

In the United States Bankruptcy Court

for the Northern District of Iowa

RAYMOND R. MORRIS

Debtor(s).

Bankruptcy No. L-89-00535W

Chapter 13

ORDER Dismissing Case

Factual Background

1. On April 12, 1989, the Debtor filed his Chapter 13 petition.
2. The Debtor filed his Chapter 13 plan on April 25, 1989. That plan proposed to pay a priority tax claim of \$6,162 to the Internal Revenue Service ("IRS") under the plan. A notice of the filing of the case and a summary of the Debtor's plan was served upon all creditors and parties in interest. Those parties were advised that any objections to confirmation of the plan had to be filed by no later than July 5, 1989. Any timely filed objections would be set for hearing by separate notice.
3. The following objections to confirmation were timely filed:
 - a. Walker State Bank ("the Bank") filed an objection alleging that Debtor's Chapter 13 petition was filed shortly after Debtor's real estate was sold at a tax sale. The Bank alleged that it had a security interest in the real estate and that the sale was subject to the valid security interest of the Bank. The objection also alleged that the plan made no provision for payment of the Bank's debt.
 - b. The Chapter 13 Trustee filed an objection related to the proposed plan treatment of a debt owed to the Buchanan County Treasurer. The objection also raised an issue concerning the feasibility of the plan.
4. The objections to confirmation were set for hearing on August 23, 1989. The following appearances were entered at that hearing: attorney Kenneth Dolezal for the Debtor, attorney H. Raymond Terpstra, II, for the Bank, attorney Jon McCright for Gary A. Mausser, and the Chapter 13 Trustee, Carol F. Dunbar. The Court was advised at that hearing that an IRS tax sale had been held shortly before the filing of Debtor's Chapter 13 petition. Gary A. Mausser was the successful bidder at the tax sale and held the certificate of sale. The Debtor's attorney advised the Court that the Debtor felt the tax sale had not been properly conducted and that an adversary complaint would be filed challenging the validity of the sale. An order was entered at the conclusion of the August 23, 1989 hearing, continuing the confirmation hearing pending the filing of an adversary complaint challenging the validity of the IRS tax sale.
5. On November 20, 1989, Gary A. Mausser filed a motion to lift stay. In that motion, Mausser alleged that he was the successful purchaser at the IRS tax sale held on April 12, 1989. The motion also alleged that the Debtor had attempted to redeem the property, but that the attempted redemption occurred outside of the 180-day period the Internal Revenue Code allows for redemption of property from a tax sale. The IRS then issued a deed to Mausser. The motion requested that the automatic stay be modified to allow Mausser to commence whatever procedure would be necessary to obtain possession of the property purchased at the tax sale.
6. A preliminary hearing on the motion for relief from stay was held on December 15, 1989. At that hearing, several issues were identified as being in dispute in connection with the motion. Essentially, those issues related to whether the

IRS had properly conducted the tax sale and whether the attempted redemption of the property was timely.

7. A final evidentiary hearing on the motion for relief from stay was held on January 8, 1990. At that hearing, evidence and testimony were taken on the issues raised by the parties. The IRS was not made a party to the motion, but the United States Attorney's office, acting as attorney for the IRS, appeared at both the preliminary hearing and the final hearing on the motion for relief from stay and submitted a brief and argument on the validity of the tax sale.

8. On February 8, 1990, the Court entered an order denying the motion for relief from stay. In that order, the Court held that the attempted redemption of the property was not timely. The Court went on to hold, however, that the IRS had not properly conducted the sale, and that therefore the motion for relief from stay should be denied. The Court declined to set aside the sale on the grounds that any action to set it aside would have to be brought by way of an adversary complaint in which both the purchaser and the IRS were named as defendants.

9. The IRS then filed a motion to set a deadline for the commencement of such an adversary complaint, or in the alternative, for the Court to expunge its order of February 8, 1990. In that motion, the IRS contended that since it was not a formal party to the motion for relief from stay, and since the Court did not set aside the § sale, the IRS would not have standing to appeal the Court's decision. The IRS requested that either the order be expunged or a deadline be set for the Debtor to commence an adversary complaint to set aside the tax sale, naming the IRS as a defendant, so the IRS would be in a position to appeal any adverse ruling.

10. At the hearing held on the IRS' motion, the Debtor indicated that he could file such an adversary complaint within the time requested by the IRS. His only reservation in filing such a complaint was that he was considering the possibility of dismissing his chapter 13 case so he could commence a civil suit against the IRS in the United States District Court. The attorney for the Debtor believed that he had a claim against the IRS and its officers and agents beyond the mere setting aside of the tax sale. He stated that he was considering the possibility of suing the IRS and its officers and agents for monetary damages arising out of what he claims was illegal conduct by the IRS. Debtor's counsel did acknowledge, however, that if an adversary complaint was not filed within the time limits set by the Court, the bankruptcy case could be dismissed.

11. The Court then entered an order on March 1, 1990, indicating that the adversary complaint challenging the validity of the IRS tax sale was to be filed by no later than the close of business on March 8, 1990. The order went on to provide that if the adversary complaint was not filed by the close of business on that date, the case would be dismissed without further notice or hearing. The order also provided that in the event the case was dismissed, the order of February 8, 1990, denying the motion for relief from stay would be vacated. It should be noted that in the order of March 1, 1990, the Court indicated that a dismissal of the case would effectively moot out any right to appeal the order of February 8, 1990, since the dismissal of the case would operate as a lifting of the automatic stay pursuant to 11 U.S.C. § 362(c)(2) (B).

12. The Debtor did not file an adversary complaint challenging the validity of the IRS tax sale by the close of business on March 8, 1990. However, the Debtor did file a motion for leave to appeal and notice of appeal from the Court's order of March 1, 1990, setting a deadline for filing of the adversary complaint. The Debtor has not sought, nor has the Debtor obtained, a stay pending appeal of the Court's order of March 1, 1990.

13. No adversary complaint challenging the IRS tax sale has been filed in this Court since the March 8, 1990, deadline. The Court has not been advised of the filing of any proceeding in the United States District Court by the Debtor challenging the tax sale or asking for any other relief from the IRS.

14. The Debtor has not filed an amended Chapter 13 plan since the plan was originally filed on April 25, 1989. Likewise, the Debtor has made no efforts towards obtaining confirmation of a Chapter 13 plan in this case.

15. The property which is the subject of the tax sale was claimed as Debtor's homestead in his bankruptcy petition. There

were no timely filed objections to the homestead designation.

The Debtor lives in a home situated on the property. The Debtor refused to vacate the property after the tax deed was given to Mausser by the IRS. The Debtor continues to reside in the home and is not paying any rent or other compensation to Mausser for the use or occupancy of the premises.

Discussion and Conclusions of Law

A. Effect of Debtor's Appeal

The Debtor has attempted to effectuate an appeal from the Court's Order of March 1, 1990. However, the Debtor has not sought a stay pending appeal pursuant to Bankruptcy Rule 8005. Since a stay pending appeal has not been obtained, the Court may continue the proceedings in this case. See Matter of Monson, 87 B.R. 577, 587 (Bankr. W.D. Mo. 1988); In re Roberts Farms, Inc., 652 F.2d 793 (9th Cir. 1981).

The Court does not believe that it can abdicate its responsibility to keep this case moving forward. As more fully discussed in the section below dealing with the dismissal of the case, the Court believes that there is ample justification for the Court to proceed with the administration of this case. Since the Debtor has not obtained a stay of proceedings in this case, the Court believes that it is appropriate for the Court to enter such orders as may be necessary to continue to process this case. "[T]he law not only permits, but encourages bankruptcy courts and trustees to enforce an unstayed order pending appeal." Matter of Monson, 87 B.R. at 587 (Bankr. W.D. Mo. 1988).

B. Dismissal of Case

The Court is somewhat perplexed as to what the Debtor seeks in this case. The Debtor advised the Court and all interested parties at the confirmation hearing held on August 23, 1989, that the Debtor would be filing an adversary complaint challenging the validity of the IRS tax sale. To date, some eight months later, the Debtor still has not filed that complaint. The Debtor also continues to live in the home on the property which is the subject of the tax sale, while Mausser continues to hold title to the property under the tax deed issued to him by the IRS.

Debtor resisted a motion for relief from stay on the grounds that the tax sale of his homestead property was not conducted in compliance with the Internal Revenue Code. The Court found in favor of the Debtor on that issue. The Court also held that it did not have authority to invalidate the tax sale until such time as the Debtor filed an adversary complaint against the IRS and Mausser. At the request of the IRS, the Court did set a deadline for the Debtor to file such an adversary complaint. At the hearing held on the IRS application for setting a deadline, the Court understood that the Debtor had no objection to filing such a complaint, except for the possibility that the Debtor might wish to pursue his remedies against the IRS outside of the bankruptcy court.

It is important to keep in mind that this dispute with the IRS arises in this Court because of the Debtor's filing of a Chapter 13 case. The grounds for dismissal of a Chapter 13 case are set out in § 1307⁽¹⁾. Under Chapter 13, the Debtor is required to file a Chapter 13 plan. See, 11 U.S.C. § 1321. Failure to file a plan timely under § 1321 is grounds for dismissal of Debtor's case. See, § 1307(c)(3). Unreasonable delay by the Debtor that is prejudicial to creditors is also grounds for dismissal. See, § 1307(c)(1).

The Bankruptcy Code does not set forth the time within which the Debtor must file a plan. However, the time limit is contained within the Bankruptcy Rules. Bankruptcy Rule 3015 provides that if a plan is not filed with the petition, it shall be filed within 15 days thereafter, unless the time is extended by the court for cause shown. A Chapter 13 case normally does not have the complexity of a Chapter 11 reorganization or a Chapter 12 family farmer case. It is in the best interests of all parties to attempt to have a Chapter 13 plan confirmed promptly, or to dismiss the case if the plan is not confirmable.

This Court believes that it has a right, as well as a duty, to supervise all cases before the Court and to enter such orders as may be appropriate to facilitate the speedy resolution of all disputes. The Fifth Circuit Court of Appeals, sitting en banc, discussed at length the obligations of a bankruptcy judge to manage a Chapter 11 case and to keep that case moving towards either confirmation, dismissal, or conversion to a Chapter 7.

See In re Timbers of Inwood Forest Associates Ltd., 808 F.2d 363

(5th Cir. 1987), aff'd, ___ U.S. ___, 108 S.Ct. 626 (1988). While the Timbers of Inwood Forest case dealt with a Chapter 11 debtor, the Court believes that the admonitions to the bankruptcy court in that case are equally appropriate in the case of a Chapter 13 debtor. It is the Court's responsibility to manage the case and to see that the case keeps moving forward. It is also the Court's responsibility to set reasonable deadlines for the debtor to file a plan, and to do such other things as may be necessary to keep the case moving forward.

The Court finds that the Debtor in this case has failed to comply with his statutory duty to file a plan. The Court also finds that the evidence shows that the Debtor has engaged in unreasonable delay that is prejudicial to creditors. Both of these findings warrant dismissal of the case pursuant to § 1307(c)(1) and (3).

The plan the Debtor has previously proposed in this case assumes that the Debtor will regain ownership of the property sold at the tax sale. Until the issue of the tax sale is resolved in Debtor's favor, confirmation of any plan cannot go forward. In fact, it appears that since the IRS tax debt would be satisfied by the tax sale and the purchaser at the tax sale took the property subject to the first mortgage owed to the Bank, the Debtor would have no debts to reorganize if the tax sale was not set aside. The debts owed to the IRS and the Bank are the only debts listed in Debtor's Chapter 13 schedules. Thus, any further proceedings in this case are dependent upon the resolution of the tax dispute.

The Court believes that the Debtor's failure to pursue the issue of the validity of the tax sale not only violates this Court's prior orders, but is also prejudicial to creditors. The purchaser at the tax sale, Gary Mausser, paid \$19,020 for the property and assumed the first mortgage to the Bank. The purchase price has been paid to the IRS which is still holding that money. More than a year after the sale, Mausser still does not have possession of the property he purchased at the sale. At the same time, the Debtor continues to occupy the home without payment of any rent or other compensation to Mausser.

In summary, the Court believes that there is more than ample justification to dismiss this case. Debtor has failed to file a plan in violation of § 1321, and he has engaged in unreasonable delay that is prejudicial to creditors. In addition, the Court understood the Debtor's attorney to indicate at the hearing held on February 23, 1990, that he had no objection to the Court entering an order dismissing the case if an adversary complaint was not filed by March 8, 1990. The Court has made it clear to the Debtor that he must take some action to resolve the dispute with the IRS; either by filing an adversary complaint in this Court, or by dismissing the Chapter 13 and proceeding against the IRS in U.S. District Court. To date, the Debtor continues to refuse to follow the Court's orders to take the steps necessary to resolve the IRS dispute, so that he can proceed with his Chapter 13 plan.

Section 1307 indicates that a case may be dismissed for cause. The section then goes on to list a number of factors which may constitute cause. A number of courts which have interpreted § 1112, virtually the identical section in chapter 11 dealing with dismissal, have interpreted that section to mean that the list of grounds for dismissal is not exclusive. See, e.g., In re Albany Partners, Ltd., 749 F.2d 670, 674 (11th Cir. 1984). Cause can include the failure to follow Court orders. This case is not unlike a case decided by my predecessor, Judge Thinnes, in In re Bacon, 52 B.R. 52 (Bankr. N.D. Iowa 1985). In that case, Judge Thinnes dismissed a Chapter 11 case because he felt that cause included a failure to expeditiously prosecute a Chapter 11 case, and for the further reason that the debtor's failure to amend a disclosure statement as ordered by the court

constituted inexcusable delay and prejudice to creditors.

The Debtor in this case has been in a Chapter 13 for over a year. He has had ample opportunity to file an adversary complaint challenging the validity of the tax sale. The Court believes that a reasonable deadline was imposed upon the Debtor to file a complaint challenging the IRS tax sale. Debtor's attorney indicated to the Court at the hearing held on February 23, 1990, that the deadline could be met. The only reason the deadline would not be met would be because the Debtor wished to voluntarily dismiss the case, as he has a right to do under § 1307(b), and commence a suit in the United States District Court. The Court believes that the Debtor has been accorded all due process rights and has received more than adequate notice of the intended dismissal of this case if he did not follow the Court's order to file an adversary complaint by March 8, 1990.

In connection with the issue of vacating the Court's Order of February 8, 1990, the Court would only note that by dismissal of the case, the automatic stay will lift in any event. See,

§ 362(c)(2)(B). Consequently, the issue of the lifting of the stay will be moot. By having the case dismissed and by refusing to file the adversary complaint as ordered by the Court, the Debtor will effectively eliminate any appeal rights either Gary Mausser or the IRS may have. By granting the IRS' motion to vacate the prior order, any ambiguity about the preclusive effect of that ruling will be removed.

Under Chapter 13, the Debtor has an absolute right to dismiss at any time. See, § 1307(b). The Debtor effectively controls whether this case will be dismissed or whether the Debtor will pursue an adversary complaint against the IRS and Mausser to set aside the tax deed. Under those circumstances, the Court believes that in the event of a dismissal, it would be necessary to protect the rights of all parties by vacating the order of February 8, 1990. Since the dismissal will grant to Mausser the relief he originally sought in this case, i.e., lifting of the stay, and Mausser will continue to hold the deed to the property, the Court believes it is appropriate to remove any uncertainty as to his ownership status. Under the order issued on February 8, 1990, as well as this order, the Court wishes to emphasize that it has not set aside the deed issued to Mausser by the IRS. The Debtor can only obtain that relief by filing a complaint against all interested parties in a court of competent jurisdiction. To date, the Debtor has taken no such action to file such a complaint and no order has been entered vacating the tax sale.

ORDER

IT IS THEREFORE ORDERED that Debtor's Chapter 13 case is dismissed.

IT IS FURTHER ORDERED that the Order of February 8, 1990, and the Order of February 7, 1990, denying the Motion for Relief from Stay, are vacated.

DONE AND ORDERED this 27th day of April, 1990.

Michael J. Melloy
Chief Bankruptcy Judge

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

IN RE:

Bankr. No. L-89-00535W

RAYMOND R. MORRIS, NO. Misc. 90-2002

Debtor. ORDER

This matter is before the court on the United States' (Department of the Treasury, Internal Revenue Service) resisted motion for dismissal of appeal, filed June 25, 1990. On September 11, 1990, this court entered an order outlining the basis of the United States' motion and expressing various concerns of the court. A hearing on the motion was held October 1, 1990. The United States appeared by Assistant

United States Attorney Ana Maria Martel, Esq. Debtor appeared by his counsel, Kenneth F. Dolezal, Esq. Gary Mausser, who

filed a joinder in the motion on September 19, 1990, appeared by his counsel, Jon M. McCright, Esq.

The United States moves to dismiss the appeal of the debtor Raymond R. Morris for failure to file a timely notice of appeal and for failure to designate and transmit the record on appeal as required by the bankruptcy rules. This court's September 11, 1990 order found debtor's appeal to be timely.

In that order, the court noted two issues which concerned the court. The October 1, 1990, hearing was held to address those issues. The threshold issue which concerned this court is the standing of the United States to move to dismiss for failure to designate the record and to participate in this appeal. The court asked the question "[i]f the sale is presumptively valid, and if the tax lien of the IRS has been satisfied from the proceeds of the sale (as seems to be indicated by this court's examination of the file), is the IRS still a creditor in this matter with standing to participate on appeal?" Order, filed September 11, 1990, at 3. However, at the hearing the court was informed that the IRS is a creditor in bankruptcy for unpaid income taxes for 1987 and 1988 which have not been satisfied. "The right to appellate review is limited to 'persons aggrieved,' i.e., to those persons whose rights or interests are 'directly and adversely affected pecuniarily' by the decree or order of the bankruptcy court." Holmes v. Silver Wings Aviation, Inc., 881 F.2d 939, 940 (10th Cir. 1989) (citing cases). The order appealed from is the bankruptcy court's dismissal of debtor's Chapter 13 petition for failure to timely file a plan pursuant to 11 U.S.C. § 1321, see 11 U.S.C. § 1307(c)(3), and for unreasonable delay which is prejudicial to creditors. See 11 U.S.C. § 1307(c)(1). Debtor is clearly aggrieved by the bankruptcy court's order. As a creditor, the United States has a right to participate in this appeal, as its interests would be directly affected if this court were to rule in debtor's favor on the merits. The court finds that the United States has standing to move to dismiss debtor's appeal for failure to comply with Bankruptcy Rule 8006.

The other issue raised by the court was the possibility that the only record on appeal is the challenged orders of the bankruptcy court, i.e., that there is no designation of the record from the debtor because there is no additional record to designate. The court noted that debtor's brief on the merits makes reference to documents outside of these orders and which have not been designated as part of the record on appeal. See brief, filed July 2, 1990, at 4. At the hearing, debtor's counsel accepted his responsibility for his failure to designate the record. Debtor's counsel stated that he was operating under the assumption that the granting of debtor's motion for leave to appeal would begin the time period for filing the designation. However, this court's order of September 11, 1990 granted debtor's motion for leave to appeal. No designation of the record was filed within ten days of that order. See Bankruptcy Rule 8006. Consequently, the court finds that debtor has failed to follow the requirements of Bankruptcy Rule 8006 with regard to the timely filing of a designated record, and his appeal must be dismissed for that reason.

ORDER:

Accordingly, It Is Ordered:

The United States' (Department of the Treasury, Internal Revenue Service) motion for dismissal of appeal, filed June 25, 1990, is granted. This appeal is dismissed for debtor's failure to timely designate the record on appeal as is required by Bankruptcy Rule 8006.

Done and Ordered this 28th day of November, 1990.

David R. Hansen, Judge

UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF IOWA

EASTERN DIVISION

IN RE: Bankr. No. L-89-00535W

RAYMOND R. MORRIS, NO. Misc. 90-2002

Debtor. ORDER

This matter is before the court on debtor Raymond R. Morris's unresisted motion for leave to appeal and notice of appeal, filed March 8, 1990; Gary A. Mausser's unresisted motion for leave to file cross appeal and notice of cross appeal, filed March 16, 1990; the United States' (Department of the Treasury, Internal Revenue Service) unresisted motion for dismissal of appeal, filed June 25, 1990; and the United States' unresisted application for extension of time to file responsive brief pending a ruling on its motion to dismiss appeal, filed July 5, 1990.

The United States moves to dismiss the appeal of the debtor Raymond R. Morris for failure to file a timely notice of appeal and for failure to designate and transmit the record on appeal as required by the bankruptcy rules.

On April 27, 1990, the bankruptcy court entered a judgment and order dismissing debtor's Chapter 13 case. On May 7, 1990, debtor filed an amendment to appeal and motion for leave to appeal in order to appeal the order dismissing

his case. Debtor's motion for leave to appeal and notice of appeal, which were filed March 8, 1990, seek to appeal the order of the bankruptcy court, entered March 1, 1990, which set the deadline to file an adversary complaint. That order gave debtor until March 8, 1990, to file his adversary complaint challenging the validity of the IRS tax sale or face dismissal of his case. See order of the bankruptcy court, filed March 1, 1990. The court finds that the amendment of the notice of appeal filed May 7, 1990, is sufficient to appeal the order dismissing debtors, Chapter 13 case.

Within 10 days after filing the notice of appeal as provided by Rule 8001(a) . . . the appellant shall file with the clerk and serve upon the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. . . . The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court.

Bankruptcy Rule 8006. The debtor has not filed any designation of the record on appeal. The debtor has filed a statement of the issues presented.

In examining this matter, two issues have surfaced which concern the court. The first is the possibility that the only record on appeal is the challenged orders of the bankruptcy court, i.e., that there is no designation of the record from debtor because there is no additional record to designate. However, the court notes that debtor's brief on the merits

makes reference to documents outside of these orders and which have not been designated as part of the record on appeal. See brief, filed July 2, 1990, at 4. Debtor has offered no explanation for his failure to designate the record, nor has he stated that the only record on appeal are the orders of the bankruptcy court.

The second issue which concerns this court is the standing of the United States to move to dismiss for failure to designate the record and to participate in this appeal. Related to that issue is the question of whether the United States had any standing to apply to the bankruptcy court to set a deadline for the filing of an adversary complaint by the debtor. Although the bankruptcy court has questioned the validity of the tax sale conducted by the IRS in this matter, that sale is arguably presumed valid until set aside. If the sale is presumptively valid, and if the tax lien of the IRS has been satisfied from the proceeds of the sale (as seems to be indicated by this court's examination of the file), is the IRS still a creditor in this matter with standing to participate on appeal?

The court desires to hear argument on these issues and, accordingly, will set the motion of the United States for dismissal of appeal for hearing. See Local Rule 14(c).

The cross-appeal of Gary A. Mausser is essentially a protective appeal in the event that this court were to reverse

the bankruptcy court on the issues appealed by the debtor. See motion for leave to file cross-appeal, filed March 16, 1990, at 3. The court will grant this motion with the understanding that Mr. Mausser need not take any action in furtherance of his appeal unless this court rules in favor of debtor on debtor's appeal. In such an event, Mr. Mausser will be given an opportunity to brief the issues raised by his cross-appeal.

ORDER:

Accordingly, It Is Ordered:

1. Debtor Raymond R. Morris's motion for leave to appeal, filed March 8, 1990, is granted.
2. Gary A. Mausser's motion for leave to file cross-appeal, filed March 16, 1990, is granted. Further action on this cross-appeal is stayed pending further order of the court.
3. Ruling is reserved on the United States' (Department of the Treasury, Internal Revenue Service) motion for dismissal of appeal, filed June 25, 1990.
4. The United States' application for extension of time, filed July 5, 1990, is granted. Filing of the brief of the United States regarding the merits of debtor's appeal is postponed until further order of the court.
5. The motion of the United States for dismissal of appeal, filed June 25, 1990, is set for hearing before the court in the Third Floor Courtroom, United States Courthouse, Cedar Rapids, Iowa, at 9:00 A.M. on the 1st day of September, 1990.

Done and Ordered this 11th day of September, 1990.

DAVID R. HANSEN, JUDGE

UNITED STATES DISTRICT COURT

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 91-1044

In Re: Raymond R. Morris,

Debtor,

Raymond R. Morris,

Appellant, Appeal from the United States

District Court for the

v. Northern District of Iowa.

IRS by the U.S. Attorney's [Unpublished]

office; Gary A. Mausser,

Appellees

Submitted: September 6, 1991

Filed: September 16, 1991

Before JOHN R. GIBSON, BOWMAN, and LOKEN, Circuit Judges.

PER CURIAM.

Raymond R. Morris, debtor, appeals the District Court's dismissal of his bankruptcy appeal for failure to designate the record as required by Bankruptcy Rule 8006. Upon careful review of the record, we conclude that the District Court did not abuse its discretion in dismissing debtor's appeal. See In re Fitzsimmons, 920 F.2d 1468, 1470-1471 (9th Cir. 1990) (dismissal for non-compliance with Rule 8006 reviewed for abuse of discretion); see also In re Champion, 895 F.2d 490, 492 (8th Cir. 1990) (District Court did not abuse its discretion in denying motion to vacate dismissal of appeal for failure to comply with Bankruptcy Rule 8006).

Bankruptcy Rule 8001(a) provides that "[f]ailure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court . . . deems appropriate, which may include dismissal of the appeal." Because Bankruptcy Rule 8006 requires the appellant, here debtor, to designate the record within ten days of filing a notice of appeal, we find meritless debtor's argument that appellees or the bankruptcy clerk should have taken responsibility to designate the record.

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

1. 11 U.S.C. § 1307(c) reads as follows:

(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including -

(1) unreasonable delay by the debtor that is prejudicial to creditors;

* * *

(3) failure to file a plan timely under section 1321 of this title;