

**JUN 15 2006**

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

**NOT FOR PUBLICATION**

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**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re:	)	BAP No.	NV-05-1458-MoSMA
	)		
ELVA JEAN HAUGEN,	)	Bk. No.	S-94-20613-BAM
	)		
Debtor.	)	Ref. No.	05-27
	)		
_____	)		
ELVA JEAN HAUGEN,	)		
	)		
Appellant,	)		
	)		
v.	)	<b><u>MEMORANDUM</u></b> <sup>1</sup>	
	)		
RAZIA ISANI; GUNAY SARIHAN;	)		
LARRY L. BERTSCH, Chapter 7	)		
Trustee; UNITED STATES	)		
TRUSTEE,	)		
	)		
Appellees.	)		
_____	)		

Submitted Without Oral Argument on May 18, 2006<sup>2</sup>

Filed - June 15, 2006

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

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding.

\_\_\_\_\_  
Before: MONTALI, SMITH and MARLAR, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, issue preclusion or claim preclusion. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> On May 4, 2006, we issued an order taking this matter off the oral argument calendar.

1 In accordance with a pre-filing order, the bankruptcy court  
2 struck certain pleadings filed by the debtor and imposed sanctions  
3 of \$100.00 because the debtor did not obtain prior permission  
4 before filing the pleadings. The debtor appeals and we AFFIRM.

5 **I.**  
6 **FACTS**

7 On April 20, 1995, the bankruptcy court entered a pre-filing  
8 order (the "Pre-Filing Order") on the case docket requiring Elva  
9 Jean Haugen ("Debtor") to obtain leave of court before filing a  
10 pleading:

11 [It is] ORDERED that the Clerk of Bankruptcy Court for  
12 the District of Nevada will file no further documents  
13 from Debtor Haugen in this case. Any pleadings received  
14 from Debtor shall be stamped received after which time  
15 they will be forwarded to a Bankruptcy Judge of this  
16 Court for review. If in fact, the pleadings are deemed  
17 meritorious, they will be returned to the Clerk for  
18 filing, after which time the Debtor shall cause the same  
19 to be served upon the attorneys for Panel Trustee, Larry  
20 Bertsch; creditor Barbara Clark; and the US Trustee. If  
21 after review, the pleadings are not found to be  
22 meritorious, the same shall be returned to Debtor, shall  
23 not be filed of record, and the received copy shall be  
24 removed from the Court file. [It is] FURTHER ORDERED  
25 that this Order shall not apply to any pleadings  
26 presented by Debtor designated as an "appeal" of any of  
27 this Court's Order whether such appeal be directed to  
28 the US District Court, the Bankruptcy Appellate Panel,  
or the Ninth Circuit Court of Appeals itself. [It is]  
FURTHER ORDERED if Debtor disobeys the orders and  
instructions contained in this Order, she will subject  
herself to immediate monetary sanctions and she will be  
ordered to appear to show cause why she should not be  
held in contempt of this Court's orders.

24 See Docket No. 174 in Case 94-20613 in the Bankruptcy Court for  
25 the District of Nevada. The case docket reflects that Debtor did  
26 not appeal the Pre-Filing Order, but did appeal subsequent orders  
27 denying her request to file other pleadings. Debtor's case was  
28 closed on April 4, 1997.

1 On July 20, 2005, Debtor filed a "Motion For Court to Enforce  
2 8/10/94 Order."<sup>3</sup> This motion was opposed by appellees Trustee and  
3 Owners. On August 22, 2005, Debtor filed a document labelled  
4 "Emergency Ex Parte Request For This Honorable Court to Reopen BK-  
5 S-20613 So My 7-20-05 Motion to Enforce 8-10-94 Order May Be  
6 Heard." The court held a hearing on both motions on August 24,  
7 2005, and entered an order denying both motions on September 27,  
8 2005 (the "September 27 Order"). Debtor did not appeal the  
9 September 27 Order.

10 On September 26, 2005, Debtor filed an "Ex Parte Request To  
11 Be Allowed To Submit State Court Records For Review." On October  
12 7, 2005, the bankruptcy court entered an order denying that  
13 request because (1) Debtor did not obtain consent to file the  
14 request and (2) because the request was moot in light of the  
15 court's September 27 Order. The court stated "[Debtor] is again  
16 cautioned that further violations of the order restricting her  
17 ability to file documents will result in monetary sanctions."

18 On October 4, 2005, Debtor presented the court with a "Motion  
19 for Court to Reconsider My Motions to Reopen My Bankruptcy Case  
20 and Motion for Court to Enforce Honorable Jdudge [sic] Jones's

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21  
22 <sup>3</sup> The "8/10/94 Order" (available at Docket Number 82 on the  
23 case docket) stated that the court would defer ruling on ownership  
24 issues regarding certain real property until submission of further  
25 briefs. It also prohibited Debtor and her family trust from  
26 transferring ownership of the property without further order of  
27 the court. In her motion to enforce the 8/10/94 order, Debtor  
28 stated that the bankruptcy court never entered an order  
transferring the property from her or her family trust. She was  
incorrect. On November 3, 1994, the court entered an order  
noting that title of the property belonged to the chapter 7  
trustee Larry L. Bertsch ("Trustee") and that Trustee could sell  
or convey the property. On September 28, 1995, the bankruptcy  
court entered an order approving the sale of the property from  
Trustee to Razia Isani and Gunay Sarihan ("Owners").

1 8/10/94 Order." On October 24, 2005, Debtor submitted for filing  
2 an "Addendum to Motion for Court to Reconsider My Motions to  
3 Reopen My Bankruptcy Case & Motion for Court to Enforce Honorable  
4 Judge Jones's 8-10-94 [Order]." Neither of these documents is in  
5 the record.

6 On November 7, 2005, Judge Bruce Markell sent a letter to  
7 Debtor rejecting these documents; the letter is available on the  
8 court's docket at Docket No. 359. The letter notes that despite  
9 acknowledgments by Debtor that she understood the purpose and  
10 meaning of the Pre-Filing Order and the significant costs and  
11 ramifications of ignoring the court's prior orders, Debtor  
12 continued to submit meritless pleadings for filing (without first  
13 seeking approval from the court). The letter also notes that the  
14 court had reviewed the submitted documents and found them without  
15 merit. The court concluded: "Your pattern of violating rules and  
16 orders known and understood by you and then apologizing has been  
17 duly noted by me and by other prior judges that have dealt with  
18 your case. Any continued abuse of the system will result in  
19 sanctions as provided for in Judge Jones' [Pre-Filing Order]."

20 Thereafter, Debtor submitted an "Amendment of: Motion for  
21 Court to Reconsider my Mtoins [sic] to Reopen my Bankrptcy [sic]  
22 Case; Motion for Court to Enforce Honorable Judge Jone's [sic] 8-  
23 10-94 Order; and Motion to Review the State Court Proceedings as  
24 Per 8-10-97 Order." On November 9, 2005, the bankruptcy court  
25 entered an Order Decreeing No Hearing (the "Sanctions Order")  
26 which struck that pleading, denied a hearing on the matter, and  
27 imposed a sanction of \$100.00 in accordance with the Pre-Filing  
28 Order and "in response to [D]ebtor's repeated, unmeritorious

1 filings." Debtor filed a timely notice of appeal of the Sanctions  
2 Order on November 15, 2005.

3 **II.**  
4 **ISSUE**

5 Did the bankruptcy court err in entering the Sanctions Order?

6 **III.**  
7 **STANDARD OF REVIEW**

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9 A court's vexatious litigant pre-filing order is reviewed for  
10 an abuse of discretion. De Long v. Hennessey, 912 F.2d 1144, 1146  
11 (9th Cir. 1990), cert. denied, 498 U.S. 1001 (1990). To the  
12 extent the bankruptcy court relied on such a pre-filing order in  
13 striking pleadings submitted by Debtor, we review the decision to  
14 strike the pleadings for abuse of discretion. Id.; cf. Denton v.  
15 Hernandez, 112 S.Ct. 1728, 1734 (1992) (applying abuse of  
16 discretion standard to an order denying leave to file an in forma  
17 pauperis complaint). In addition, the imposition of sanctions is  
18 reviewed for an abuse of discretion. Weissman v. Quail Lodge  
19 Inc., 179 F.3d 1194, 1197-98 (9th Cir. 1999).

20 Findings of fact by the bankruptcy court "shall not be set  
21 aside on appeal unless clearly erroneous." Fed. R. Bankr. P.  
22 8013; Abrams v. Sea Palms Assocs., Ltd. (In re Abrams), 229 B.R.  
23 784, 788 (9th Cir. BAP 1999), aff'd, 242 F.3d 380 (9th Cir. 2000).

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25 **IV.**  
26 **DISCUSSION**

27 As a preliminary matter, we note that other than two  
28 sentences requesting that the \$100.00 monetary sanction be

1 "forgiven" by us, Debtor's brief does not address specifically the  
2 order on appeal: the Sanctions Order. Nor does Debtor address the  
3 Pre-Filing Order. Debtor cites no authority for reversal.  
4 Rather, she engages in a collateral attack on a 1993 state court  
5 judgment and repeats her contention that the transfer of the  
6 property to Owners somehow violated the "8-10-94 Order." Because  
7 Debtor fails to raise any issue or cite any authority to show that  
8 the court erred in entering the Sanctions Order, we could simply  
9 affirm on that basis. Nonetheless, because we are to construe pro  
10 se appellate briefs liberally even when it is difficult to  
11 ascertain the appellant's contentions (see Balistreri v. Pacifica  
12 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988)), we will examine  
13 the record to determine if any basis for reversing the Sanctions  
14 Order is clearly evident.

15 In deciding whether a court abused its discretion in refusing  
16 or striking pleadings in accordance with a pre-filing order, an  
17 appellate court may review the issuance of the initial pre-filing  
18 order for abuse of discretion. See West v. Proconier, 452 F.2d  
19 645, 646 (9th Cir. 1971). Courts "have the inherent power to  
20 file restrictive pre-filing orders against vexatious litigants  
21 with abusive and lengthy histories of litigation." Weissman, 179  
22 at 1197, citing De Long, 912 F.2d at 1147-48.

23 Such pre-filing orders may enjoin the litigant from  
24 filing further actions or papers unless he or she first  
25 meets certain requirements, such as obtaining leave of  
26 the court or filing declarations that support the merits  
27 of the case. See, e.g., O'Loughlin v. Doe, 920 F.2d 614,  
28 616 (9th Cir. 1990) (requiring pro se inmate deemed  
vexatious litigant to show good cause before being  
permitted to file future actions); De Long, 912 F.2d at  
1146-47 (prohibiting filings of pro se litigant  
proceeding in forma pauperis without leave of the  
district court); Moy v. United States, 906 F.2d 467, 469

1 (9th Cir. 1990) (forbidding pro se plaintiff from filing  
2 further complaints without prior approval of district  
court).

3 Weissman, 179 F.3d at 1197.

4 An order restricting future court filings must comply with  
5 the following requirements: (1) the plaintiff must be given notice  
6 and the opportunity to oppose a restrictive pre-filing order  
7 limiting access to the court; (2) the order must be supported by  
8 case filings that support a limitation on future filings; (3) the  
9 court must make substantive findings as to the frivolous or  
10 harassing nature of the plaintiff's filings; and (4) the order  
11 must be narrowly tailored to remedy the plaintiff's particular  
12 abuses. De Long, 912 F.2d at 1147-49.

13 Debtor has not argued that the Pre-Filing Order fails to  
14 satisfy these requisites. Moreover, the record demonstrates that  
15 the order satisfies the first and fourth requirements. The Pre-  
16 Filing Order granted a motion by Trustee that was noticed to  
17 Debtor and set for hearing. Debtor filed at least two objections  
18 to the Trustee's motion. In addition, the Pre-Filing Order is  
19 narrowly tailored to prevent litigation abuses by Debtor; the  
20 order does not apply to appeals and requires merely that the court  
21 approve submissions to the bankruptcy court as meritorious before  
22 such pleadings are filed.

23 Debtor has not provided the transcript of the hearing or the  
24 Trustee's motion, but a review of the docket demonstrates her  
25 propensity for filing numerous pleadings to deter execution of  
26 court orders. Because Debtor has not provided us with a copy of  
27 the Pre-Filing Order, a copy of the motion leading to the Pre-  
28 Filing Order, and the transcript of the hearing which would

1 presumably contain the court's findings in support of its order,  
2 we cannot conclude that the court erred by failing to comply with  
3 the second and third requirements under De Long when it entered  
4 the Pre-Filing Order. See Abrams, 229 B.R. at 789 (appellant has  
5 the burden of providing a sufficient record on appeal -- including  
6 a full transcript of relevant hearings -- and the failure to  
7 provide an adequate record is grounds for affirming the bankruptcy  
8 court's decision); McCarthy v. Prince (In re McCarthy), 230 B.R.  
9 414, 416 (9th Cir. BAP 1999) (by failing to provide a transcript of  
10 the trial court's oral findings of fact and conclusions of law as  
11 required by Federal Rules of Bankruptcy Procedure 8006 and 8009,  
12 appellant could not demonstrate error by the trial court).

13       The appellants bear the responsibility to file an  
14 adequate record, and the burden of showing that the  
15 bankruptcy court's findings of fact are clearly  
16 erroneous. Burkhart v. FDIC (In re Burkhart), 84 B.R.  
17 658, 660 (9th Cir. BAP 1988). 'Appellants should know  
18 that an attempt to reverse the trial court's findings of  
19 fact will require the entire record relied upon by the  
20 trial court be supplied for review.' 84 B.R. at 661.

21 Kritt v. Kritt (In re Kritt), 190 B.R. 382, 387 (9th Cir. BAP  
22 1995). Therefore, based on the record and Debtor's failure to  
23 address the validity of the Pre-Filing Order on appeal, we  
24 conclude that the bankruptcy court did not abuse its discretion in  
25 entering it.

26       Having determined that the bankruptcy court did not abuse its  
27 discretion in entering the Pre-Filing Order, we now turn to the  
28 Sanctions Order. A review of the bankruptcy court's orders of  
November 4, 1994, and September 28, 1995, give lie to Debtor's  
repeated assertions in her various 2005 pleadings that the court  
did not approve a transfer of the real property to Owners. Merely



1 repeating these assertions in amended motions for reconsideration  
2 and on appeal does not make them any more meritorious. Debtor has  
3 not shown that the bankruptcy court erred in concluding that the  
4 pleadings were without merit. The court therefore did not abuse  
5 its discretion in striking the pleadings.

6 Likewise, Debtor has not shown that the court abused its  
7 discretion in sanctioning her \$100.00 for attempting to file  
8 pleadings without obtaining the court's prior approval. In the  
9 only portion of her brief addressing this issue, Debtor states:  
10 "I deeply regret forgetting to tell the clerk that she must not  
11 file my papers, but just stamp them received. Will this HONORABLE  
12 COURT mercifully forgive my errors and VOID the SANCTIONS?" Judge  
13 Markell's letter, however, shows that Debtor will apologize for  
14 filing documents without complying with the Pre-Filing Order, but  
15 then continues to submit such documents for filing. Despite  
16 several admonishments to Debtor by the Bankruptcy Court to comply  
17 with the order, she did not do so. Under such circumstances, the  
18 court did not abuse its discretion in sanctioning Debtor \$100.00.

19  
20 **V.  
CONCLUSION**

21 For the foregoing reasons, we AFFIRM.  
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