UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Sylvia Nicole v. T2M Investments, LLC

No. 1:24-cv-00562-JLT (E.D. Cal. Mar. 10, 2025) · No. 1:24-cv-00562-JLT · Decided March 11, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Sylvia Nicole's third motion to appoint counsel in her bankruptcy appeal. The court found that her assertions regarding fraud, unresolved issues, and alleged legal errors were conclusory and that she had not shown either a likelihood of success on the merits or an inability to litigate the appeal pro se.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 11, 2025
DOCKET	1:24-cv-00562-JLT
DISPOSITION	other
PROCEDURAL POSTURE	Appellant appealed a bankruptcy-court decision and filed a third motion for appointment of counsel in the district-court bankruptcy appeal. The district court denied the motion because the appeal was not yet ripe and appellant had not shown exceptional circumstances warranting appointed counsel.
STANDARD OF REVIEW	Discretionary determination under 28 U.S.C. § 1915(e)(1); appointment of counsel is permitted only upon a showing of exceptional circumstances.
PRECEDENTIAL VALUE	Unpublished district-court order; precedential status not established in the source metadata.
PARTIES	Sylvia Nicole v. T2M Investments, LLC

TOPICS

bankruptcy · appellate procedure · civil procedure

PRACTICE AREAS

Bankruptcy Civil procedure Appellate procedure

QUESTIONS PRESENTED

1. Whether the district court should appoint counsel for an indigent litigant in a bankruptcy appeal under 28 U.S.C. § 1915(e)(1).

HOLDINGS

1. Appointment of counsel was not warranted because Nicole failed to demonstrate exceptional circumstances, including a likelihood of success on the merits or an inability to articulate her claims pro se in light of the complexity of the issues.

KEY QUOTATIONS

> *"When determining whether exceptional circumstances exist, a court must consider the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved."* (at 1-2)

> *"Neither of these considerations is dispositive and instead must be viewed together."* (at 2)

FACTUAL BACKGROUND

Nicole asserted that T2M Investments and its witnesses committed fraud and perjury during a three-day bankruptcy trial, that the bankruptcy court failed to address a mortgage-fraud cause of action, and that the parties offered conflicting interpretations of a written settlement agreement. She also claimed that numerous issues remained unresolved and that the bankruptcy court improperly credited T2M's testimony. The district court found these assertions conclusory and determined that Nicole had not shown either a likelihood of success or an inability to articulate her claims pro se.

PROCEDURAL HISTORY

Sylvia Nicole appealed a decision of the United States Bankruptcy Court for the Eastern District of California in bankruptcy case No. 21-10679 and adversary proceeding No. 21-01015-A. Before the appeal was noticed, she moved for appointment of counsel in the adversary proceeding; the bankruptcy court transferred the motion to the district court because it was unclear whether the bankruptcy court had authority to decide it. The district court previously denied two requests for counsel, and it denied Nicole's third motion after finding her merits assertions conclusory and finding that she had demonstrated an ability to articulate her claims pro se.

DISPOSITION

other

CASES CITED

- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)
- Sariol v. Fitzgerald, No. C16-0835JLR, 2016 WL 8808819, at *1 (W.D. Wash. June 27, 2016)

- Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)

OPINION

Nicole v. T2M Investments, LLC

PER CURIAM.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SYLVIA NICOLE, No. 1:24-cv-00562-JLT

BAP No. EC-24-1032

Appellant, Bk. No. 21-10679 Adv. No. 21-01015 v.

ORDER DENYING THIRD MOTION TO

T2M INVESTMENTS, LLC, APPOINT COUNSEL

Appellee. (Doc. 19.) Sylvia Nicole appeals a decision entered by the U.S. Bankruptcy Court for the Eastern District of California in Case No. 21-10679 - Adversary Case No. 21-01015-A. The appeal, initiated May 10, 2024 (see Doc. 1), is not yet ripe for decision. Prior to noticing this appeal, Ms. Nicole filed a motion to appoint counsel in the underlying adversary proceeding, which the Bankruptcy Court transferred to the undersigned for resolution because it is unclear whether the Bankruptcy Court has authority to address such a motion. (Doc. 3.) As the Bankruptcy Court indicated in its order transferring the motion (Id. at 1), the authority for this Court to appoint counsel for an indigent litigant is set forth in 28 U.S.C. § 1915(e)(1), but the Court may do so only in “exceptional circumstances.” See Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009); see also Sariol v. Fitzgerald, No. C16-0835JLR, 2016 WL 8808819, at *1 (W.D. Wash. June 27, 2016) (applying “exceptional circumstances” standard to request for counsel in bankruptcy appeal to district court). “When determining whether exceptional circumstances exist, a court must consider the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Palmer, 560 F.3d at 970; see also Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (explaining that “any difficulty [Appellant] experienced in attempting to litigate his case [must be] derived from the complexity of the issues involved”). “Neither of these considerations is dispositive and instead must be viewed together.” Id. (internal citation omitted) Finding that “Ms. Nicole has made no showing as to the merits of her case or why she is unable to articulate her claims pro se,” the undersigned denied her initial motion to appoint counsel on June 17, 2024. (Doc. 5.) That same day, Ms. Nicole filed another motion to appoint counsel along with what appeared to be a request to waive fees related to this appeal. (Doc. 6.) She subsequently filed separate motions for appointment of counsel (Doc. 7) and to proceed in forma pauperis in this appeal. (Doc. 8.) The Court denied Ms. Nicole’s section request for appointment of counsel as “unsupported by any showing as to why she is likely to succeed on the merits of her claims.” (Doc. 10.) On March 6, 2025, Ms. Nicole filed a third motion to appoint counsel. (Doc. 19.) Therein, she argues that she “will win” the appeal for the following reasons: a. The Appellee and its witnesses committed fraud and perjury intentionally on the Bankruptcy Court during the 3 days trial. b. This is an on-going mortgage fraud and abuse case, but the Bankruptcy Court did ·not address the Appellant’s Mortgage Fraud Cause of Action in the complaint for the reason stated on the record that it is for the criminal court to address the issue. c. As a result, there were 2 completely different and opposite interpretations of the written Settlement Agreement: one interpretation by the Appellant and one interpretation by the Appellee. d. Many issues were not resolved by the bankruptcy court: total of 23 issues, because the Appellee had 2 attorneys to represent it, and the Appellant did not have any attorney to represent her. e. As a result, the bankruptcy court chose to believe the Appellee’s testimonies are credible over the Appellant’s testimonies, even though her testimonies aligned with the written Settlement Agreement’s terms and requirements. f. Such a decision had caused errors in court judgment and order by the Bankruptcy Court against the Appellant. g. This court is the proper court to address the appeal; and by law and for justice, the bankruptcy court’s judgment or order for this case should be reversed. h. Furthermore, this case is also about on-going process abuse by the Appellee’s attorneys, namely story fabrications and exaggerations under penalty of perjury against the Appellant. 1. The Appellant is entitled to relief under 42 U.S.C. Section 1983 against the Appellee and its attorneys with respect to her property ownership rights, right to due process of the law and right to equal protection under the law which was denied by the Bankruptcy Court due to the Appellee’s and its attorneys’ illegal conduct. J. The existing emails, court documents on file, as well as trial’s court transcripts listed in the docket contain evidence to support the Appellant’s above claims. (Doc. 19 at 3.) These assertions are entirely conclusory at this stage. The Court has nothing before it with which it could possibly determine, even preliminarily, whether Appellees committed fraud onthe Bankruptcy Court; why the Bankruptcy Court failed to address certain issues raised, let alone whether that was improper; how Ms. Nicole’s interpretation of the mentioned Settlement Agreement is relevant to this appeal, nor whether her interpretation of it is correct; and so on. Even, assuming these assertions demonstrated some likelihood of success, the record still does not demonstrate that Ms. Nicole is unable to present her arguments pro se considering the complexity of the record. She appears to be able to articulate various theories underpinning her appeal. For all these reasons, the Court again declines to exercise its discretion to appoint counsel 1n this case.

IT IS SO ORDERED.

Dated: _ March 10, 2025

TED STATES DISTRICT JUDGE

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