

NOT FOR PUBLICATION

JUN 25 2008

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6 In re:) BAP Nos. CC-07-1469-PeKPa
7 STEVEN J. STANWYCK,)
8 Debtor.) Bk. No. LA 07-19183-SB
9 _____)
10 STEVEN J. STANWYCK,)
11 Appellant,)
12 v.) **MEMORANDUM**¹
13 JOAN C. STANWYCK,)
14 Appellee.)
_____)

Argued and Submitted on May 15, 2008
at Pasadena, California

Filed - June 25, 2008

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

Honorable Samuel L. Bufford, Bankruptcy Judge, Presiding

Before: PETERSON,² 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.

² Hon. John L. Peterson, U.S. Bankruptcy Judge for the District of Montana, sitting by designation.

1 Appellant, Chapter 11³ debtor Steven J. Stanwyck ("Debtor"),
2 appeals the order of the bankruptcy court terminating the
3 automatic stay under § 362(d)(1) so that his estranged wife,
4 appellee Joan Stanwyck ("Mrs. Stanwyck"), could continue a marital
5 dissolution proceeding pending in Los Angeles Superior Court, In
6 re Marriage of Petitioner, Joan Stanwyck and Respondent, Steven
7 Stanwyck, case no. BD317414 (the "marital dissolution"
8 proceeding). We AFFIRM.

9
10 **FACTS⁴**

11 Debtor and Mrs. Stanwyck were married in 1969; the couple had
12 several children.

13 In July 2000, Mrs. Stanwyck filed a petition for legal
14 separation in Los Angeles County Superior Court. In that action,
15 she requested that the state court grant her legal and physical
16 custody of the children, award spousal support, give visitation
17 rights to Debtor, and determine property rights.

18 On August 10, 2000, Debtor responded by filing a petition for
19 dissolution of the marriage (the current marital dissolution
20 proceeding). Debtor was, at that time, a debtor in a chapter 7
21 case which he had filed approximately nine years earlier. Bankr.

22
23 ³ Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

25 ⁴ This account of the facts is, admittedly, sketchy because,
26 as discussed below, Debtor provided no statement of facts in his
27 appellate briefs. This is a violation of Rule 8010(a)(1)(D). The
28 excerpts of record also provide little factual information. One
promising source of facts in the excerpts, Mrs. Stanwyck's
Memorandum of Points and Authorities in Support of Motion for
Relief from Stay, indicates that a complete statement of facts in
a declaration from her attorney was attached to the Memorandum.
However, Debtor failed to include this attachment in the excerpts.

1 C.D. Cal. 92-22475-SB, filed March 30, 1991, dismissed July 17,
2 2002. Debtor removed the marital dissolution proceeding to the
3 bankruptcy court. On August 31, 2000, the bankruptcy court,
4 acting through the same presiding judge involved in this appeal,
5 ordered that the marital dissolution proceeding be remanded. In a
6 harbinger of the current appeal, the bankruptcy court ruled in its
7 remand decision that:

8 Superior Court is uniquely qualified to make a decision
9 on all the issues relating to marital dissolution,
10 including property division. This Court is uniquely
11 unsuited for making any such decisions. This matter
12 should be in Superior Court where that expertise exists
13 and not in this Court where it does not.

14 Debtor appealed the remand order to this Panel, but withdrew his
15 appeal at oral argument.⁵

16 The record provides little information concerning events in
17 the marital dissolution proceeding in state court from the time of
18 its remand in 2000 to the filing of Debtor's third bankruptcy
19 petition on October 12, 2007. Bankr. C.D. Cal. 07-19183. Mrs.
20 Stanwyck alleges that there was a hearing scheduled to occur on

21 ⁵ These events, including the judge's statement quoted
22 above, were described in the Panel's Memorandum in Stanwyck v.
23 Stanwyck (In re Stanwyck) (BAP nos. CC-00-1654/1676 MaBK, August
24 24, 2001). In addition, between 2000 and the present, Debtor and
25 Mr Stanwyck were apparently involved in numerous other legal
26 actions in addition to the marital dissolution proceeding. For
27 example, Debtor filed another chapter 7 petition on May 28, 2002,
28 Bankr. C.D. Cal. no. 02-25398-SB, in which discharge was denied on
September 22, 2003. There was also a lawsuit, about which the
record provides no detail, commenced by Debtor in district court
against numerous parties, including the bankruptcy judge, C.D.
Cal. No. CV-01-7749-GAF; this action was later dismissed, Debtor
was sanctioned, and an order declaring Debtor a vexatious litigant
was entered. Finally, there also are other pending actions
involving these parties, although with no details in the record on
appeal, in the U.S. Tax Court, and before the California Board of
Equalization. There are also pending disciplinary proceedings
against Debtor before the State Bar of California, In re Steven J.
Stanwyck, 02-0-10226 and 05-0-02193DFM, filed July 10, 2006.

1 October 29, 2007, at which the state court would review a
2 referee's report concerning alleged discovery violations of
3 Debtor, another referee's report investigating allegations of
4 Debtor's misappropriation of community assets and breach of
5 fiduciary duty, and a conference to set a trial date in the
6 marital dissolution proceeding. According to Mrs. Stanwyck,
7 Debtor filed his chapter 11 petition on October 12 to impose the
8 stay and prevent the hearings on October 29, 2007.

9 Mrs. Stanwyck filed a Motion for Relief from Stay on November
10 13, 2007. In her motion, she argued that Debtor's latest
11 bankruptcy petition was filed in bad faith, that the claims at
12 issue between the parties arise under nonbankruptcy law and can be
13 most expeditiously handled in state court, and that Debtor has
14 been declared a vexatious litigant as a result of his activities
15 in bankruptcy-related proceedings. Debtor submitted a reply to
16 this motion on November 21, 2007.

17 The bankruptcy court conducted a hearing on November 27,
18 2007. Debtor appeared pro se, Mrs. Stanwyck was represented by
19 counsel, and both were heard. The court found that good cause for
20 relief from stay existed, in that the state court had greater
21 expertise in family law matters, and that the issues related to
22 the marital dissolution were more properly decided in the state
23 court. Tr. Hr'g 22:24 - 231. The bankruptcy court also found
24 that Debtor's opposition to the motion and supporting exhibits
25 were unintelligible, violated numerous local rules, and were not
26 supported by "any evidence at all." Tr. Hr'g 1:10-14.

27 The bankruptcy court entered its order granting Mrs.
28 Stanwyck's motion for relief from the automatic stay on November

1 29, 2007, terminating the stay as to the marital dissolution
2 proceeding in state court. However, the bankruptcy court's order
3 limited enforcement of any judgment obtained in state court to
4 "non-ESTATE property or earnings."

5 Debtor filed a timely appeal on December 5, 2007.

6 7 **JURISDICTION**

8 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
9 §§ 1334 and 157(b)(2)(G). We have jurisdiction pursuant to 28
10 U.S.C. § 158.

11 12 **ISSUE**

13 Whether the bankruptcy court abused its discretion in
14 granting Mrs. Stanwyck relief from the automatic stay to continue
15 the marital dissolution proceeding.

16 17 **STANDARD OF REVIEW**

18 A bankruptcy court's decision to grant relief from the
19 automatic stay is reviewed for abuse of discretion. In re Skagit
20 Pac. Corp., 316 B.R. 330, 335 (9th Cir. BAP 2004). A bankruptcy
21 court necessarily abuses its discretion if it bases its decision
22 on an erroneous view of law or clearly erroneous factual findings.
23 Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990). An
24 abuse of discretion will also be found if the Panel has a definite
25 and firm conviction that the bankruptcy court committed a clear
26 error of judgment in the conclusion it reached. Beatty v. Traub
27 (In re Beatty), 162 B.R. 853, 855 (9th Cir. BAP 1994).

1 DISCUSSION

2 I.

3 Procedural Irregularities in this Appeal

4 Although appearing without counsel in this appeal, Debtor is
5 apparently a seasoned attorney and member of the California bar.
6 Despite his legal training, Debtor has created innumerable
7 procedural difficulties in prosecuting this appeal that have
8 significantly interfered with the Panel's ability to consider the
9 issues.

10 The Debtor filed an eight-page Opening Brief, much of which
11 is difficult to understand and fails to comply with the
12 requirements of Rule 8010. For example,

- 13 • Debtor's one-line statement of appellate jurisdiction,
14 required by Rule 8010(a)(1)(B), is "This appeal lies from an
15 order granting relief fro[m] the automatic stay." This is
not a jurisdictional statement.
- 16 • Debtor declined to comply with Rule 8010(a)(1)(C)'s mandate
17 that the Opening Brief provide a statement of the issues
18 presented. Instead, Debtor states, "To fully address all of
19 the issues on Appeal, Appellant/Debtor is awaiting
20 Appellee/Movant's Proof of Claim, if any, due on or before
February 29, 2008." Opening Br. at 1. Indeed, there is no
real articulation of the issues on appeal to be found in
Debtor's Opening Brief.
- 21 • Debtor's statement of the case does not describe the nature
22 of the underlying case, the course of proceedings in the
23 bankruptcy court, or even identify the disposition in the
24 bankruptcy court, all of which are required by Rule
25 8010(a)(1)(D). Further, Debtor's one-paragraph statement of
26 facts provides none of the critical information concerning
27 disputes between these parties that relate back at least to
2000, and it contains no references to the record on appeal,
also required by Rule 8010(a)(1)(D).
- 28 • Debtor's "argument" is a one-paragraph restatement of his
unwillingness to discuss the issues until the filing of his
Reply Brief. Specifically, Debtor fails to comply with Rule
8010(a)(1)(E)'s requirements that his Opening Brief contain,
somewhere, Debtor's contentions on appeal with respect to the
issues presented, and the reasons therefor.

1 • The only relief sought in the conclusion to his Opening Brief
2 that, upon remand to the bankruptcy court, the Panel should
3 order this case reassigned to a different bankruptcy judge.
4 Obviously, such relief is not justified by the record before
5 us.⁶

6 Simply put, while Debtor did provide a table of contents and
7 authorities as required by Rule 8010(a)(1)(A), his brief violated
8 or failed to comply with every other provision of Rule 8010(a)(1).
9 We agree with Mrs. Stanwyck that she has been unfairly prejudiced
10 by Debtor's failure to present any substantive arguments
11 whatsoever in his Opening Brief, in that she was deprived of any
12 meaningful opportunity to respond to Debtor's positions in her
13 brief.⁷

14 Moreover, although Debtor's Opening Brief indicated that he
15 would present his arguments on appeal in his Reply Brief, his
16 four-page Reply Brief is likewise deficient. Instead, the Reply
17 Brief merely repeats Debtor's complaint that Mrs. Stanwyck has not

18 ⁶ Debtor's demand apparently refers back to a statement on
19 page 3 of Debtor's Opening Brief, which is presented here in full
20 as a fair example of the clarity of Debtor's arguments:

21 Appellee/Movant in her moving papers by reference to a
22 2000 civil case brought by Appellant/Debtor including
23 against Judge Bufford, App. Exhibit D, pages 44 and
24 49-58, Related Parties and cases #2 and #8,
25 respectively, has intentionally inserted prejudicial,
26 infectious, inflammatory and on its face disqualifying
27 matter. In the interests of justice, Appellant/Debtor
28 address whether now this "Sword of Damocles" in this
case should continue before Judge Bufford, who now may
even be a witness due to Appellee/Movant's insertion
which likely will be focused on by other persons.
Appellant/Debtor necessarily addresses this with
trepidation.

⁷ We would be more sympathetic to Mrs. Stanwyck's concern
that she did not have any opportunity to respond to Debtor's
arguments had counsel for Mrs. Stanwyck appeared at oral argument
before the Panel or at least provided an excuse in advance for her
absence.

1 yet filed a Proof of Claim in Debtor's bankruptcy case.⁸

2 Finally, on May 12, 2008, three days before oral argument in
3 this appeal, Debtor filed a "Supplemental Brief" including 180
4 pages of exhibits. This act violated Rule 8009(a)(3), which
5 provides that, after the filing of a reply brief, "[n]o further
6 briefs may be filed except with leave of . . . the bankruptcy
7 appellate panel." Debtor made no request for leave to submit
8 further briefing, nor do we grant it. Accordingly, Mrs.
9 Stanwyck's request that we STRIKE Debtor's Supplemental Brief and
10 exhibits is GRANTED.⁹

11 Debtor has not provided the essential information required by
12 the Rules so the Panel may perform an effective review of the
13 decision of the bankruptcy court. Debtor's failure to properly
14 present and argue issues in an Opening Brief, in and of itself,

15 _____
16 ⁸ It is not clear why Debtor insists that Mrs. Stanwyck must
17 file a Proof of Claim before he will address the substance of the
18 issues in this appeal. Debtor states "Appellee . . . is simply
19 trying to avoid the inevitable by even strategically delaying her
20 Proof of Claim under oath, to avoid meaningful review here as to
21 what was or was not substantively [to be] relieved from." Reply
22 Br. at 1. Debtor's concerns about obtaining a "substantive,"
23 "meaningful review" of Mrs. Stanwyck's claims do not amount to a
24 defense to Mrs. Stanwyck's motion. The disposition by the
25 bankruptcy court of a motion for relief from stay does not require
a full adjudication of the merits of parties' claims. Biggs v.
Stovin (In re Luz Int'l), 219 B.R. 837, 842 (9th Cir. BAP 1998);
In re Johnson, 756 F.2d 738, 740 (9th Cir.1985) ("Hearings on
relief from the automatic stay are thus handled in a summary
fashion. The validity of the claim or contract underlying the
claim is not litigated during the hearing."). Instead, in ruling
on Mrs. Stanwyck's motion, the bankruptcy court properly focused
on the preferred forum in which the "review" of the issues should
occur.

26 ⁹ The Clerk of the BAP sent a "Notice of Case Set for
27 Hearing" to Debtor and Mrs. Stanwyck on April 3, 2008. The notice
28 advised the parties that they may submit citations to relevant
decisions rendered since the filing of their last brief, but makes
clear that no further argument is permitted, and that any
citations must be submitted no later than one week before oral
argument. Debtor's late-filed brief contains no such citations.

1 can justify our refusal to consider those issues. Lewis v.
2 Fairchild Indus., Inc., 797 F.2d 727, 738 (9th Cir. 1986) ("The
3 Court of Appeals will not ordinarily consider matters on appeal
4 that are not specifically and distinctly argued in appellant's
5 opening brief."); Busseto Foods v. Laizure (In re Laizure), 349
6 B.R. 604, 608 (9th Cir. BAP 2006) ("[O]n appeal, arguments not
7 raised by a party in its opening brief are deemed waived.").

8 More significantly, that Debtor failed to present the issues
9 and his arguments on appeal in his Opening Brief, and magnified
10 this error by failure to rectify it in his Reply Brief, would
11 almost surely allow the Panel to dismiss this appeal. We are,
12 however, mindful of the counsel of our Court of Appeals in
13 Ehrenberg v. Cal. State Univ. (In re Beachport Entm't), 396 F.3d
14 1083, 1087 (9th Cir. 2005): "Although summary dismissal is within
15 the BAP's discretion, it 'should first consider whether informed
16 review is possible in light of what record has been provided'.
17 Kyle v. Dye (In re Kyle), 317 B.R. 390, 393 (B.A.P. 9th Cir.
18 2004)." The Panel therefore declines to dismiss the appeal.
19 Instead, while Debtor's submissions on appeal are quite dismal, we
20 will endeavor to examine the merits of this appeal.

21
22 II.

23 The Bankruptcy Court did not Abuse its Discretion
24 by Granting Relief from the Automatic Stay to Continue
25 the Marital Dissolution Proceeding

26 Section 362(d) (1) governs relief from stay in this instance,
27 and provides that "On request of a party in interest and after
28 notice and a hearing, the court shall grant relief from the stay

1 provided under subsection (a) of this section, such as by
2 terminating, annulling, modifying or conditioning such stay - (1)
3 for cause[.]” Determination of whether cause exists for stay
4 relief is made on a case-by-case basis, because the Bankruptcy
5 Code does not define “cause.” Christensen v. Tucson Estates, Inc.
6 (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990).

7 In this case, the bankruptcy court found cause for
8 termination of the stay to allow the marital dissolution
9 proceedings to continue because of the nature of the issues and
10 the state court’s extensive experience in family law matters. The
11 bankruptcy judge observed,

12 Family law matters, according to my view, belong in the
13 Family Law Court. I have no expertise on such matters.
14 . . . [I]n contrast, just up the street in the Family
15 Law Court, we have judges who are enormously well versed
16 in those matters, and that’s the place to litigate
17 family law matters insofar as . . . giving appropriate
18 weight in the Court’s view to all the matters. . . .
19 What’s before the court today is a motion to proceed in
20 family law court. That motion is granted.

21 Tr. Hr’g 22:14 - 23:1 (November 27, 2007).

22 The bankruptcy court’s decision that cause existed to
23 terminate the stay of the marital dissolution proceedings is
24 consistent with the law of this circuit.

25 It is appropriate for bankruptcy courts to avoid
26 incursions into family law matters “out of consideration
27 of court economy, judicial restraint, and deference to
28 our state court brethren and their established expertise
29 in such matters.” . . . Schulze v. Schulze, 15 B.R.
30 106, 109 (Bankr. S.D. Ohio 1981) (granting debtor’s wife
31 relief from stay to complete state proceedings for
32 divorce, child custody and property division).^[10]

33 ¹⁰ The Schulze case specifically ruled that “cause” existed
34 because a nondebtor spouse’s rights would be seriously compromised
35 if bankruptcy proceedings continued while divorce proceedings were
36 stayed indefinitely. Schulze, 15 B.R. at 109.

1 MacDonald v. MacDonald (In re MacDonald), 755 F.2d 715, 717 (9th
2 Cir. 1985). MacDonald, and this excerpt, have been oft-cited by
3 other circuits to support similar rulings that cause may exist to
4 terminate the stay in regard to marital dissolution proceedings.
5 See e.g., Carver v. Carver, 954 F.2d 1573, 1578 (11th Cir. 1992)
6 (holding that courts should liberally grant relief "to avoid
7 entangling the federal courts in family law matters"); In re
8 Robbins, 964 F.2d 342, 346 (4th Cir. 1992) (holding that cause
9 exists where lifting the stay promotes judicial economy); In re
10 White, 851 F.2d 170, 173 (6th Cir. 1988) (holding that cause exists
11 when bankruptcy court defers to greater expertise of the divorce
12 court). Indeed, the bankruptcy court's position here aligns with
13 the counsel provided by the Supreme Court in Elk Grove Unified
14 Sch. Dist. v. Newdow, 542 U.S. 1, 12 (2004):

15 One of the principal areas in which this Court has
16 customarily declined to intervene is the realm of
17 domestic relations. Long ago we observed that "[t]he
18 whole subject of the domestic relations of husband and
19 wife, parent and child, belongs to the laws of the
20 States and not to the laws of the United States." In re
21 Burrus, 136 U.S. 586, 593, 34 L. Ed. 500, 10 S. Ct. 850
22 (1890). See also Mansell v. Mansell, 490 U.S. 581, 587,
23 104 L. Ed. 2d 675, 109 S. Ct. 2023 (1989) ("[D]omestic
24 relations are preeminently matters of state law"); Moore
25 v. Sims, 442 U.S. 415, 435, 60 L. Ed. 2d 994, 99 S. Ct.
26 2371 (1979) ("Family relations are a traditional area of
27 state concern"). So strong is our deference to state law
28 in this area that we have recognized a "domestic
relations exception" that "divests the federal courts of
power to issue divorce, alimony, and child custody
decrees." Ankenbrandt v. Richards, 504 U.S. 689, 703,
119 L. Ed. 2d 468, 112 S. Ct. 2206 (1992). We have also
acknowledged that it might be appropriate for the
federal courts to decline to hear a case involving
"elements of the domestic relationship," id., at 705,
119 L. Ed. 2d 468, 112 S. Ct. 2206, even when divorce,
alimony, or child custody is not strictly at issue[.]

27 In sum, the bankruptcy court appropriately found cause for
28 relief from the automatic stay existed based on the expertise of

1 the state court in family law matters. Where cause for relief
2 from the automatic stay is established, "the burden of going
3 forward and the burden of persuasion shifts to the party opposing
4 relief [from the stay] on all issues." In re 15375 Memorial
5 Corp., 382 B.R. 652, 686 (Bankr. D. Del. 2008).¹¹ The bankruptcy
6 court's ruling is consistent with the law of this circuit and,
7 thus, the bankruptcy court did not abuse its discretion in
8 granting relief from the automatic stay so that the marital
9 dissolution proceeding could continue.¹²

11 ¹¹ The bankruptcy court also found Debtor's opposition to the
12 motion unintelligible, violated various local rules, and lacked
evidentiary support.

13 THE COURT: The tentative is to grant the motion [for
14 relief from stay] on several grounds. One is that
15 [Debtor's] opposition is unintelligible. Second, the
pages are not numbered, contrary to local rule, and,
third, that we couldn't find any evidence.

16 DEBTOR: Your Honor, as to the third point, I'm not sure
17 whether the Court can't find the evidence submitted or
whether it finds the evidence insufficient.

18 THE COURT: We didn't find any evidence at all, sir. We
19 found points, not much by way of authorities. We found
20 argument, but we didn't find any evidentiary submission
at all.

21 Tr. Hr'g 1:10-23. The bankruptcy court's rulings in this regard
22 are consistent with our observations of Debtor's approach in this
23 appeal, as we discuss above. See Discussion, Section I, supra.

24 ¹² Although the bankruptcy court's order granting relief from
25 the automatic stay to allow the marital dissolution proceedings to
26 continue was consistent with case law, and not an abuse of
27 discretion, it was perhaps unnecessary. In 2005, Congress amended
28 § 362(b) by adding a "dissolution of a marriage" exception to the
list of actions and proceedings to which the automatic stay does
not apply. The Code now provides that:

(b) The filing of a petition under section 301, 302, or
303 of this title . . . does not operate as a stay -
. . . (2) under subsection (a) - (A) of the commencement
or continuation of a civil action or proceeding - . . .
(continued...)

1 **CONCLUSION**

2 We AFFIRM the order of the bankruptcy court.
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19 ¹²(...continued)

20 (iv) for the dissolution of a marriage, except to the
21 extent that such proceeding seeks to determine the
division of property that is property of the estate[.]

22 § 362(b)(2)(A)(iv). Since Debtor's bankruptcy case was filed in
23 2007, after the effective date of the Bankruptcy Abuse Prevention
24 and Consumer Protection Act of 2005 (BAPCPA), there was no
automatic stay in effect to prohibit continuation of the marital
25 dissolution proceedings as to non-estate property issues. And if
there are any issues in the marital dissolution proceedings that
26 purport to affect property of Debtor's bankruptcy estate,
something we can not discern from the record, the order entered by
the bankruptcy court specifically limits enforcement of any
27 judgment in the divorce court to "non-estate property or
earnings." Since the terms of the bankruptcy court's order appear
to be consistent with the express provisions of
28 § 362(b)(2)(A)(iv), Debtor was not prejudiced by entry of that
order.