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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	CC-07-1367-MoCK
)		
7	SHANEL STASZ,)	Bk. No.	LA 05-43980 AA
)		
8	Debtor.)		
)		
9	SHANEL STASZ,)		
)		
10	Appellant,)		
)		
11	v.)	O P I N I O N	
)		
12	ROSENDO GONZALEZ, Chapter 7)		
)		
13	Trustee,)		
)		
14	Appellee.)		
)		

Submitted Without Oral Argument
on March 19, 2008

Filed - April 15, 2008

Appeal from the United States Bankruptcy Court
for the Central District of California

Hon. Alan M. Ahart, Bankruptcy Judge, Presiding.

Before: MONTALI, CASE¹ and KLEIN, Bankruptcy Judges.

¹Hon. Charles G. Case, II, Bankruptcy Judge for the District
of Arizona, sitting by designation.

1 MONTALI, Bankruptcy Judge:
2

3 In the matter before us we hold that an order of civil
4 contempt issued in a contested matter within a main bankruptcy
5 case, unlike in an adversary proceeding, is a final, appealable
6 order. We publish this decision because it requires us to decide
7 an issue of first impression in this circuit regarding the
8 finality of this type of civil contempt order.

9 A Chapter 7 trustee obtained a bankruptcy court order
10 requiring the debtor to appear at a Rule 2004² examination ("2004
11 examination") and produce documents to the trustee. The debtor
12 repeatedly failed to appear for the 2004 examination and brought
13 two motions before the court alleging that the 2004 examination
14 and discovery requests were improper. Although the court denied
15 the debtor's motions, she continued to evade the 2004
16 examination.

17 The trustee filed a motion to find the debtor in civil
18 contempt, to order her to appear for the 2004 examination and
19 produce documents, and to impose monetary sanctions on the
20 debtor. The court granted the trustee's motion and awarded
21 sanctions. The debtor appealed and we AFFIRM.
22
23

24 ²Unless otherwise indicated, all chapter, section and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
27 enacted and promulgated prior to the effective date of The
28 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, 119 Stat. 23. All references to Local Rules are
to the Local Bankruptcy Rules for the Central District of
California.

1 **I. FACTS**

2 1. Order for Debtor to Appear at Rule 2004 Examination and
3 Related Motions

4 On February 5, 2007, the bankruptcy court entered an order
5 (the "2004 Order") requiring Chapter 7 Debtor Shanel Stasz
6 ("Debtor") to appear for an examination by Chapter 7 Trustee,
7 Rosendo Gonzalez ("Trustee"), pursuant to Rule 2004.³ Through
8 the 2004 examination, Trustee sought information regarding
9 \$10,000 that Debtor received post-petition.

10 Debtor filed a Motion for Protective Order, arguing that she
11 should not be required to appear for the 2004 examination or to
12 produce documents because she had "submitted to the Trustee the
13 source of the money as post-petition and received from the
14 largest creditor in this matter, Hugo Quackenbush." She argued
15 that the 2004 examination was improper because its purpose was
16 not limited to the scope of Debtor's estate. Debtor's Motion for
17 Protective Order was denied on March 21, 2007.

18 On March 22, 2007, Debtor called Trustee's counsel and
19 requested that the 2004 examination scheduled for the next day be
20 postponed because her car was "in the shop." Trustee's counsel
21 agreed to reschedule the 2004 examination for March 28, 2007.

22 On March 27, 2007, Debtor informed Trustee's counsel that
23 she would not be attending the 2004 examination because she was

24
25 ³Rule 2004(a) provides that "On motion of any party in
26 interest, the court may order the examination of any entity."
27 Rule 2004(b) limits the scope of the 2004 examination to "the
28 acts, conduct, or property or to the liabilities and financial
condition of the debtor, or to any matter which may affect the
administration of the debtor's estate, or to the debtor's right
to a discharge."

1 ill and her car was still in the shop. She also told Trustee's
2 counsel that she had filed a Motion for Reconsideration of Order
3 Denying Protective Order.

4 Debtor's Motion for Reconsideration was denied on April 25,
5 2007. On April 26, 2007, Trustee's counsel noticed a new date
6 for the 2004 examination - May 3, 2007. Debtor did not attend
7 this 2004 examination or produce any documents to Trustee.

8
9 2. Trustee's Motion to Find Debtor in Contempt

10 On June 11, 2007, Trustee filed a Motion to Find Debtor in
11 Civil Contempt for Willful Refusal to Comply with Court Order; to
12 Compel Production of Documents and Participation Pursuant to
13 Order for Rule 2004 Examination; Request for Sanctions ("the
14 Motion"). Debtor opposed the Motion.

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16 3. Continuance of the Contempt Motion

17 The Motion was originally set for hearing on July 11, 2007,
18 but was continued to September 12 to allow Debtor an additional
19 opportunity to produce documents by August 16 and to appear for a
20 2004 examination on August 20. On August 16 Debtor faxed a
21 notice of objections to the document request to Trustee's
22 counsel.⁴ In response, Trustee's counsel postponed the upcoming
23 2004 examination. He requested that Debtor contact him within
24 ten days to meet and confer regarding her failure to produce

25
26 _____
27 ⁴All objections were identical: "The documents requested
28 are objected to since they are outside of the scope of a 2004
Examination and as such are irrelevant to ascertaining the
debtor's estate."

1 documents.

2 In the Supplemental Declaration of Trustee's Counsel in
3 support of the Motion, Trustee's counsel stated that he had
4 incurred more fees since the filing of the Motion, increasing the
5 total fee request to \$4,178.00. Debtor objected to Trustee's
6 counsel's declaration on the grounds that he was ineligible to
7 practice law beginning on August 16, 2007. Debtor also asserted
8 that the deadline for preparing a discovery stipulation was
9 September 4, not August 30.

10
11 4. September 12 Hearing on the Motion

12 At the hearing, Debtor repeated her argument from the
13 pleadings that Trustee's counsel was ineligible to practice law
14 beginning on August 16, 2007. Trustee's counsel asked the court
15 to "order [Debtor] one more time to produce the documents," to
16 which the Court replied, "But she's already been ordered to do
17 that, hasn't she?" Trustee's counsel responded that the Court
18 had already ordered her to produce the documents.

19 The bankruptcy court granted the Motion and awarded
20 sanctions for contempt in the amount of \$3,278.50 by an order
21 entered on September 24, 2007. Debtor timely appealed.

22
23 **II. ISSUE**

24 Did the bankruptcy court err in granting Trustee's contempt
25 motion and ordering Debtor to pay sanctions to Trustee?

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27 **III. STANDARD OF REVIEW**

28 We review a bankruptcy court's award of sanctions for civil

1 contempt under an abuse of discretion standard. See S&C Home
2 Loans, Inc. v. Farr (In re Farr), 278 B.R. 171, 175 (9th Cir. BAP
3 2002); Miller v. Cardinale (In re Deville), 280 B.R. 483, 492
4 (9th Cir. BAP 2002), aff'd, 361 F.3d 539 (9th Cir. 2004). A
5 bankruptcy court abuses its discretion if it bases its decision
6 on an erroneous view of the law or clearly erroneous factual
7 findings. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405
8 (1990). Otherwise, to reverse for abuse of discretion we must
9 have a definite and firm conviction that the bankruptcy court
10 committed a clear error of judgment in the conclusion it reached.
11 SEC v. Coldicutt, 258 F.3d 939, 941 (9th Cir. 2001).

12 13 **IV. JURISDICTION**

14 Trustee argues that the order granting sanctions for civil
15 contempt is not a final order. If the order is not final, then
16 the panel lacks jurisdiction to hear this appeal absent leave to
17 appeal an interlocutory order. See 28 U.S.C. § 158(a). We
18 conclude that the order granting sanctions on a motion for an
19 order of contempt made under Rule 9020 is final.

20 A final order "ends the litigation on the merits and leaves
21 nothing for the court to do but execute the judgment." Catlin v.
22 United States, 324 U.S. 229, 233 (1945). Trustee bases his
23 argument that the order lacks finality solely on Cunningham v.
24 Hamilton County, Ohio, 527 U.S. 198 (1999). In Cunningham, the
25 Supreme Court held that an order imposing sanctions against a
26 non-party attorney for discovery violations under Federal Rule of
27 Civil Procedure 37(a) was not a final order because it did not
28 end the litigation. Cunningham, 527 U.S. at 210. In Markus v.

1 Gschwend (In re Markus), 313 F.3d 1146 (9th Cir. 2002), the Ninth
2 Circuit applied Cunningham to an appeal of sanctions awarded by a
3 bankruptcy court within an adversary proceeding. The Markus
4 court found the sanctions order to be interlocutory and not
5 appealable "until final judgment is entered." Markus, 313 F.3d
6 at 1151.

7 The instant appeal differs significantly from an appeal of
8 discovery sanctions that were awarded in general litigation or in
9 an adversary proceeding in bankruptcy. The sanctions order here
10 was issued in the main Chapter 7 case, rather than within an
11 adversary proceeding. The order did not award sanctions for a
12 discovery violation under Federal Rule of Civil Procedure 37,
13 which is applicable to adversary proceedings in bankruptcy
14 through Bankruptcy Rule 7037. Instead, the court awarded
15 sanctions for civil contempt due to Debtor's failure to comply
16 with the court's 2004 Order that Debtor appear at a 2004
17 examination and produce documents to Trustee's counsel before the
18 2004 examination. Thus, neither Cunningham nor Markus directly
19 addresses the procedural context of the case at hand.

20 While civil contempt orders entered "during the course of a
21 pending civil action" are not appealable until final judgment,⁵
22 the Ninth Circuit has allowed immediate appeals of sanctions
23 orders that dispose of the only issue before the court. See
24 Shuffler v. Heritage Bank, 720 F.2d 1141, 1145 (9th Cir. 1983)
25 (order finding party in contempt of prior judgment is final);
26

27 ⁵SEC v. Elmas Trading Corp., 824 F.2d 732, 732 (9th Cir.
28 1987).

1 Hilao v. Estate of Marcos, 103 F.3d 762, 764 (9th Cir. 1996)
2 (post-judgment orders of contempt are final and appealable).

3 Rule 9020 provides that motions for contempt in bankruptcy
4 cases are contested matters governed by Rule 9014.⁶ In this
5 case, the contested matter alleging Debtor's contempt was the
6 only matter before the court. The order entered resolving a
7 contested matter has the status of a judgment under Federal Rule
8 of Civil Procedure 58. Fed. R. Civ. P. 58, incorporated by Fed.
9 R. Bankr. P. 9021. It follows that the court's award of
10 sanctions was a final order that ended the particular contested
11 matter.

12 If the award of sanctions were not appealable now, it is
13 unclear when the order would become final and appealable. Unlike
14 an adversary proceeding or a civil action outside bankruptcy, the
15 culmination of the bankruptcy case does not result in a final
16 judgment.

17 Because the sanctions order stands alone and requires no
18

19 ⁶Although some courts continue to require a party seeking an
20 order of contempt to apply to the court for an Order to Show
21 Cause Re Contempt, we note that Rule 9020 supersedes this
22 procedure and renders it unnecessary. From 1987 until 2001, Rule
23 9020(b) provided in relevant part that "[c]ontempt committed in a
24 case or proceeding pending before a bankruptcy judge ... may be
25 determined by the bankruptcy judge only after a hearing on
26 notice," and that "[t]he notice may be given on the court's own
27 initiative or on application of the United States attorney or by
28 an attorney appointed by the court for that purpose." In 2001,
Rule 9020 was amended to simply state that "Rule 9014 governs a
motion for an order of contempt made by the United States trustee
or a party in interest." Hence, a request for civil contempt is
a contested matter and, as such, "relief should be requested by
motion." Motions for contempt are ordinary contested matters and
need not involve an application for an Order to Show Cause.

1 further action by the bankruptcy court, the order is a final
2 order, and the panel has jurisdiction under 28 U.S.C. § 158.

3
4 **V. DISCUSSION**

5 Bankruptcy courts have the power to impose civil contempt.
6 See Caldwell v. Unified Capital Corp. (In re Rainbow Magazine,
7 Inc.), 77 F.3d 278, 284-85 (9th Cir. 1996); see also 11 U.S.C.
8 § 105(a). In order to hold a debtor in contempt, the bankruptcy
9 court must find that the debtor "violated a specific and definite
10 order of the court." Knupfer v. Lindblade (In re Dyer), 322 F.3d
11 1178, 1191 (9th Cir. 2003). Because Debtor's conduct
12 demonstrates her repeated refusal to comply with the court's
13 clear order to appear for a 2004 examination, we cannot find that
14 the bankruptcy court abused its discretion by holding Debtor in
15 civil contempt and imposing sanctions on her.

16 The bankruptcy court's 2004 Order was a definite and
17 specific order. It set forth the date, time, and place of the
18 2004 examination and stated that "IT IS ORDERED that [Debtor]
19 appear for examination." Debtor does not allege that the 2004
20 Order contained any ambiguity.

21 More than six months elapsed between the issuance of the
22 2004 Order and the hearing on Trustee's Motion. The 2004
23 examination was scheduled and rescheduled for four different
24 dates. Twice, Debtor communicated excuses for her unavailability
25 to Trustee's counsel on the eve of the 2004 examination. Twice,
26 Debtor petitioned the court to excuse her from appearing at the
27 2004 examination and from producing documents to Trustee's
28 counsel. The court denied Debtor's Motion for Protective Order

1 and Motion for Reconsideration. Debtor claimed that she did not
2 receive notice of Trustee's counsel's third attempt to hold a
3 2004 examination. Even if this contention were true, it does not
4 excuse Debtor's subsequent noncompliance. Trustee's Motion was
5 continued from the original July 11 date to allow Debtor the
6 opportunity to produce documents and attend a 2004 examination in
7 August. Debtor refused to provide the required documents and
8 objected to the request on the date the documents were to be
9 produced. Trustee's counsel cancelled the August 2004
10 examination after Debtor failed to produce documents.

11 In support of her appeal, Debtor argues that sanctions
12 should not be awarded because Trustee's counsel was ineligible to
13 practice law beginning on August 16, 2007, and because he
14 allegedly failed to comply with Local Rules regarding discovery
15 disputes. She also complains of alleged deficiencies in
16 Trustee's Motion. We do not find Debtor's arguments persuasive.

17 First, Debtor's conduct during the time when Trustee's
18 counsel was eligible to practice law provides sufficient grounds
19 for holding Debtor in civil contempt. The sanctions awarded did
20 not include attorney's fees incurred when Trustee's counsel was
21 ineligible to practice law.⁷ The sanctions awarded by the court
22 were limited to attorney's fees for work performed prior to the
23 filing of the Motion on June 11, 2007. Trustee's counsel
24 submitted a supplemental declaration requesting additional
25 attorney's fees for his continued attempts to conduct a 2004
26

27 ⁷Trustee's counsel was temporarily suspended from practice
28 for non-payment of his bar fees, not for misconduct.

1 examination after the filing of the Motion. The court did not
2 include these additional fees in its sanctions award, but only
3 awarded the original amount requested. In addition, the Motion
4 was based on Debtor's conduct prior to June 11, 2007 - all of
5 which occurred when Trustee's counsel was eligible to practice
6 law. The majority of events that transpired between Debtor and
7 Trustee's counsel occurred when Trustee's counsel was eligible to
8 practice law.

9 Second, Debtor's contention that Trustee's counsel did not
10 comply with Local Rule 9013-1(c), which pertains to discovery
11 disputes, does not affect the award of sanctions. Local Rule
12 9013-1(c) provides that in the event of a dispute arising under
13 Rule 2004, "counsel for the parties shall meet in person or by
14 telephone in a good faith effort to resolve the discovery
15 dispute" and that "[i]f counsel are unable to settle their
16 differences, the party seeking discovery shall file and serve a
17 notice of motion together with a written stipulation." Trustee's
18 counsel attempted to meet and confer with Debtor, in accordance
19 with Local Rule 9013-1(c)(1). Instead of contacting Trustee's
20 counsel by telephone or arranging to meet him in person, as the
21 rule requires, Debtor faxed Trustee's counsel a letter
22 instructing him to prepare a stipulation, as described by Local
23 Rule 9013-1(c)(2). Trustee's counsel prepared his portion of the
24 stipulation and gave Debtor an opportunity to contribute to the
25 stipulation. Debtor claimed that she was ill and unable to
26 prepare her portion of the stipulation by August 30, 2007.
27 Instead, she composed a letter objecting to the amount of time
28 she was given to review the stipulation and to the format of the

1 stipulation, and faxed this letter on August 30.

2 Debtor seems to argue that Trustee's counsel bore the
3 responsibility of complying with Local Rule 9013-1(c); he did not
4 comply with the Local Rule; and therefore sanctions cannot be
5 awarded against Debtor. Debtor's argument is unpersuasive for
6 both factual and logical reasons. First, Trustee's counsel seems
7 to have done all that he could to comply with the rule despite
8 Debtor's lack of cooperation. Debtor did not meet and confer
9 with Trustee's counsel, and she did not take part in preparing
10 the discovery stipulation. Second, Debtor's attempt to shift
11 blame onto Trustee's counsel does not excuse her blatant and
12 persistent evasion of the court-ordered 2004 examination.

13 Third, Debtor's argument that the Motion cites inapplicable
14 law and misquotes a Rule of Bankruptcy Procedure also lacks
15 merit. The Motion cites the Rainbow Magazine decision which,
16 although factually different from the case at hand, stands for
17 the proposition that bankruptcy courts have the power to hold
18 parties in civil contempt. Although the Motion quotes an
19 obsolete version of Rule 9020, which was amended in 2001, Debtor
20 presents nothing to suggest this inaccuracy affected the court's
21 decision to impose sanctions.

22 None of the arguments presented by Debtor on appeal
23 establish that the bankruptcy court applied an erroneous view of
24 the law or clearly erroneous factual findings when making its
25 decision to hold Debtor in contempt. We conclude that the court
26 did not abuse its discretion to impose sanctions on Debtor.

VI. CONCLUSION

For the foregoing reasons, we AFFIRM the bankruptcy court's order granting the contempt Motion and awarding sanctions to Trustee.

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