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NOT FOR PUBLICATION

SUSAN M SPRAYL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

| | | | |
|-------------------|---|-------------------------------|-------------------|
| In re: |) | BAP Nos. | CC-11-1410-HHaMk |
| |) | | CC-11-1423-HHaMk |
| ANTONIA ALEMAN, |) | | (Related Appeals) |
| |) | | |
| Debtor. |) | Bk. No. | 11-11734-RR |
| _____ |) | | |
| |) | | |
| ELIZABETH CAMPOS, |) | | |
| |) | | |
| Appellant, |) | | |
| |) | | |
| v. |) | MEMORANDUM¹ | |
| |) | | |
| ANTONIA ALEMAN, |) | | |
| |) | | |
| Appellee. |) | | |
| _____ |) | | |

Submitted Without Oral Argument on
September 21, 2012

Filed - November 7, 2012

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

Honorable Robin L. Riblet, Bankruptcy Judge, Presiding

Appearances: Appellant Elizabeth Campos pro se on brief;
Clifton Earl Reed, Esq. on brief for appellee
Antonia Aleman.

Before: HOLLOWELL, HAMMOND² and MARKELL, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² Hon. M. Elaine Hammond, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

1 The appellant, Elizabeth Campos (Campos) appeals two orders
2 of the bankruptcy court. BAP No. CC-11-1410 is an appeal of the
3 bankruptcy court's order denying Campos a waiver of the filing
4 fee for an adversary proceeding that Campos intended to bring to
5 except her claim from discharge under § 523(a)(6).³ BAP No.
6 CC-1423 is an appeal of the debtor's discharge. For the reasons
7 explained below, we DISMISS both appeals for lack of
8 jurisdiction.

9 **I. FACTS⁴**

10 On April 14, 2011, Antonia Aleman (the Debtor) filed a
11 voluntary chapter 7 bankruptcy petition. The § 341 meeting of
12 creditors was scheduled for May 10, 2011, and continued to
13 June 1, 2011, so that the Debtor could submit additional
14 documentation and information to the bankruptcy trustee.⁵ A
15 notice was sent to all creditors that the deadline to object to
16 the Debtor's discharge or to challenge the dischargeability of
17 any debt was July 11, 2011. The notice specified that if a
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20 ³ Unless otherwise indicated, all chapter and section
21 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
22 All "Rule" references are to the Federal Rules of Bankruptcy
23 Procedure, Rules 1001-9037.

24 ⁴ In order to fully understand the facts underlying these
25 appeals, we have taken judicial notice of documents filed with
26 the bankruptcy court on its electronic docket. See See O'Rourke
v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955,
957-58 (9th Cir. 1988); Atwood v. Chase Manhattan Mortg. Co.
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

27 ⁵ The Debtor amended her bankruptcy schedules on May 27,
28 2011, based on the additional documentation sought by the
bankruptcy trustee.

1 creditor believed "that the debtor is not entitled to receive a
2 discharge under Bankruptcy Code § 727(a) or that a debt owed
3 . . . is not dischargeable under Bankruptcy Code § 523(a)(2), (4)
4 or (6), [the creditor] must file a complaint or a motion . . . by
5 the [deadline]."

6 Campos was listed on the Debtor's schedules as an unsecured
7 creditor holding a claim in the amount of \$6,500. The bankruptcy
8 case docket reflects that Campos received notice of the deadline
9 for bringing actions objecting to or excepting debts from
10 discharge.

11 On June 2, 2011, the bankruptcy trustee filed a report of no
12 distribution, finding that there was no property available for
13 distribution from the estate over and above that exempted by the
14 Debtor. In the report, the trustee stated that the estate had
15 been fully administered and requested relief from any further
16 duties.

17 On June 16, 2011, Campos filed an application requesting
18 that the bankruptcy court waive the fee for filing an adversary
19 proceeding (Motion to Waive AP Fee). Campos contended that she
20 could not afford to pay the filing fee to initiate an adversary
21 proceeding and that based on her income and disability, she was
22 entitled to proceed with filing a nondischargeability complaint
23 in forma pauperis (IFP).

24 Along with the Motion to Waive AP Fee, Campos included a
25 copy of a complaint (Proposed Complaint), which she intended to
26 file against the Debtor if the filing fee were waived. According
27 to the Proposed Complaint, Campos had obtained a judgment in the
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1 Ventura County Court (Judgment) in March 2011.⁶ The Judgment
2 stemmed from a 2009 incident involving Campos, who is disabled
3 and uses a wheelchair along with a service dog, and her neighbors
4 (including the Debtor), who Campos alleged willfully and
5 maliciously caused their dog to attack her and her service dog.
6 The attack resulted in severe injury to Campos' service dog that
7 required \$6,500 in veterinary expenses and forced Campos to
8 obtain a replacement service dog. The Proposed Complaint sought
9 a declaration that the Judgment was nondischargeable under
10 § 523(a)(6).

11 Additionally, Campos asserted in the Proposed Complaint that
12 the Debtor committed fraud by failing to fully disclose
13 information regarding her marital status and dependents on her
14 bankruptcy schedules.

15 On June 17, 2011, the bankruptcy court entered an order
16 denying the Motion to Waive AP Fee (Fee Waiver Order); however,
17 it did reduce the fee to \$150.00.⁷ On July 8, 2011, Campos filed
18 a notice of appeal, challenging the bankruptcy court's authority
19 to deny her IFP request.⁸

21 ⁶ Campos sued the Debtor in Ventura County Small Claims
22 Court and appears to have also prevailed on an appeal of that
23 order in the same court. See Appellee's Opening Br. at 2.

24 ⁷ No explanation accompanies the bankruptcy court's order
25 regarding why the amount was set at \$150.00, or what section of
26 the Bankruptcy Code or other federal law authorized the reduction
of the filing fee.

27 ⁸ On appeal, Campos asserts that because her IFP request to
28 proceed with her appeal was transferred to the district court and
(continued...)

1 Also on July 8, 2011, the Debtor filed a motion requesting
2 an extension of time to file the appeal. Campos did not,
3 however, pay the reduced fee to file the Proposed Complaint or
4 file the Proposed Complaint without paying the required fee.
5 Campos also did not seek an extension of time to file the
6 Proposed Complaint while her appeal of the Fee Waiver Order was
7 pending. The deadline for filing nondischargeability actions
8 passed on July 11, 2011, and the Debtor received a discharge on
9 July 18, 2011 (Discharge Order).

10 On July 26, 2011, Campos filed an appeal of the Discharge
11 Order, contending that the bankruptcy court erred in entering a
12 discharge as to her claim.

13 On September 26, 2011, the Bankruptcy Appellate Panel (BAP)
14 entered an order noting that the appeal of the Fee Waiver Order
15 had not been filed within 14 days of its entry but that a motion
16 for extension of time to file the notice of appeal was timely
17 under Rule 8002(c)(2). However, because the bankruptcy court had
18 not ruled on the extension motion, the BAP remanded the matter to
19 the bankruptcy court for the limited purpose of ruling on the
20 extension motion. On October 7, 2011, the bankruptcy court
21 granted the extension of time to file the appeal.

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25 ⁸(...continued)
26 subsequently approved by that court, the bankruptcy court lacked
27 the authority to decide the Motion to Waive AP Fee. Moreover,
28 she asserts that the approval by the district court of her
request to proceed with her appeal IFP established her
entitlement to have proceeded with the Proposed Complaint without
paying the filing fee.

1 Campos requested to proceed with both her appeals IFP. Her
2 request was transferred to the district court pursuant to
3 28 U.S.C. § 1915. On April 26, 2012, the district court granted
4 Campos' request.

5 II. JURISDICTION

6 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
7 § 1334 and 157(b)(2)(A). We address our jurisdiction under
8 28 U.S.C. § 158 below.

9 III. ISSUES

10 Do we have jurisdiction over the appeals?

11 If we have jurisdiction over the appeals, did the bankruptcy
12 court err in entering the Fee Waiver Order and Discharge Order?

13 IV. STANDARDS OF REVIEW

14 We may raise the question of our jurisdiction over an appeal
15 sua sponte. WMX Tech., Inc. v. Miller, 104 F.3d 1133, 1135 (9th
16 Cir. 1997) (en banc). Our jurisdiction, such as whether an
17 appeal is moot, is a question of law that we address de novo.
18 Menk v. Lapaqlia (In re Menk), 241 B.R. 896, 903 (9th Cir. BAP
19 1999).

20 V. DISCUSSION

21 A. Fee Order

22 Constitutional mootness is derived from Article III of the
23 U.S. Constitution, which provides that the exercise of judicial
24 power depends on the existence of a case or controversy. DeFunis
25 v. Odegaard, 416 U.S. 312, 316 (1974); Clear Channel Outdoor,
26 Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 33 (9th Cir. BAP
27 2008). The doctrine of constitutional mootness is a recognition
28 of Article III's prohibition against federal courts' issuing

1 advisory opinions. Church of Scientology of Cal. v. United
2 States, 506 U.S. 9, 12 (1980) ("It has long been settled that a
3 federal court has no authority 'to give opinions upon moot
4 questions or abstract propositions, or to declare principles or
5 rules of law which cannot affect the matter in issue in the case
6 before it.'") (internal citation omitted).

7 The mootness doctrine applies when events occur during the
8 pendency of the appeal that make it impossible for the appellate
9 court to grant effective relief. Id. The determining issue is
10 "whether there exists a 'present controversy as to which
11 effective relief can be granted.'" People of Village of Gambell
12 v. Babbitt, 999 F.2d 403, 406 (9th Cir. 1993) (quoting NW Env'tl.
13 v. Gordon, 849 F.2d 1241, 1244 (9th Cir. 1988)). If no effective
14 relief is possible, we must dismiss for lack of jurisdiction.
15 United States v. Arkison (In re Cascade Rds., Inc.), 34 F.3d 756,
16 759 (9th Cir. 1994).

17 After reviewing the record before us, we conclude that we
18 cannot provide effective relief to Campos even if we were to
19 reverse the Fee Waiver Order. The Proposed Complaint alleged
20 that the Judgment was excepted from discharge under § 523(a)(6).
21 Under Rule 4007(c), the Proposed Complaint had to be filed
22 60 days after the first date established for the § 341 meeting of
23 creditors. Schreiber v. Halstead (In re Halstead), 158 B.R. 485,
24 487 (9th Cir. BAP 1993) aff'd and adopted, 53 F.3d 253 (9th Cir.
25 1995) (Rule 4007(c) is strictly construed in the Ninth Circuit).
26 Thus, creditors must act promptly to request a determination that
27 a debt is nondischargeable or risk the consequence that it is
28 discharged.

1 While Campos contemplated a timely filing of the Proposed
2 Complaint, she did not actually file it. Nor did she seek an
3 extension of time in which to file the Proposed Complaint while
4 the appeal of the Fee Waiver Order was pending. Accordingly, the
5 July 11, 2011 deadline to file complaints challenging the
6 dischargeability of the Debtor's debts passed without Campos
7 preserving her right to challenge the dischargeability of the
8 Judgment. Neither the bankruptcy court nor the appellate court
9 may grant an extension of time for the filing of dischargeability
10 complaints once the deadline has passed. Rule 9006(b)(3); see
11 also, Classic Auto Refurbishing, Inc. v. Marino (In re Marino),
12 37 F.3d 1354, 1358 (9th Cir. 1994).

13 Under these circumstances, we can offer Campos no effective
14 relief even if we were to reverse the Fee Waiver Order. Any
15 opinion on whether the bankruptcy court erred in entering the Fee
16 Waiver Order now would be advisory. Kittel v. Thomas, 620 F.3d
17 949, 951 (9th Cir. 2010) (Constitution forbids issuance of
18 advisory opinions). As a result, we dismiss BAP No. CC-11-1410
19 for lack of jurisdiction.

20 **B. Discharge Order**

21 Campos asserts that it is a "flagrant abuse of judicial
22 power" for the bankruptcy court to have entered the Discharge
23 Order when she had appealed the Fee Waiver Order. See
24 Appellant's Opening Br. at 1.

25 The timely filing of an appeal of a final order ordinarily
26 divests a bankruptcy court of jurisdiction "'over those aspects
27 of the case involved in the appeal.'" Sherman v. Sec. & Exch.
28 Comm'n (In re Sherman), 491 F.3d 948, 967 (9th Cir. 2007).

1 However, the bankruptcy court retains jurisdiction over other
2 proceedings related to the petition. Id. Therefore, even though
3 Campos appealed the Fee Waiver Order, the bankruptcy court had
4 jurisdiction to enter the Discharge Order.⁹

5 For the same reasons that we articulated above, reversal of
6 the Discharge Order cannot provide Campos with effective relief,
7 namely, the ability to have the Judgment declared
8 nondischargeable. The deadline to challenge the Debtor's
9 discharge has passed, and as we previously noted, neither this
10 Court nor the bankruptcy court has the power to extend it. As a
11 result, we lack jurisdiction over BAP No. CC-11-1423. Therefore,
12 we do not reach the merits of either appeal.

13 VI. CONCLUSION

14 For the foregoing reasons we DISMISS both the appeal of the
15 Fee Waiver Order (BAP No. CC-11-1410) and the appeal of the
16 bankruptcy court's entry of the Discharge Order (BAP No.
17 CC-11-1423) on jurisdictional grounds.¹⁰

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23 ⁹ Rule 4004 determines when a bankruptcy court may grant a
24 discharge under § 727. It provides that "[i]n a chapter 7 case,
25 on expiration of the times fixed for objecting to discharge . . .
26 the court shall forthwith grant the discharge unless [one of
27 twelve enumerated conditions exist.]" Rule 4004(c)(1). If none
28 of those conditions exist, the bankruptcy court is required to
promptly enter the discharge.

¹⁰ We DENY Campos's request to the BAP to order the
bankruptcy judge to pay her damages in the amount of \$15,462.