

Notice of Appeal
FRBP 8002(a)
FRBP 8002(c)(1)
FRBP 8002(c)(2)

In Re Geraldine K. Smith

Dist Ct. Misc. # 03-08-AA
Main Case # 697-62183-aer7

9/22/03

Aiken
Dismissing appeal

Unpublished

The Bankruptcy Court entered an order on Debtor's objection to a secured claim. Debtor then moved for reconsideration/additional findings. That motion was denied. Seventeen days later, Debtor filed her notice of appeal with the District Court. Creditor moved to dismiss the appeal. Debtor objected to dismissal, and more than 60 days from the order denying the motion to reconsider, filed with the District Court, a motion for extension of time to file her notice of appeal. The motion for extension was based on inadvertence and excusable neglect, alleging the Bankruptcy Court sent the Order denying her motion for reconsideration to the wrong address, thus delaying her notice thereof.

The District Court granted the motion to dismiss the appeal. Debtor did not file a notice of appeal within the 10 day period of FRBP 8002(a), nor had she timely moved within the 10 day (or 20 days past the 10 days, if excusable neglect) period under FRBP 8002(c)(2) for an extension of time to file a notice of appeal. The requirements of FRBP 8002 are jurisdictional. Debtor's motion filed with the District Court was insufficient as under FRBP 8002(c)(1), only the Bankruptcy Court may extend the time for filing a notice of appeal.

E03-10(4)

Lichtig

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DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:

GERALDINE K. SMITH,

Case No. Misc. 03-08-AA

Debtor.

Bankruptcy Case No. 697-62183-aer7

AIKEN, Judge:

Appellant Geraldine Smith, appearing pro se, appeals a ruling of the Bankruptcy Court. Creditor Gold Country Lenders, Inc. ("GCL") moves for an order dismissing the appeal. GCL maintains that appellant did not file a timely notice of appeal, and that the court thus lacks jurisdiction over the appeal. The motion is granted.

On April 15, 2003, after issuing a letter opinion, the bankruptcy court issued its "Claims Order on Remand." Issued upon remand from the Ninth Circuit Court of Appeals, the order allowed a claim of GCL, with an unpaid balance of \$883.96, plus interest. On April 25, appellant filed a motion for Additional or Different Findings and for Clarification and Modification of the Order entered on April 15. Appellant sought clarification as to which portions of the April 15 Order were final, because the Order provided, "This Order is subject to recalculation when all attorney's fees have been finally determined by

1 - OPINION AND ORDER

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1 the court." Appellant also sought reconsideration of the post-judgment
2 interest awarded to GCL. On April 29, 2003, appellant's motion was
3 denied.

4 On May 16, 2003, appellant filed a notice of appeal with this
5 court. Prior to filing such notice, appellant did not file a written
6 motion to extend time with the bankruptcy court. On June 13, 2003, GCL
7 filed its motion to dismiss on the ground that appellant's notice of
8 appeal was untimely. On July 8, 2003, appellant objected to GCL's
9 motion and filed a Motion for Extension of Time to File Appeal on
10 grounds of inadvertence and excusable neglect.

11 Appellant maintains that the Bankruptcy Court sent the April 29
12 Order to an incorrect address, and appellant did not learn of the
13 Court's order until May 6 and did not receive the Order until May 9.
14 Appellant states that she called the Bankruptcy Court on May 6, and
15 requested an extension of time to determine whether she should file an
16 appeal. Appellant claims that she did not receive a response from the
17 court and felt that such an extension would be "automatic," because she
18 did not receive the Order dated April 29 until May 9.

19 A notice of appeal must be filed "within 10 days of the date of the
20 entry of the judgment, order, or decree appealed from." Fed. R. Bankr.
21 P. 8002(a). "The provisions of Bankruptcy Rule 8002 are jurisdictional;
22 the untimely filing of a notice of appeal deprives the appellate court
23 of jurisdiction to review the bankruptcy court's order." In re
24 Mouradick, 13 F.3d 326, 327 (9th Cir. 1994). In other words, if a
25 notice of appeal is not filed in a timely matter, the district court has
26 no authority to hear the appeal.

27 With some exceptions not applicable here, "the bankruptcy judge may
28 extend the time for filing the notice of appeal by any party"

1 Fed. R. Bankr. P. 8002(c)(1). A motion to extend the time for filing a
2 notice of appeal must be made within the 10-day appeal period, although
3 a request made no more than 20 days after the expiration of the 10-day
4 period may be granted upon a showing of excusable neglect.¹ Fed. R.
5 Bankr. P. 8002(c)(2). If the court grants the motion for extension, the
6 notice of appeal must be filed no later than 30 days after entry of the
7 judgment, order or decree. Id. "A motion for an extension filed more
8 than 20 days after the expiration of the 10 day period is untimely
9 without regard to excusable neglect and is properly denied." In re
10 Martinez, 97 B.R. 578, 580 (9th Cir. BAP 1989), aff'd Martinez v. Peelle
11 Financial Corp., 919 F.2d 145 (9th Cir. 1990).

12 Here, appellant filed her notice of appeal beyond the ten-day
13 appeal period. Further, appellant failed to file a written motion to
14 the bankruptcy court to extend the time for filing an appeal within the
15 20-day period allowed under Rule 8002(c)(2). Appellant's motion filed
16 in this court is insufficient, because only the bankruptcy court, not
17 the district court, may extend the time for filing a notice of appeal.
18 Fed. R. Bankr. P. 8002(c)(1). The court appreciates appellant's pro se
19 status and, given the circumstances, finds that she has not acted in bad
20 faith. However, the court must adhere to the law as set forth by the

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22 ¹Federal Rule of Bankruptcy Procedure Rule 8002(c)(2) provides:

23 A request to extend the time for filing a notice of appeal
24 must be made by written motion filed before the time for
25 filing a notice of appeal has expired, except that such a
26 motion filed not later than 20 days after the expiration of
27 the time for filing a notice of appeal may be granted upon a
28 showing of excusable neglect. An extension of time for
filing a notice of appeal may not exceed 20 days from the
expiration of the time for filing a notice of appeal
otherwise prescribed by this rule or 10 days from the date
of entry of the order granting the motion, whichever is
later.

1 Federal Bankruptcy Rules and the Court of Appeals for the Ninth Circuit.
2 Under those rules, appellant's notice of appeal is untimely, and the
3 court has no authority to hear this appeal.

4 CONCLUSION

5 Appellee's Motion to Dismiss Appeal (Bankruptcy Case No. 697-62183-
6 aer7, doc. 636) is GRANTED. Appellant's Appeal is HEREBY DISMISSED.
7 IT IS SO ORDERED.

8 DATED this 18 day of September, 2003.

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11 Ann Aiken
12 United States District Judge
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