UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Hewlett v. Elder

330 F. App'x 690 (9th Cir. 2009) · Decided July 28, 2009

SUMMARY

The Ninth Circuit affirmed the district court’s dismissal of Patricia Hewlett’s appeal from a bankruptcy court turnover order as untimely. The court held that a later turnover order concerning another party did not restart the appeal period because it did not alter Hewlett’s legal rights or obligations, and that the ten-day deadline under Bankruptcy Rule 8002(a) was jurisdictional.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Schroeder; Thomas; Wardlaw
JURISDICTION	Federal
DECIDED	July 28, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hewlett appealed pro se from the district court's dismissal as untimely of her appeal from a bankruptcy court order requiring her to turn over real property.
STANDARD OF REVIEW	The Ninth Circuit reviewed jurisdictional issues and the district court's decision on appeal from the bankruptcy court de novo.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Patricia Hewlett v. Elder

TOPICS

bankruptcy · appellate jurisdiction · appellate procedure · standard of review

PRACTICE AREAS

Bankruptcy · Appellate procedure

QUESTIONS PRESENTED

1. Whether a later bankruptcy court order concerning another party's turnover of property restarted the time for Hewlett to appeal the earlier order requiring her own turnover.

2. Whether Hewlett's appeal was a collateral appeal rather than a direct appeal subject to Bankruptcy Rule 8002(a).
3. Whether the district court properly dismissed Hewlett's bankruptcy appeal as untimely.

HOLDINGS

1. A later bankruptcy court order restarts the appeal period only if it disturbs or revises legal rights and obligations previously settled with finality; an order concerning another party's property turnover did not restart Hewlett's appeal period because it did not affect her rights or obligations.
2. Because Hewlett filed her notice of appeal more than ten days after the bankruptcy court's order requiring her turnover of property, the district court properly dismissed the appeal as untimely.

KEY QUOTATIONS

> *"holding that a second order restarts the appeal period only when the court "disturb[s] or revisefs] legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality""* (330 F. App'x at 690)

> *"The provisions of Bankruptcy Rule 8002 are jurisdictional; the untimely filing of a notice of appeal deprives the appellate court of jurisdiction to review the bankruptcy court's order."* (330 F. App'x at 690)

FACTUAL BACKGROUND

The bankruptcy court ordered Hewlett to turn over real property. In a later order concerning another party's turnover of property, the bankruptcy court did not alter Hewlett's legal rights or obligations under the earlier order. Hewlett nevertheless treated the later order as restarting her appeal period and filed her notice of appeal to the district court more than ten days after the order requiring her own turnover.

PROCEDURAL HISTORY

The bankruptcy court entered an order requiring Hewlett to turn over property. Hewlett filed an appeal in the district court more than ten days after that order. The district court dismissed the appeal as untimely, and the Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Mantz v. Cal. State Bd. of Equalization (In re Mantz), 343 F.3d 1207, 1211 (9th Cir. 2003)
- F.T.C. v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 212 (1952)
- Anderson v. Mouradick (In re Mouradick), 13 F.3d 326, 327 (9th Cir. 1994)

OPINION

Hewlett v. Elder (In re Ng) 330 F. App'x 690

PER CURIAM.

MEMORANDUM **

Patricia Hewlett appeals pro se from the district court’s order dismissing as untimely an appeal from the bankruptcy court’s order requiring her to turn over real property. We have jurisdiction pursuant to 28 U.S.C. § 158(d). We review de novo jurisdictional issues and the district court’s decision on appeal from a bankruptcy court, Mantz v. Cal. State Bd. of Equalization (In re Mantz), 343 F.3d 1207, 1211 (9th Cir.2003), and we affirm. Contrary to Hewlett’s contention, the bankruptcy court’s order concerning the turnover of property by another party did not restart the time for Hewlett’s appeal because it did not affect her legal rights or obligations as established under the order requiring her own turnover of property. See F.T.C. v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 212, 73 S.Ct. 245, 97 L.Ed. 245 (1952) (holding that a second order restarts the appeal period only when the court “disturb[s] or revisefs] legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality”). Further, this appeal is not collateral, as Hewlett contends, but rather a direct appeal of the bankruptcy order. Because Hewlett’s notice of appeal to the district court was filed more than ten days after the bankruptcy court’s order *691requiring the turnover of property by Hewlett, the district court properly dismissed the appeal as untimely. See Fed. R. Bankr.P. 8002(a); Anderson v. Mouradick (In re Mouradick), 13 F.3d 326, 327 (9th Cir.1994) (“The provisions of Bankruptcy Rule 8002 are jurisdictional; the untimely filing of a notice of appeal deprives the appellate court of jurisdiction to review the bankruptcy court’s order.”). AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.