

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

Kristine Brecht v. Michael Klein, et al.

Brecht · No. C24-1949JLR · Decided November 26, 2025

OPINION

Kristine Brecht v. Michael Klein, et al.

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

8

AT SEATTLE

9

10 KRISTINE BRECHT, CASE NO. C24-1949JLR

11 Appellant, ORDER v. 12 MICHAEL KLEIN, et al., 13 Appellees. 14

15 I. INTRODUCTION

16 Before the court are Appellant Kristine Brecht’s two motions: (1) a motion for 17 entry of a
comfort order authorizing the sale of certain real property (the “Property”) 18 while preserving
Ms. Brecht’s rights to proceeds (MFC (Dkt. # 28); Reply (Dkt. # 31)) 19 and (2) a motion for
reconsideration of the court’s October 16, 2025 Order awarding 20 attorneys’ fees, costs, and
damages (MFR (Dkt. # 29); see 10/16/25 Order (Dkt. # 25)). 21 Although Ms. Brecht
characterizes her motion for reconsideration as being made under 22 Federal Rule of Civil
Procedure 59(e), (see MFR), the court construes the motion as a 1 motion for rehearing under
Federal Rule of Bankruptcy Procedure 8022 (“Rule 8022”). 2 See *In Re Silver*, No. 2:25-cv-
00149-FWS, 2025 WL 2238728, at *1–2 (C.D. Cal. July 3 15, 2025) (compiling cases and
construing an appellant’s Federal Rule of Civil Procedure 4 59(e) motion as a motion for
rehearing under Rule 8022). Appellees oppose the motion 5 for a comfort order.¹ (Resp. (Dkt. #
30).) Appellees raise threshold questions about the 6 court’s subject matter jurisdiction in light of
Ms. Brecht’s pending appeal before the 7 Ninth Circuit Court of Appeals and offer to provide
additional briefing for the motion for 8 comfort if invited to do so by the court. (Id.) The court has
considered the parties’ 9 submissions, the relevant portions of the record, and the applicable law.
Being fully 10 advised,² the court DENIES Ms. Brecht’s motion for reconsideration and
ORDERS the 11 parties to file supplemental briefing regarding Ms. Brecht’s motion for a comfort
order.

12 II. BACKGROUND

13 The court set forth much of the factual and procedural background of this matter in 14 its prior orders and does not repeat that background here except as relevant. (See, e.g., 15 8/12/25 Order (Dkt. # 12) at 2-7; 10/16/25 Order (Dkt. # 25) at 2-5.) On August 12, 16 2025, the court concluded that it did not have subject matter jurisdiction over Ms. 17 Brecht's bankruptcy appeal and dismissed her appeal with prejudice. (8/12/25 Order at 18 7-15; Judgment (Dkt. # 13).) Specifically, the court held that (1) it did not have 19 1 "Unless the district court . . . requests, no response to a motion for rehearing is 20 permitted." Fed. R. Bankr. P. 8022(a)(3). The court did not ask Appellees to respond to Ms. Brecht's motion for reconsideration. (See generally Dkt.) 21 2 Ms. Brecht requests oral argument for her motion for reconsideration. (MFR at 1.) However, the court determines that oral argument will not assist it with the resolution of the 22 motion. 1 jurisdiction over Ms. Brecht's untimely appeal of the bankruptcy court's orders outside of 2 the 14-day period for taking an appeal (see 8/12/25 Order at 8-11 (citing Fed. R. Bankr. 3 P. 8002(a))); and (2) Ms. Brecht did not have standing to pursue the remainder of her 4 appeal (see id. at 11-15). 5 On August 26, 2025, Ms. Brecht moved for a rehearing. (See MFR (Dkt. # 14) at 6 4-15.) On September 8, 2025, the court denied Ms. Brecht's motion, finding that her 7 motion did not meet the standard for granting a rehearing and that it relied in part upon 8 overruled legal authority and materials that were not properly in the record. (See 9/8/25 9 Order (Dkt. # 16) at 2-6.) 10 On September 21, 2025, Appellee Michael P. Klein (the "Trustee") moved for 11 entry of judgment jointly and severally against Ms. Brecht, attorney Jeffrey M. Wheat, 12 and Wheat Legal PLLC, asserting that Ms. Brecht's appeal was frivolous and harmed the 13 administration of her bankruptcy case. (See generally MFF (Dkt. # 17).) The court 14 granted in part and denied in part the Trustee's motion, concluding that both Ms. Brecht's 15 appeal to this court and her motion for rehearing were frivolous. (10/16/25 Order at 16 5-10.) Pursuant to Federal Rule of Bankruptcy Procedure 8020(a), the court authorized a 17 total award of \$29,949.66 in attorneys' fees, damages, and costs. (Id. at 15.) 18 On October 7, 2025, Ms. Brecht appealed to the Ninth Circuit Court of Appeals 19 (1) the August 12, 2025 Order dismissing Ms. Brecht's bankruptcy appeal; (2) the 20 judgment dismissing the appeal with prejudice; and (3) the September 8, 2025 Order 21 denying Ms. Brecht's motion for rehearing. (10/7/25 Not. (Dkt. # 22) at 2.) 22 1 Ms. Brecht filed her motion for entry of a comfort order on October 21, 2025. 2 (MFC.) Ms. Brecht seeks to confirm that "the pendency of [her appeal to the Ninth 3 Circuit] does not preclude the Chapter 7 Trustee from completing the sale of the 4 [Property]" and to clarify that Ms. Brecht's "appellate rights with respect to proceeds of 5 the sale are preserved pending resolution of the appeal." (Id. at 1-2 (citing Fed. R. Bankr. 6 P. 8013(a)).) Ms. Brecht contends that such confirmation and clarification will reassure 7 title insurance underwriters who "expressed reluctance to insure the transaction due to 8 uncertainty created by the pending appeal[,] . . . facilitate closing of the Property sale, and 9 preserve the integrity of the appellate process." (Id. at 2.) Appellees oppose Ms. 10 Brecht's motion for a comfort order and contend that it is "a transparent attempt to 11 support a position in the future that neither [Ms. Brecht] nor her counsel should be 12 sanctioned

for filing a further frivolous appeal to the [Ninth Circuit].” (Resp. at 3.) 13 On October 24, 2025, Ms. Brecht filed her motion for reconsideration of the 14 court’s October 16, 2025 Order awarding fees and costs to the Trustee. (See MFR.) The 15 court now addresses its subject matter jurisdiction and the merits of Ms. Brecht’s two 16 pending motions.

17 III. ANALYSIS

18 The court first addresses Ms. Brecht’s motion for rehearing and then turns to Ms. 19 Brecht’s motion for a comfort order. 20 A. Ms. Brecht’s Motion for Rehearing 21 In general, when a matter is pending appeal, the district court no longer has 22 jurisdiction over matters involved in the appeal. *Griggs v. Provident Consumer Disc. 1 Co.*, 459 U.S. 56, 58-59 (1982) (“The filing of a notice of appeal is an event of 2 jurisdictional significance—it confers jurisdiction on the court of appeals and divests the 3 district court of its control over those aspects of the case involved in the appeal.”). Under 4 Federal Rule of Appellate Procedure 6(b)(2), however, a court sitting in appellate 5 jurisdiction may consider a motion for rehearing under Rule 8022 while a bankruptcy 6 case is pending appeal. Fed. R. App. P. 6(b)(2)(A). Therefore, the court concludes that it 7 has subject matter jurisdiction to decide Ms. Brecht’s motion for rehearing.

8 Rule 8022 provides that a motion for rehearing “must state with particularity each 9 point of law or fact that the movant believes the district court . . . has overlooked or 10 misapprehended and must argue in support of the motion.” Fed. R. Bankr. P. 8022(a)(2). 11 A petition for rehearing is “designed to ensure that the appellate court properly 12 considered all relevant information in rendering its decision.” *In re Hessco Indus., Inc.*, 13 295 B.R. 372, 375 (B.A.P. 9th Cir. 2003) (citing *Armster v. U.S. Dist. Ct. for Cent. Dist. 14 of California*, 806 F.2d 1347, 1356 (9th Cir. 1986)). “[It] is not a means by which to 15 reargue a party’s case.” *Id.* (citing *Anderson v. Knox*, 300 F.2d 296, 297 (9th Cir. 1962)). 16 Instead, the moving party must “identify any error in the district court’s order dismissing 17 his appeal.” *In re Kenny G Enters., LLC*, 708 F. App’x 390, 390 (9th Cir. 2017). 18 Ms. Brecht asserts that the court made three errors in its October 16, 2025 Order 19 that warrant rehearing: (1) the court erred in awarding fees, costs, and damages against 20 Ms. Brecht because the court found that Ms. Brecht’s standing argument was not wholly 21 without merit and, as such, is precluded from making a frivolousness determination and 22 issuing sanctions against Ms. Brecht; (2) the court erred in awarding damages against Ms. 1 Brecht based on the Trustee’s assertion that Ms. Brecht’s appeal caused the title insurer’s 2 refusal to insure the Property; and (3) the court erred in issuing sanctions against Ms. 3 Brecht because she never opposed the sale of the Property, which she asserts is evidence 4 that she did not undertake an appeal in bad faith or to obstruct proceedings. (MFR at 4- 5 5.) 6 These arguments, however, are the same arguments that Ms. Brecht presented to 7 the court in her original opposition to the Trustee’s motion for fees and costs. (See MFF 8 Resp. (Dkt. # 20) at 4- 11 (arguing that (1) her appeal was not frivolous, (2) the claimed 9 damages are not properly attributable to the appeal, and (3) Ms. Brecht did not oppose the 10 sale of the Property).) Thus, Ms. Brecht presents no “new point of law or fact” that the 11 court “overlooked or

misapprehended[.]” Fed. R. Bankr. P. 8022(a)(2). Consequently, 12 the court finds no basis for a rehearing and denies Ms. Brecht’s motion. 13 B. Ms. Brecht’s Motion for Comfort 14 Ms. Brecht also moves under Federal Rule of Bankruptcy Procedure 8013(a) for a 15 “comfort order confirming that the pendency of this appeal does not preclude the Chapter 16 7 Trustee from completing the sale of the [Property][.]” (MFC at 1-2.) She contends that 17 her “sole purpose in pursuing this appeal is to preserve her rights to the proceeds of sale, 18 including her claimed homestead exemption under Washington law[.]” (Id. at 3.) 19 Appellees oppose Ms. Brecht’s motion and challenge her motives, asserting that Ms. 20 Brecht’s appeal is frivolous and that the motion for comfort “is a transparent attempt to 21 support a position in the future... that neither [Ms. Brecht] nor her counsel should be 22 sanctioned for filing a further frivolous appeal to the [Ninth Circuit].” (Resp. at 3.) 1 Because Ms. Brecht filed a notice of appeal, the court retains only very limited 2 jurisdiction to decide collateral matters. (See 10/7/25 Not.); Griggs, 459 U.S. at 58; In re 3 Mirzai, 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999) (explaining jurisdiction on appeal for 4 bankruptcy matters by analogizing to trial court’s remaining original jurisdiction during 5 pendency of appeal to an appellate court). Trial courts sitting in appellate jurisdiction 6 cannot take actions “over those aspects of the case involved in the appeal.” In re Mirzai, 7 236 B.R. at 8 (citing Griggs, 459 U.S. at 58.). 8 At issue, then, is whether, or to what extent, a comfort order is a collateral matter 9 or would impact any substantive issue on appeal. Therefore, the court orders the parties 10 to provide additional briefing regarding (1) whether the court has jurisdiction to decide 11 Ms. Brecht’s pending motion for a comfort order and (2) the merits of Ms. Brecht’s 12 motion.

13 IV. CONCLUSION

14 Therefore, for the foregoing reasons, the court DENIES Ms. Brecht’s motion for 15 reconsideration (Dkt. # 29) and ORDERS the parties to provide additional briefing on 16 Ms. Brecht’s motion for a comfort order (Dkt. # 28). The deadline for Appellees to file 17 supplemental briefing is Wednesday, December 10, 2025. The deadline for Ms. Brecht 18 to file a response is Wednesday, December 17, 2025. 19 20 Dated this 2 6th day of November, 2025. A 21

JAMES L. ROBART

22 United States District Judge