

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Emann v. Latture

605 F.3d 830 (10th Cir. 2010) · No. No. 09-6016 · Decided May 20, 2010

SUMMARY

The Tenth Circuit held that the failure to file a bankruptcy appeal within the time prescribed by Federal Rule of Bankruptcy Procedure 8002(a) is a jurisdictional defect. The court affirmed the Bankruptcy Appellate Panel's dismissal of Rodger Latture's appeal as untimely, concluding that the bankruptcy judgment was entered on November 14, 2008, making November 24 the filing deadline. The court also rejected arguments concerning calendar computation, application of the Federal Rules of Appellate Procedure, excusable neglect, and alleged duplicate docket entries.

CASE DETAILS

|                       |                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Tenth Circuit                                                                                                                    |
| WRITING FOR THE COURT | Baldock, Circuit Judge; Briscoe, Chief Judge; Gorsuch, Circuit Judge                                                                                                    |
| JURISDICTION          | Federal                                                                                                                                                                 |
| DECIDED               | May 20, 2010                                                                                                                                                            |
| DOCKET                | No. 09-6016                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                |
| PROCEDURAL POSTURE    | Latture appealed the Bankruptcy Appellate Panel's dismissal of his appeal from a bankruptcy court summary judgment determining that Emann's claim was nondischargeable. |
| STANDARD OF REVIEW    | The court reviewed de novo whether the untimely notice of appeal deprived the Bankruptcy Appellate Panel of jurisdiction.                                               |
| PRECEDENTIAL VALUE    | published and precedential                                                                                                                                              |
| PARTIES               | Rodger Kolyn Latture v. Tracy Emann                                                                                                                                     |

TOPICS

- appellate jurisdiction
- bankruptcy
- final judgment rule
- standard of review
- appellate procedure

PRACTICE AREAS

- bankruptcy
- appellate procedure
- civil procedure

## QUESTIONS PRESENTED

1. Whether the bankruptcy court's judgment was entered on November 13 or November 14, 2008 for purposes of calculating the appeal period.
2. Whether the ten-day filing deadline in Federal Rule of Bankruptcy Procedure 8002(a), as incorporated by 28 U.S.C. § 158(c)(2), is jurisdictional.
3. Whether the Federal Rules of Appellate Procedure, rather than the Bankruptcy Rules, governed computation of the time for Latture's appeal to the Bankruptcy Appellate Panel.
4. Whether Latture was entitled to relief based on excusable neglect, lack of notice, or the alleged duplicate docket entries.

## HOLDINGS

1. The effective date of entry was November 14, 2008, the date the clerk entered the judgment on the official docket, rather than November 13, the date appearing on the signed judgment.
2. Failure to file a timely notice of appeal from a bankruptcy court order under Rule 8002(a) is a jurisdictional defect that bars appellate review.
3. The Federal Rules of Appellate Procedure do not govern an appeal taken from a bankruptcy court directly to a Bankruptcy Appellate Panel; the Bankruptcy Rules govern that appeal.
4. Latture was not entitled to an extension because he did not file a motion within the period permitted by Rule 8002(c), and lack of notice did not extend the appeal deadline.

## KEY QUOTATIONS

*“The entry occurs when it is noted on the docket and thereby becomes public.... A document is entered when the clerk makes the notation on the official public record, the docket, of the activity or submission of the particular document.” (832-833)*

*“We believe recent Supreme Court cases and our own precedent reaffirm our holding in *In re Herwit* and support the B.A.P.'s conclusion in *In re Kingsley* that Rule 8002(a) is jurisdictional.” (837)*

## FACTUAL BACKGROUND

Emann obtained a judgment against Latture, who later filed for bankruptcy. The bankruptcy court granted Emann summary judgment, determining that her claim was nondischargeable, and entered the judgment on the docket on November 14, 2008. Latture filed his notice of appeal on November 25, 2008, one day after the ten-day appellate deadline expired.

## PROCEDURAL HISTORY

The bankruptcy court granted Emann summary judgment and entered judgment on November 14, 2008. Latture filed his notice of appeal with the Tenth Circuit Bankruptcy Appellate Panel on November 25, 2008, one day beyond the ten-day period prescribed by Bankruptcy Rule 8002(a). The B.A.P. dismissed the appeal as untimely and jurisdictionally barred, and the Tenth Circuit affirmed.

## DISPOSITION

affirmed

## CASES CITED

- In re Herwit, 970 F.2d 709, 710 (10th Cir. 1992)
- Kontrick v. Ryan, 540 U.S. 443, 447, 452-56 (2004)
- Eberhart v. United States, 546 U.S. 12, 16-19 (2005)
- Arbaugh v. Y & H Corp., 546 U.S. 500, 503-16 (2006)
- Bowles v. Russell, 551 U.S. 205, 209-14 (2007)
- Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154, 130 S. Ct. 1237, 1241, 1245-49 (2010)
- In re Taylor, 343 Fed. Appx. 753, 755 & n.1 (3d Cir. 2009)
- In re Kingsley, 423 B.R. 344, 351 (B.A.P. 10th Cir. 2010)
- In re Faragalla v. Access Receivable Mgmt., 422 F.3d 1208, 1210 (10th Cir. 2005)
- Herrera v. First Nat'l Sav. & Loan Ass'n, 805 F.2d 896, 899 (10th Cir. 1986)
- United States v. Garduño, 506 F.3d 1287, 1288-90 (10th Cir. 2007)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 90 (1998)
- Felix v. Felix, 2009 WL 3711483, at \*2 (E.D. La. 2009)