Appellant did obtain a stay with regard to the Bar-J stock.

In October, 1993, the Denisons filed a Motion (#1) to Dismiss the Appeal based on appellant's failure to file a timely appellate brief and excerpt of record and a Motion (#2) to Dismiss in Part based on their purchase of JDC and 3-J's stock from the trustee. Appellant filed a Response (#4) to Motion to Dismiss stating that he did not oppose the Motion (#2) to Dismiss in Part but did oppose dismissal of the appeal in its entirety.

A telephone argument was held on January 4, 1994, during which the court stated its "initial inclination is to deny the motion filed on procedural grounds." #7 in 93-29. After argument, the court entered a minute order granting both the Motion (#1) to Dismiss and the Motion (#2) to Dismiss in Part. #6. On October 24, 1994, the bankruptcy court dismissed the Complaint with prejudice on the ground that this court had dismissed the appeal. On November 3, 1994, the trustee assigned the estate's Bar-J stock to the Denisons.

On November 4, 1994, appellant filed a Motion (#8) to Vacate the Order Dismissing Appeal, arguing that the dismissal of the Bar-J portion of the appeal was the result of clerical error. The Denisons filed a Motion (#11) to Dismiss the Bar-J portion of the appeal in the event it is reinstated and a Motion (#27) to Strike the Motion (#8) to Vacate due to its allegedly untimely filing under Federal Rule of Civil Procedure 60(b).

DISCUSSION

Federal Rule of Civil Procedure 60(a) permits a court to correct clerical errors in judgments or orders on its own initiative or upon motion by a party. Federal Rule of Civil Procedure 60(b)(1) allows a court to relieve a party of a judgment predicated on mistake, inadvertence, surprise, or excusable neglect.

In this case, there is no evidence that the dismissal of the appeal was predicated on mistake, neglect or inadvertence by either clerk or party. Under Local Rule 2200-6, appellant's opening brief and excerpt of record were due 40 days after entry of the appeal on the court docket. The appeal was docketed on August 20, 1993. See #106 in Case No. 92-65238. Appellant's Opening Brief and Excerpt of Record were filed October 1, 1993, 42 days after docketing of the appeal. See #s 115 and 116 in Case No. 92-65238.

October 1, 1993 was a Friday, and neither September 29 nor 30 was a holiday.

Because the court's Order dismissing the appeal was based on a procedural ground rather than a mistake, appellant's Motion (#8) to Vacate the Order of Dismissal is denied.

CONCLUSION

Appellant's Motion (#8) to Vacate the Order of Dismissal is denied. The Denisons' Motion (#11) to Dismiss and Motion (#27) to Strike are denied as moot.

DATED this 29th day of August, 1996.


UNITED STATES DISTRICT JUDGE