

1 Attorney of Jesse Butch Torres" (POA). The POA was executed two
2 years earlier on May 22, 2009. By its terms, it appointed
3 Christopher Torres (Torres) as the Debtor's lawful attorney-in-
4 fact authorized "to do and perform all acts in the Principal's
5 place and stead as fully as the Principal might do and perform
6 such acts as Principal," and listed several non-exclusive powers
7 that Torres was authorized to undertake on behalf of the Debtor.
8 Filing a bankruptcy petition was not listed as a specific power
9 that Torres was authorized to perform.

10 Also on May 5, 2011, the Debtor filed his schedules,
11 statements and chapter 13 plan, along with an amended petition
12 (Amended Petition). The "Declaration Concerning Debtor's
13 Schedules" was signed with the Debtor's electronic signature
14 dated May 4, 2011. The Amended Petition contained Schmitt's
15 handwritten signature dated March 15, 2011, and a handwritten
16 signature, "Jesse Butch Torres by Christopher Scott Torres,"
17 underneath which was typed, "Christopher Scott Torres as his
18 attorney-in-fact and not in my individual capacity." It was
19 dated March 12, 2011.

20 According to the Debtor's bankruptcy schedules, the Property
21 was worth \$488,261.00 and had various secured claims against it
22 in the amount of \$429,297.72. The Debtor's chapter 13 plan
23 proposed to market and sell the Property within nine months to
24 pay the liens against it.

25 The § 341 meeting of creditors was scheduled for May 19,
26 2011. Schmitt attended the meeting with Torres. However,
27 K. Michael Fitzgerald, the chapter 13 trustee (the Trustee)
28 declined to take Torres' testimony because the Debtor had not

1 requested an alternate appearance as required by the Local
2 Rules.³

3 On May 20, 2011, the Debtor filed a motion to allow Torres
4 to act for the Debtor under the POA (POA Motion). The POA Motion
5 explained that: "Debtor is incarcerated and was unable to sign
6 the petition, schedules and Chapter 13 Plan and is unable to
7 attend the meeting of creditors. Debtor has turned over the
8 administration to his son, Chris Torres by the way of a Durable
9 Power of Attorney." No declaration was filed in support of the
10 POA Motion.

11 The Trustee filed an objection to the POA Motion.⁴ The
12 Trustee was concerned that Schmitt filed the Petition when the
13 Debtor had not actually signed it. The Trustee pointed out that
14 the Amended Petition was also problematic because it was signed
15 by Torres and dated March 12, while the accompanying schedules
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18 ³ Local Rule 2003-1(b) provides that a debtor's personal
19 appearance is required at the § 341 meeting. There is an
20 exception to this requirement only if the bankruptcy court
21 permits an alternative method for examination, after requested by
22 motion filed 14 days prior to the scheduled meeting. Id. The
23 motion must be supported by the debtor's affidavit "providing a
24 detailed factual explanation of the exceptional circumstances
25 preventing the debtor from appearing in person." Id. at (b)(1),
26 (b)(3)(A).

27 ⁴ The Trustee also filed, the same day, an Objection to
28 Confirmation of Plan, Motion to Dismiss (Plan Objection). The
Plan Objection was identical to the objection to the POA Motion.
Appellee, Whidbey Island Real Estate, LLC (WIRE) also filed an
objection to plan confirmation, as well as a motion for relief
from stay in order to foreclose on the Property. WIRE did not
file an objection to the POA Motion. All matters were set for
hearing on the same day.

1 and statements were signed by the Debtor and dated May 4. The
2 Trustee questioned whether the Debtor had actually approved the
3 bankruptcy filing. The Trustee also objected to Torres appearing
4 as attorney-in-fact because Torres was a creditor⁵ of the Debtor
5 and because the Debtor had failed to obtain approval for Torres
6 to appear for the Debtor at the § 341 meeting.

7 In reply to the Trustee's objection, Schmitt and her
8 paralegal filed declarations in an attempt to explain the
9 irregularities in the filing of the Petition. They both stated
10 that the Petition was inadvertently filed electronically with the
11 Debtor's signature. They stated they contacted the bankruptcy
12 court clerk's office for instruction on how to correct the error
13 and were told to file an amended petition, but that they did not
14 need to file a motion to allow Torres to act as attorney-in-fact
15 since the POA had been filed.

16 A hearing on the POA Motion was held June 22, 2011
17 (Dismissal Hearing).⁶ At the Dismissal Hearing, Schmitt
18 acknowledged that she had not communicated with the Debtor, but
19 was called by his criminal attorney and directed to file the
20 bankruptcy in order to try to avoid the pending foreclosure of
21 the Property. Because the Petition was not signed by the Debtor,
22 and because the bankruptcy court found that there was no evidence
23 in the record that the Debtor authorized or directed Torres to
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25 ⁵ On May 18, 2011, Torres filed a proof of secured claim in
26 the amount of \$93,139.48 for wages from acting as power of
attorney.

27 ⁶ Also at the Dismissal Hearing, the bankruptcy court heard
28 WIRE's motion for relief from stay.

1 file the bankruptcy case, the bankruptcy court concluded the
2 Petition was invalid. The bankruptcy court subsequently entered
3 an order dismissing the Debtor's chapter 13 case on June 23, 2011
4 (the Dismissal Order).

5 On July 7, 2011, the Debtor filed a motion for
6 reconsideration (Reconsideration Motion). The Debtor argued that
7 the Debtor qualified as a debtor under § 109(e), the POA
8 authorized Torres to file the Debtor's bankruptcy case, the
9 Debtor's chapter 13 plan was filed in good faith and, that it was
10 a technical mistake that the Petition containing the Debtor's
11 signature, rather than the Amended Petition containing Torres'
12 signature as attorney-in-fact, was initially filed.

13 In support of the Reconsideration Motion, Schmitt filed two
14 declarations. In the first, Schmitt stated that since the last
15 week of May 2011, she had experienced difficulty in communicating
16 with the Debtor, either by telephone or in person. The second
17 declaration from Schmitt stated that Torres had signed a
18 declaration when he signed the Amended Petition on March 12,
19 2011. Attached to her declaration were two declarations from
20 Torres dated March 12, 2011, and June 22, 2011, each stating that
21 Torres had signed a bankruptcy petition on behalf of the Debtor
22 as his attorney-in-fact. The June 22 declaration provided the
23 additional information that the Debtor wanted to file bankruptcy
24 to stop the pending foreclosure of the Property and that Torres
25 filed the petition with the Debtor's authorization. There was no
26 explanation provided by Schmitt as to why the March 12, 2011
27 declaration was not submitted with the Amended Petition or POA.

1 In addition, the Debtor submitted his own declaration, dated
2 July 6, 2011, ratifying the bankruptcy filing. The Debtor stated
3 that he had directed Torres to file bankruptcy to stop the
4 scheduled foreclosure of the Property.

5 The Trustee objected to the Reconsideration Motion,⁷
6 asserting that Schmitt did not verify directly from the Debtor
7 any information she received or conduct a reasonable inquiry as
8 required by Rule 9011. The Trustee noted that there was no
9 evidence at the time of the Dismissal Hearing that the Debtor
10 knew of or authorized the bankruptcy filing, and that it was only
11 after the Dismissal Hearing that Schmitt spoke with the Debtor in
12 an attempt to ratify the filing.

13 The bankruptcy court considered the language in the POA and
14 determined that Torres failed to meet the minimum standards for
15 filing a case under a power of attorney in Washington state.
16 Furthermore, the bankruptcy court found that there were no
17 exceptional circumstances that warranted the subsequent
18 ratification by the Debtor after the Dismissal Order had been
19 entered. Therefore, the bankruptcy court denied the
20 Reconsideration Motion by written decision entered on August 22,
21 2011 (Reconsideration Order). The Debtor timely appealed.⁸

23 ⁷ WIRE also objected to the Reconsideration Motion, but the
24 bankruptcy court did not consider the objection because WIRE had
25 not objected to the POA Motion. In its appellate brief, WIRE
argues only that the appeal is moot.

26 ⁸ The Debtor filed the Reconsideration Motion within 14 days
27 of the bankruptcy court's Dismissal Order. Therefore, it tolled
28 the time for appeal until 14 days from the final order disposing
(continued...)

1 Justus (In re Kaypro), 218 F.3d 1070, 1073 (9th Cir. 2000);
2 Sewell v. MGF Funding, Inc. (In re Sewell), 345 B.R. 174, 178
3 (9th Cir. BAP 2006). A bankruptcy court abuses its discretion if
4 it bases a decision on an incorrect legal rule, or if its
5 application of the law was illogical, implausible, or without
6 support in inferences that may be drawn from the facts in the
7 record. United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir.
8 2009) (en banc); Ellsworth v. Lifescape Med. Assocs., P.C. (In re
9 Ellsworth), 455 B.R. 904, 914 (9th Cir. BAP 2011).

10 V. DISCUSSION

11 A. Jurisdiction

12 The appellees assert that this appeal is moot because the
13 Debtor did not seek a stay pending appeal and the Debtor's
14 Property, that he had hoped to save from foreclosure, has now
15 been foreclosed on and sold.

16 Constitutional mootness is derived from Article III of the
17 U.S. Constitution, which provides that the exercise of judicial
18 power depends on the existence of a case or controversy. DeFunis
19 v. Odegaard, 416 U.S. 312, 316 (1974); Clear Channel Outdoor,
20 Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 33 (9th Cir. BAP
21 2008). The mootness doctrine applies when events occur during
22 the pendency of the appeal that make it impossible for the
23 appellate court to grant effective relief. Id. The determining
24 issue is "whether there exists a 'present controversy as to which
25 effective relief can be granted.'" People of Village of Gambell
26 v. Babbitt, 999 F.2d 403, 406 (9th Cir. 1993) (quoting NW Envtl.
27 v. Gordon, 849 F.2d 1241, 1244 (9th Cir. 1988)). If no effective
28 relief is possible, we must dismiss for lack of jurisdiction.

1 United States v. Arkison (In re Cascade Rds., Inc.), 34 F.3d 756,
2 759 (9th Cir. 1994).

3 Our review of the record leads us to conclude that we cannot
4 provide effective relief to the Debtor in this case even if we
5 were to reverse the Dismissal Order. The Debtor represented to
6 the bankruptcy court at the Dismissal Hearing that the bankruptcy
7 filing was an emergency filing to stop the foreclosure of the
8 Property. Torres and the Debtor both stated in their
9 declarations (submitted with the Reconsideration Motion) that the
10 purpose for the bankruptcy filing was to delay the pending
11 foreclosure on the Property. Moreover, the marketing and sale of
12 the Property was the cornerstone of the Debtor's chapter 13 plan.

13 Because the Property has been foreclosed on and now sold,
14 the Debtor no longer owns or has an interest in the Property.
15 Consequently, a reversal of the Dismissal Order would not provide
16 the Debtor the relief he sought. Therefore, the controversy is
17 moot and we lack jurisdiction of the appeal. In re Burrell,
18 415 F.3d at 998.

19 **B. Merits**

20 Because we have determined that the appeal is moot, we do
21 not reach the merits of the appeal.

22 **VI. CONCLUSION**

23 We DISMISS the appeal for lack of jurisdiction.
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