

MAR 14 2008

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6 In re:) BAP No. AZ-07-1036-JuKPa
7 WAYNE ENGRAM,)
8 Debtor,) Bk. No. 05-24758
9 _____)
10 WAYNE ENGRAM; MADELINE ENGRAM;)
11 SUSIE ENGRAM,)
12 Appellants,)
13 v.) **M E M O R A N D U M¹**
14 S. WILLIAM MANERA, Trustee;)
15 SAMUEL ENGRAM; JULIA ENGRAM,)
16 Appellees.)
17 _____)

Submitted Without Oral Argument
on February 21, 2008

Filed - March 14, 2008

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable James M. Marlar, Bankruptcy Judge, Presiding

Before: JURY, KLEIN, and PAPPAS, 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.

1 This is an appeal of the order approving the compromise of
2 the chapter 7² estate's interest in a multi-party, intra-family
3 state court quiet title action. Specifically, the debtor, his
4 sister, and his daughter ("Appellants") all appeal the
5 bankruptcy court's order approving the trustee's compromise of
6 the estate's portion of the state court lawsuit. It is but one
7 piece of a larger compromise of the entire state court lawsuit,
8 which is presently the subject of a state court appeal.

9 Perceiving no abuse of discretion in the bankruptcy court's
10 approval of the bankruptcy trustee's portion of the compromise,
11 we AFFIRM.

12 I. FACTS

13 Lloyd Engram, debtor's father, who died in 2004, owned real
14 property located in Phoenix, Arizona. At some point in time,
15 Samuel Engram, Lloyd Engram's nephew, either claimed title or
16 had acquired title to the property through a tax foreclosure.

17 On September 2, 2005, the debtor, Wayne Engram, and his
18 sister Madeline Engram, with the assistance of counsel, Barry
19 Becker ("Becker"), commenced a lawsuit against Samuel and Julia
20 Engram ("the Sam Engrams") in Maricopa County, Arizona, Superior
21 Court, Case No. CV2005-0139566 to quiet title to the property.
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24 ² Unless 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, because the case from which this
appeal arises was filed before its effective date (generally
October 17, 2005).

1 The Sam Engrams filed a third-party complaint against Susie
2 Engram, who is the debtor's daughter, and Sheila Gossett.

3 **A. Debtor's Bankruptcy Filing**

4 Debtor filed his chapter 13 case on October 14, 2005, which
5 case was converted to chapter 7 on April 28, 2006. Appellee S.
6 William Manera is the chapter 7 trustee.

7 Although the lawsuit No. CV2005-0139566 had been filed only
8 six weeks before the bankruptcy case filing, debtor omitted that
9 action from his schedules of assets and liabilities and did not
10 claim it as exempt. He revealed it in his Statement of
11 Financial Affairs where he described it as "inactive."

12 On August 2, 2006, the bankruptcy court authorized the
13 trustee to employ general counsel. On November 13, 2006, the
14 bankruptcy court authorized the trustee to hire Becker, Debtor's
15 state court counsel, as special counsel to represent the
16 estate's interest in the state court lawsuit. Debtor did not
17 object to Becker's employment.

18 Debtor received his chapter 7 discharge on August 30, 2006.

19 **B. Settlement of the State Court Lawsuit**

20 On November 10, 2006, a settlement conference in the state
21 court litigation occurred. The trustee, his general counsel,
22 Becker, debtor, the Sam Engrams, and their counsel Robert J.
23 DuComb attended.

24 The parties present entered into a "global" settlement that
25 was reduced to writing in apparent compliance with Ariz. R. Civ.

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1 P. 80(d).³ The settlement provided that the Sam Engrams would
2 pay the estate \$5,000, with approximately \$250 going towards a
3 lien held against debtor. The Sam Engrams were also required to
4 pay \$3,500 to a savings account for Madeline, and the parties'
5 counsel were to work towards a mutually accepted settlement
6 release and agreement. Lastly, the settlement was subject to
7 the bankruptcy court's approval of terms applicable to the
8 trustee.

9 Debtor agreed to the terms and signed the agreement on
10 behalf of himself and Madeline, representing that he had
11 authority to sign on her behalf. Becker also signed the
12 settlement as state court counsel for debtor, Madeline, Susie
13 and Sheila Gossett. Madeline, Susie and Sheila Gossett were not
14 present at the settlement conference nor did they sign the
15 settlement agreement individually.

16 **C. Approval of the Compromise Pursuant to Rule 9019**

17 On December 5, 2006, the trustee sought the bankruptcy
18 court's approval of the settlement by filing a "Stipulated
19 Application to Compromise Claim and Compensate Special Counsel."
20 Madeline objected to the compromise, contending that she was not
21 advised of the settlement hearing and her father, Lloyd, wanted
22 her and her two brothers and niece (Susie) to have the property.
23 Susie objected on the grounds that she did not know about the
24 settlement conference, she was an interest holder in the

25
26 ³ The Arizona rule provides: "No agreement or consent
27 between parties or attorneys in any matter is binding if
28 disputed, unless it is in writing, or made orally in open court,
and entered in the minutes."

1 property, and her grandfather, Lloyd, wanted her to have an
2 interest in the property. Debtor also filed an objection to the
3 stipulation, asserting for the first time that the state court
4 lawsuit was not property of the estate.

5 On January 18, 2007, the bankruptcy court heard the matter.
6 After the hearing, the bankruptcy court filed its Memorandum
7 Decision on January 19, 2007, and entered an order on the same
8 date overruling Appellants' objections. The bankruptcy court
9 found that neither Madeline nor Susie were creditors and,
10 therefore, they lacked standing to object to the compromise.
11 The bankruptcy court also found the state court lawsuit was
12 property of the estate and ruled the compromise fair and
13 equitable.⁴

14 Appellants timely appealed.

15 **II. JURISDICTION**

16 The bankruptcy court had subject matter jurisdiction
17 pursuant to 28 U.S.C. §§ 1334 over this core proceeding under
18 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

19 **III. ISSUES⁵**

20 A. Whether Madeline Engram and Susie Engram had standing to
21 object to the compromise.
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23 ⁴ The bankruptcy court entered a separate order on January
24 22, 2007, approving the stipulation, directing payment of the
25 settlement sum, and authorizing the trustee to enforce the
26 settlement terms, execute documents related to the settlement and
compensate Becker as special counsel.

27 ⁵ Although the pro se Appellants' brief appears to state a
28 large number of issues, they boil down to the three that we here
restate.

1 B. Whether debtor's interest in the state court lawsuit was
2 property of the estate under § 541(a).

3 C. Whether the bankruptcy court abused its discretion in
4 approving the compromise.

5 IV. STANDARDS OF REVIEW

6 We review the bankruptcy court's determination of standing
7 de novo. Brown v. Sobczak (In re Sobczak), 369 B.R. 512, 516
8 (9th Cir. BAP 2007) citing Arakaki v. Lingle, 477 F.3d 1048,
9 1056 (9th Cir. 2007).

10 Whether property is included in a bankruptcy estate is a
11 question of law subject to de novo review. Gaughan v. Smith (In
12 re Smith), 342 B.R. 801, 805 (9th Cir. BAP 2006).

13 We review a bankruptcy court's order approving a trustee's
14 application to compromise a controversy for abuse of discretion.
15 Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1380 (9th
16 Cir. 1986).

17 V. DISCUSSION

18 A. Madeline Engram and Susie Engram Lacked Standing to 19 Object to the Compromise

20 The bankruptcy court correctly ruled that Madeline and
21 Susie lacked standing. It noted that they were not creditors;
22 they were not scheduled as such, nor, not having filed proofs of
23 claim, did they contend that they were creditors.

24 Only persons who are directly or adversely affected
25 pecuniarily by the compromise have standing to object.
26 Fondiller v. Robertson (In re Fondiller), 707 F.2d 441, 442 (9th
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1 Cir. 1983).⁶ The bankruptcy court's approval of the compromise
2 between the trustee, who represented the estate's interests, and
3 the Sam Engrams did not have any adverse effect on Madeline or
4 Susie. The matters Madeline and Susie present in their
5 objections to the compromise appear to relate to whether the
6 "global" settlement of the state court litigation is effective
7 as to them. As they are parties in that lawsuit and have
8 appealed the Arizona judgment enforcing that settlement,⁷
9 whatever rights they may have in the property, or issues
10 relating to the enforceability of the underlying settlement
11 signed in apparent compliance with Ariz. R. Civ. P. 80(d), are
12 appropriately addressed in the state court.

13 **B. Debtor's Interest in the State Court Lawsuit Was Property**
14 **of the Estate**

15 When debtor filed his bankruptcy petition, all the "legal
16 or equitable interests" he had in property became property of
17 the bankruptcy estate and were represented by the bankruptcy
18 trustee. § 541(a). "Causes of action are among such legal or
19 equitable interests." Turner v. Cook, 362 F.3d 1219, 1226 (9th
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21 ⁶ Although Fondiller sets forth the "aggrieved person" test,
22 which limits bankruptcy appeals to those persons whose rights or
23 interests are directly and adversely affected pecuniarily,
24 Madeline's and Susie's standing to object to the compromise would
25 also not pass muster under the broader standing principles
26 applicable to parties in interest at the trial level. See
27 Sobczak, 369 B.R. at 517-18 (noting that a party in interest may
28 be one who has actual pecuniary interest in the case, one who has
a practical stake in the outcome of the case, or one who will be
impacted in any significant way in the case).

⁷ On February 20, 2007, the state court entered a judgment
enforcing the settlement.

1 Cir. 2004). All causes of action embodied in the lawsuit that
2 the debtor filed six weeks before his bankruptcy petition
3 qualify as such "legal or equitable interests." Accordingly,
4 the bankruptcy court correctly ruled that debtor's interest in
5 the state court lawsuit was estate property.

6 **C. The Compromise Was Fair and Equitable**

7 The approval of a compromise involves application of a four
8 factor test: (a) the probability of success in the litigation;
9 (b) the difficulties, if any, to be encountered in the matter of
10 collection; (c) the complexity of the litigation involved, and
11 the expenses, inconvenience and delay necessarily attending it;
12 and (d) the paramount interest of the creditors and a proper
13 deference to their reasonable views in the premises. Fireman's
14 Fund Ins. Co. v. Woodson (In re Woodson), 839 F.2d 610, 620 (9th
15 Cir. 1988); A&C Props., 784 F.2d at 1381.

16 Although the bankruptcy court's ruling approving the
17 compromise was not accompanied by a slavish reiteration of the
18 four factors set forth in A&C Props., we may affirm the
19 bankruptcy court if the record supports approval of the
20 compromise. Id. at 1383. The record establishes that the
21 bankruptcy court did apply the requisite factors for determining
22 whether to approve a proposed compromise. First, the motion to
23 approve the compromise actually articulated the A&C
24 Props./Woodson factors. Stipulated Motion to Approve Compromise
25 of Claim with Samuel and Julian Engram (12/5/06) at 4. Second,
26 in its Memorandum Decision explaining its ruling approving the
27 compromise, the bankruptcy court noted that "the trustee
28 satisfied the Ninth Circuit's standards, as set forth in In re

1 Woodson." Mem. Decision (1/19/07) at 1-2. It is, thus,
2 apparent that the court considered and applied the requisite
3 factors when approving the compromise.

4 It is also significant that Appellants have neither
5 contended nor argued that the bankruptcy court applied an
6 incorrect legal standard when assessing the compromise as fair
7 and equitable. Nonjurisdictional issues not raised and argued
8 by an appellant are deemed waived. United States v. Montoya, 45
9 F.3d 1286, 1300 (9th Cir. 1995); Law Offices of Neil Vincent
10 Wake v. Sedona Inst. (In re Sedona Inst.), 220 B.R. 74, 76 (9th
11 Cir. BAP 1998).

12 In sum, after close analysis of the record as a whole we
13 are persuaded that the compromise is fair and equitable and
14 conclude that the bankruptcy court did not abuse its discretion
15 in approving it.

16 **D. Attorneys' Fees And Expenses**

17 The Sam Engrams request their attorneys' fees and expenses
18 against the Appellants in connection with this appeal pursuant
19 to Ariz. Rev. Stat. § 12-341.01. They contend that this appeal
20 arises out of the settlement agreement reached in the state
21 court lawsuit, which is a signed contract.

22 The statute relied upon provides that in any contested
23 action arising out of a contract, express or implied, the court
24 may award the successful party reasonable attorneys' fees. This
25 appeal, however, involves an appeal of the bankruptcy court's
26 order approving a compromise of the estate's interest in the
27 state court lawsuit under Rule 9019 and not the judgment
28 enforcing the underlying settlement agreement pursuant to Ariz.

1 R. Civ. P. 80(d). Therefore, the Sam Engrams are not entitled
2 to their attorneys' fees in this appeal pursuant to the statute
3 cited. Whether they will be entitled to fees in connection with
4 the state court appeal is left to the appellate court in that
5 matter.

6 **VI. CONCLUSION**

7 For the reasons set forth herein, we AFFIRM.
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