

NOV 30 2011

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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NOT FOR PUBLICATION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

In re:	)	BAP No. CC-11-1050-HKiPa
	)	
SHANEL ANN STASZ,	)	Bk. No. LA 05-43980
	)	
Debtor.	)	
_____	)	
	)	
SHANEL ANN STASZ,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>M E M O R A N D U M</b> <sup>1</sup>
	)	
ROSENDO GONZALEZ, Chapter 7	)	
Trustee,	)	
	)	
Appellee.	)	
_____	)	

Submitted Without Oral Argument  
on November 17, 2011

Filed - November 30, 2011

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

Honorable Alan M. Ahart, Bankruptcy Judge, Presiding

Appearances: Shanel Stasz, pro se, on brief.  
Patrick Kelly McClellan on brief for Rosendo  
Gonzalez, Chapter 7 Trustee.

Before: HOLLOWELL, KIRSCHER and PAPPAS, Bankruptcy Judges.

<sup>1</sup> 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 Shanel Stasz (the Debtor) appeals the bankruptcy court's  
2 order approving the chapter 7<sup>2</sup> bankruptcy trustee's Final Report,  
3 Application for Compensation and Application for Compensation for  
4 Professionals (Final Report). We conclude that the Debtor's  
5 standing to appeal is tenuous; however, assuming she does have  
6 standing, we AFFIRM.

7 **I. FACTS<sup>3</sup>**

8 On October 13, 2005, the Debtor filed a voluntary petition  
9 for relief under chapter 7. Rosendo Gonzales was appointed the  
10 bankruptcy trustee (Trustee). In January 2006, the Trustee filed  
11 an application to employ Patrick K. McClellan (McClellan) as  
12 general bankruptcy counsel to assist him in the investigation,  
13 recovery and liquidation of assets. The application was approved  
14 on March 1, 2006.

15 Throughout the Debtor's bankruptcy case, the Debtor  
16 challenged the Trustee's efforts to recover and monetize assets  
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19 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
20 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as  
21 enacted and promulgated prior to the effective date of the  
22 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,  
23 Pub. L. 109-8, 119 Stat. 23 and Bankruptcy Rules 1001-9036.

24 <sup>3</sup> Many of the facts recited here were obtained by taking  
25 judicial notice of documents filed with the bankruptcy court's  
26 electronic docketing system since they were not submitted by the  
27 Debtor in the record on appeal. Such documents include the  
28 bankruptcy trustee's declaration, which supported the Final  
Report, his supplemental declaration supporting the Final Report,  
and his responses to the Debtor's objection to the Final Report.  
See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert), 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).

1 of the estate.<sup>4</sup> On September 21, 2010, the Trustee filed the  
2 Final Report. In the Final Report, the Trustee accounted for  
3 \$618,639.23 in estate assets that had been reduced to cash and  
4 sought approval for the following distributions:

5 (1) \$36,864.58 for his fees and \$672.98 for his expenses  
6 pursuant to § 326(a);

7 (2) \$325,260.00 in fees and \$2,655.19 in expenses for  
8 McClellan's work performed throughout the bankruptcy  
9 case, pursuant to § 330(a);

10 (3) \$8,815.50 in fees and \$102.13 in expenses for work  
11 performed by the Trustee's hired accountant;

12 (4) \$4,101.01 to pay the allowed priority claim of the  
13 Internal Revenue Service (IRS); and,

14 (5) a \$239,407.84 payment on creditor Hugo W. Quackenbush's  
15 nondischargeable unsecured claim of \$1,984,778.10.

16 A declaration to support the requested fees was submitted on  
17 September 29, 2010, which described the Trustee's and his  
18 counsel's various and protracted efforts in investigating the  
19 Debtor's interest in real property, in avoiding and recovering  
20 the fraudulent transfer of that interest to a family trust, and  
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22 <sup>4</sup> Background on salient events and disputes in this  
23 bankruptcy case are chronicled in: Stasz v. Gonzales  
24 (In re Stasz), 2007 WL 7370101 (9th Cir. BAP Aug. 9, 2007),  
25 dismissed, 348 Fed. Appx. 234 (9th Cir. 2009), cert. denied,  
26 131 S.Ct. 209 (2010); Stasz v. Gonzales (In re Stasz), 387 B.R.  
27 271 (9th Cir. BAP 2008); Stasz v. Quackenbush (In re Stasz),  
28 2007 WL 75401964 (9th Cir BAP Feb. 28, 2009), aff'd 352 Fed.  
Appx. 154 (9th Cir. 2009), cert. denied, 130 S.Ct. 3293 (2010);  
Stasz v. Gonzales (In re Stasz), 2011 WL 3299162 (9th Cir. BAP  
Apr. 5, 2011).

1 in monetizing the asset for the benefit of the estate.

2 Additionally, McClellan provided his full billing records.

3 The United States Trustee (UST) filed a limited objection to  
4 the Final Report, questioning the benefit to the estate of the  
5 fees incurred in the effort to declare the Debtor a vexatious  
6 litigant. The Trustee filed a supplemental declaration  
7 addressing the issue and the UST made no further objection to the  
8 requested fees.

9 On October 15, 2010, the Debtor requested that the hearing  
10 on the Final Report be continued to November 10, 2010. The  
11 Debtor then filed, on October 20, 2010, a motion for the  
12 disqualification and recusal of the bankruptcy judge under  
13 28 U.S.C. § 455(a), and to set aside all prior rulings, orders  
14 and judgments in the case, as well as to disgorge all funds  
15 received by the Trustee (Motion to Recuse).

16 On October 28, 2010, the Debtor filed an opposition to the  
17 Final Report, contending that the bankruptcy judge lacked  
18 jurisdiction to rule on the Final Report as a result of the  
19 Motion to Recuse. Additionally, she contended that McClellan's  
20 "fee application [was] telltale of the fraud allowed to occur in  
21 the case" and that \$62,294.53 of McClellan's fees did not benefit  
22 the estate. She alleged that there was no benefit to the estate  
23 generally for work related to compelling the Debtor to appear for  
24 the Rule 2004 examination, for discussions with the Debtor's  
25 homeowner's association regarding her real property, and for work  
26 done in connection with declaring her a vexatious litigant. The  
27 declaration supporting her opposition consisted of simply  
28

1 enclosing the Motion to Recuse and McClellan's billing statements  
2 with various amounts underlined.

3 The Motion to Recuse was scheduled to be heard on  
4 November 10, 2010, before a different bankruptcy judge; however,  
5 that judge declined to rule on the Motion to Recuse based on  
6 contacts he previously had with the Debtor. At the hearing on  
7 the Final Report the same day, the Trustee stated that he was  
8 trying to expedite having the Motion to Recuse heard by a  
9 different judge in the district. The bankruptcy court decided to  
10 rule on the Final Report in the interim, on the condition that,  
11 if the Motion to Recuse were granted, the Final Report would be  
12 heard de novo by a new bankruptcy judge. See Hr'g Tr. (Nov. 10,  
13 2010) at 5. The bankruptcy court then approved the Final Report  
14 on the basis that the Debtor did not provide any evidence to  
15 support her allegations that the fees should be denied.

16 Another bankruptcy judge in the district subsequently ruled  
17 on the Motion to Recuse, denying the Debtor's request on  
18 December 28, 2010; the Debtor filed a motion for reconsideration,  
19 which was denied on January 14, 2011.<sup>5</sup> After the Motion to  
20 Recuse was finally decided, on January 20, 2011, the bankruptcy  
21 court entered the order approving the Final Report. The Debtor  
22 timely appealed.

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26 <sup>5</sup> The Debtor appealed that order to the Bankruptcy Appellate  
27 Panel, but the appeal was dismissed for failure to prosecute.  
28 The Debtor then appealed the dismissal of the appeal to the Ninth  
Circuit on July 27, 2011.



1 (9th Cir. 2010) (citing United States v. Hinkson, 585 F.3d at  
2 1261-62 & n.21)).

### 3 V. DISCUSSION

4 The Debtor contends that the filing of the Motion to Recuse  
5 divested the bankruptcy court of jurisdiction over proceedings in  
6 the case. Additionally, she alleges that the Final Report  
7 demonstrated an "outrageous violation of § 330 and  
8 § 326(a)." Appellant's Opening Brief at 4. We address her  
9 arguments below, but first consider whether the Debtor has  
10 standing to appeal the bankruptcy court's order approving the  
11 Final Report.

#### 12 A. Appellate Jurisdiction

13 The Ninth Circuit has adopted the "person aggrieved" test  
14 for determining whether a party has standing to challenge an  
15 order of the bankruptcy court. Fondiller v. Robertson  
16 (In re Fondiller), 707 F.2d 441, 442-43 (9th Cir. 1983). The  
17 test limits appellate standing to "those persons who are directly  
18 and adversely affected pecuniarily by an order of the bankruptcy  
19 court." Id.; Sole Survivor Corp. v. Buxbaum, 2009 WL 210471 \* 5,  
20 6 (C.D. Cal. 2009). A "person aggrieved" is one whose property  
21 is diminished, burdens are increased, or rights are impaired by  
22 the order on appeal. Id.; Duckor Spradling & Metzger v. Baum  
23 Trust (In re P.R.T.C., Inc.), 177 F.3d 774, 777 (9th Cir. 1999).

24 "Ordinarily, a debtor cannot challenge a bankruptcy court's  
25 order unless there is likely to be a surplus after bankruptcy."  
26 Id. at 778 n.2. According to the Final Report, the allowed  
27 claims in the Debtor's bankruptcy case significantly exceed the  
28 funds on hand and the Debtor will not receive any distribution

1 from the bankruptcy estate. As a result, the bankruptcy court's  
2 order would not diminish her property or detrimentally affect her  
3 rights.

4 However, if we were to reverse the bankruptcy court's order  
5 approving the Final Report and a subsequent hearing resulted in a  
6 potential reduction of the trustee's fees, there could be a  
7 resulting increase in distribution to creditor Quakenbush and  
8 reduction in the Debtor's liability on that nondischargeable  
9 debt. Therefore, the Debtor's burden could be increased,  
10 providing her sufficient standing to appeal.

11 On the other hand, it is speculation that the bankruptcy  
12 court would, upon reversal and remand, find a factual basis to  
13 reduce the Trustee's or McClellan's fees. Thus, the Debtor's  
14 standing to appeal the order approving the Final Report is  
15 tenuous at best. In any event, we address the merits below, and  
16 conclude that the bankruptcy court did not abuse its discretion  
17 in approving the Final Report.

18 **B. Bankruptcy Court Jurisdiction**

19 The Debtor opposed the Final Report because she asserted  
20 that the pendency of the unresolved Motion to Recuse divested the  
21 bankruptcy court of jurisdiction in the case. The Debtor  
22 asserted that the Motion to Recuse:

23 establishes that Judge Ahart's actual bias violated Due  
24 Process and he has no jurisdiction over this bankruptcy  
25 proceeding and that all of his prior rulings, orders or  
26 judgments are void ab initio and that all assets held  
by the Trustee . . . must be returned to the Trusts  
that they were illegally taken from.

27 The Debtor provided no legal authority for her assertion.  
28 On appeal, the only argument the Debtor submits is that Fed. R.



1 Civ. P. 62(a) provided a 14-day stay of orders and judgments and  
2 therefore, the bankruptcy court's order approving the Final  
3 Report was improperly entered before the stay period dissolved.

4 Neither of the Debtor's arguments have merit. First,  
5 28 U.S.C. § 455 governs the disqualification of bankruptcy judges  
6 for reasons of bias or when a judge's impartiality may reasonably  
7 be questioned. There is no provision in 28 U.S.C. § 455 that  
8 requires the disqualification of the judge upon presentation of a  
9 motion to recuse.

10 We note that under limited circumstances, pursuant to  
11 28 U.S.C. § 144, a district court judge may be disqualified upon  
12 the presentation of a timely and properly filed motion and  
13 affidavit that the judge assigned to a case has demonstrated  
14 personal bias or prejudice. 28 U.S.C. § 144. That section  
15 requires that proceedings cease until another judge is assigned.  
16 However, 28 U.S.C. § 144 does not apply to bankruptcy judges.  
17 Seidel v. Durkin (In re Goodwin), 194 B.R. 214, 221 (9th Cir. BAP  
18 1996) (internal citations omitted). Furthermore, unlike motions  
19 made under § 28 U.S.C. 144, a motion to recuse under 28 U.S.C.  
20 § 455 does not require the judge to take the factual allegations  
21 as true. Id. at 222. Therefore, there is no legal basis to  
22 support the Debtor's contention that the bankruptcy judge in this  
23 case lacked jurisdiction over approval of the Final Report. See  
24 28 U.S.C. 157(b)(2)(A).

25 Rule 7062 makes Fed. R. Civ. P. 62 applicable in adversary  
26 proceedings. Fed. R. Civ. P. 62(a) provides that "no execution  
27 may issue on a judgment nor may proceedings be taken to enforce  
28 it, until 14 days have passed after its entry." Rule 7062 is

1 inapplicable here. The Final Report was not brought by motion in  
2 an adversary proceeding but in conjunction with the general  
3 administration of the bankruptcy estate. Moreover, the entry of  
4 the bankruptcy court's order approving the Final Report does not  
5 constitute "executing" or "enforcing a judgment" against the  
6 Debtor. In sum, the bankruptcy court was not divested of  
7 jurisdiction and did not err in ruling on the Final Report.

8 **C. Merits**

9 Bankruptcy Code §§ 330(a)(1) and 326(a) govern the  
10 bankruptcy court's determination of the amount of reasonable  
11 compensation to be awarded to a chapter 7 trustee. Boldt v. U.S.  
12 Trustee (In re Jenkins), 130 F.3d 1335, 1337 (9th Cir. 1997).  
13 Section 326(a) sets forth the maximum compensation payable to a  
14 chapter 7 trustee. It limits a chapter 7 trustee's compensation  
15 to a percentage of the funds disbursed by the trustee. The  
16 policy underlying § 326(a) is to ensure that a trustee is  
17 compensated commensurate with the value of the services conferred  
18 on the bankruptcy estate. Sw. Media, Inc. v. Rau, 708 F.2d 419,  
19 423 (9th Cir. 1983). "The crucial test seems to be . . . whether  
20 or not the particular property or fund has been justifiably  
21 administered in the bankruptcy court, or whether or not the  
22 trustee has properly performed services in relation thereto."  
23 Id. at 424 n.4 (quoting In re Schautz, 390 F.2d 797, 800 (2d Cir.  
24 1968)).

25 Additionally, § 330(a)(3)(A)-(E) lists the criteria the  
26 bankruptcy court must consider in determining the amount of  
27 reasonable compensation to be awarded a trustee's counsel under  
28

1 § 330(a), including whether the services were necessary to the  
2 administration of, or beneficial toward the completion of a  
3 bankruptcy case. The burden of establishing entitlement to the  
4 fees requested from the estate rests with the trustee. Roderick  
5 v. Levy (In re Roderick Timber Co.), 185 B.R. 601, 606 (9th Cir.  
6 BAP 1995).

7 The Debtor did not initially dispute the compensation sought  
8 by the Trustee under § 326(a), but on appeal argues that the  
9 Trustee's calculation of his percentage is wrong, that his fees  
10 were not itemized, and are excessive. Because these arguments  
11 were not presented to the bankruptcy court, we do not address  
12 them here. In re E.R. Fegert, Inc., 887 F.2d at 957 (internal  
13 citation omitted). Furthermore, we note that the Trustee  
14 provided a lengthy declaration explaining the work performed  
15 throughout the bankruptcy case and the resulting benefit of that  
16 work to recovering assets for the estate, as well as a form  
17 outlining his calculations.

18 Before the bankruptcy court, the Debtor opposed the approval  
19 of the Final Report by contending that \$62,894.53 of McClellan's  
20 fees did not benefit the estate. She argued that there was no  
21 benefit to the estate from his fees generally incurred in  
22 attempting to complete a Rule 2004 Examination of the Debtor, in  
23 talking to the Debtor's homeowners' association, in attempting to  
24 deem the Debtor a vexatious litigant, and in revoking the  
25 Debtor's discharge.<sup>6</sup> However, the Debtor did not identify

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28 <sup>6</sup> No fees were sought by the Trustee related to revoking the  
Debtor's discharge.

1 specific line item amounts or present any reasoned legal  
2 arguments or facts as to why such efforts did not benefit the  
3 estate.

4 The Debtor asserts that the bankruptcy court erred in  
5 determining that she did not provide evidence to support her  
6 argument. She contends that she supported her argument with  
7 "detailed findings of \$62,894.53 in false billings included  
8 within McClellan's outrageous \$327,925.19 bill and her [Motion to  
9 Recuse]." Appellant's Opening Brief at 7.

10 While McClellan submitted comprehensive billing records to  
11 support his fee request, our review of the record reveals that  
12 the Debtor did not provide any detail about the source of her  
13 \$64,894.53 calculation and did not provide a declaration setting  
14 forth facts to support her conclusory assertion that certain work  
15 performed by McClellan did not benefit the estate. As a result,  
16 her assertions are merely argument and provide insufficient  
17 evidentiary support or facts which the bankruptcy court may use  
18 in its findings. See, e.g., British Airways Bd. v. Boeing Co.,  
19 585 F.2d 946, 952 (9th Cir. 1978).

20 The record supports the bankruptcy court's ruling that the  
21 Debtor did not provide any evidence or factual support for her  
22 allegation that certain work performed by the Trustee and  
23 McClellan did not benefit the estate. Indeed, the Trustee  
24 submitted a lengthy declaration detailing his and his counsel's  
25 protracted efforts in conducting a Rule 2004 Examination of the  
26 Debtor, in interviewing the homeowner's association in his  
27 efforts to recover real property for the estate, and in his  
28 efforts to limit the expenses and fees in responding to the

1 numerous challenges by the Debtor, throughout the administration  
2 of the estate, by having her deemed a vexatious litigant. The  
3 Trustee stated in his declaration that all of those various  
4 efforts taken by McClellan resulted in assets being recovered and  
5 reduced to cash. Accordingly, the bankruptcy court had  
6 uncontroverted evidence that the work performed by the Trustee  
7 and McClellan benefitted the estate. Under these circumstances,  
8 we conclude that the bankruptcy court did not abuse its  
9 discretion by approving the Final Report.

10 **VI. CONCLUSION**

11 For the foregoing reasons, we AFFIRM the bankruptcy court's  
12 order approving the Final Report.