

APR 24 2014

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. EC-13-1126-DJuTa
)
 6 JAMES W. CORBETT and)
 DAISY A. CORBETT,) Bk. No. 08-10861-A-7
)
 7 Debtors.)
)
 8)
 9 DAISY A. CORBETT,)
)
 10 Appellant,)
)
 11 v.) **M E M O R A N D U M**¹
)
 12 JAMES E. SALVEN, Chapter 7)
 Trustee; CALIFORNIA)
 13 CORRECTIONAL PEACE OFFICERS)
 ASSOCIATION,)
 14)
 Appellees.)
 15)

Submitted Without Oral Argument on March 21, 2014²

Filed - April 24, 2014

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

Honorable Fredrick E. Clement, Bankruptcy Judge, Presiding

Appearances: Appellant Daisy A. Corbett pro se on brief;
 D. Edward Hays and Martina A. Slocomb of Marshack
 Hays LLP on brief for appellee California
 Correctional Peace Officers Association; appellee
 James E. Salven, Chapter 7 Trustee pro se on
 brief.

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 By order entered October 17, 2013, this appeal was deemed
 suitable for submission without oral argument. See Fed. R.
 Bankr. P. 8012 and Ninth Circuit BAP Rule 8012-1.

1 Before: DUNN, JURY and TAYLOR, Bankruptcy Judges.

2 This appeal concerns disputes as to who is entitled to an
3 award of workers' compensation benefits in the approximate amount
4 of \$86,000 ("Benefits Award"). The debtor/appellant Daisy A.
5 Corbett ("Ms. Corbett")³ appeals two of the bankruptcy court's
6 orders that relate to the Benefits Award: 1) the order sustaining
7 the chapter 7 trustee's ("Trustee")⁴ objection to Ms. Corbett's
8 claimed exemption in the Benefits Award ("Exemption Order"); and
9 2) the order overruling her objection to the Trustee's final
10 account and distribution report ("Final Account Order").⁵

11
12 ³In her opening brief, Ms. Corbett refers to herself both
13 as "Daisy A. Smith-Corbett" and "Daisy A. (Smith) Corbett." To
14 further confuse matters, in her reply brief she further refers to
15 herself as simply "Daisy A. Corbett." To end the confusion, the
16 appeal is captioned in her name as "Daisy A. Corbett." Her
17 chapter 7 case was filed jointly with her husband, James W.
18 Corbett, but since the issues in this appeal relate solely to
19 Ms. Corbett, we will make no further reference to Mr. Corbett.
20 However, as appropriate, we do refer from time to time to the
21 Corbetts jointly as "debtors."

22 ⁴ Unless otherwise indicated, all chapter and section
23 references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-
24 1532, and all "Rule" references are to the Federal Rules of
25 Bankruptcy Procedure, Rules 1001-9037.

26 ⁵ In the notice of appeal, Ms. Corbett, acting pro se, only
27 referred to the Exemption Order. However, she discussed the
28 Final Account Order as well as the Exemption Order in her
Statement of Issues on Appeal and included both orders in her
excerpts of record. In their briefs, the parties address both
orders, and appellees raise no issue of prejudice. We note that
the orders arose from proceedings at the same hearing and are
related, and both orders were entered on the same date.
Accordingly, we address both the Exemption Order and the Final
Account Order in this disposition. See Le v. Astrue, 558 F.3d
continue...

1 To be blunt, the parties all have made a hash of this case.
2 The first bankruptcy judge assigned to the case provided some
3 guidance as to an appropriate procedural vehicle to resolve their
4 disputes. That guidance was ignored. After substantial time had
5 passed and the first bankruptcy judge had recused himself, a
6 successor bankruptcy judge was faced with the task of cleaning up
7 the mess. We VACATE and REMAND with respect to both orders.

8
9 **FACTS**

10 A. Ms. Corbett's workers' compensation claim

11 Several years prepetition, Ms. Corbett worked as a
12 correctional officer for the California Department of Corrections
13 and Rehabilitation. Tr. of January 30, 2013 hr'g, 29:14-16.⁶
14 Sometime in late 1996, while on the job, she was assaulted by an
15
16
17

18 ⁵...continue
19 1019, 1023 (9th Cir. 2009); Shapiro v. Paradise Valley Unified
20 School Dist. No. 69, 374 F.3d 857, 863 (9th Cir. 2004) ("Where 'a
21 party seeks to argue the merits of an order that does not appear
22 on the face of the notice of appeal,' we consider two factors:
23 (1) whether the intent to appeal a specific judgment can be
24 fairly inferred, and (2) whether the appellee was prejudiced by
25 the mistake."), citing Lolli v. County of Orange, 351 F.3d 410,
26 414 (9th Cir. 2003).

27 ⁶ Ms. Corbett only provided portions of the January 30, 2013
28 hearing transcript in her excerpts of record. We retrieved the
entire January 30, 2013 hearing transcript from the bankruptcy
court's electronic docket. See O'Rourke v. Seaboard Sur. Co.
(In re E.R. Fegert, Inc.), 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 inmate, sustaining an injury.⁷ Tr. of January 30, 2013 hr'g,
2 30:3-8. Due to her injury, Ms. Corbett became unable to work
3 sometime in 2005.⁸

4 At the time she became unable to work, Ms. Corbett was a
5 member of the California Correctional Peace Officers Association
6 ("CCPOA"), a union for correctional officers employed by the
7 California Department of Corrections and Rehabilitation. As a
8 service to its members, the CCPOA established a disability
9 benefit trust fund ("disability benefit fund").⁹ Participation
10 in the disability benefit fund was optional for CCPOA members.

11 The disability benefit fund advances funds to injured CCPOA
12 members until they receive workers' compensation benefits. In
13 exchange for these advances, the CCPOA is granted a statutory
14 lien on any workers' compensation benefits received by its
15 members.¹⁰ When she filed a claim for benefits through the
16

17 ⁷ At the time she sustained her injury, Ms. Corbett was
18 working as a correctional officer at the California State Prison,
19 Corcoran, a men's prison. Tr. of January 30, 2013 hr'g,
20 29:14-24.

21 ⁸ Both debtors reported in their Schedule I that they are
22 disabled and retired.

23 ⁹ The disability benefit fund is a self-funded employee
24 welfare benefit plan. The disability benefit fund is funded with
25 premiums paid by its participants and any investment earnings.

26 ¹⁰ According to the CCPOA, it had a statutory lien on
27 Ms. Corbett's workers' compensation benefits under Cal. Labor
28 Code § 4903. However, the CCPOA does not provide the applicable
subsection of Cal. Labor Code § 4903.

Cal. Labor Code § 4903 provides, in relevant part:
continue...

1 disability benefit fund, Ms. Corbett signed an agreement titled,
2 "Reimbursement Agreement and Assignment of Proceeds"
3 ("Reimbursement Agreement").¹¹

5 ¹⁰...continue

6 The appeals board may determine, and allow as liens
7 against any sum to be paid as compensation, any amount
8 determined as hereinafter set forth in subdivisions (a)
9 through (i). If more than one lien is allowed, the
10 appeals board may determine the priorities, if any,
11 between the liens allowed. The liens that may be
12 allowed hereunder are as follows:

13 . . .
14 (b) The reasonable expense incurred by or on behalf of
15 the injured employee, as provided by Article 2
16 (commencing with Section 4600) and, to the extent the
17 employee is entitled to reimbursement under
18 Section 4621, medical-legal expenses as provided by
19 Article 2.5 (commencing with Section 4620) of Chapter 2
20 of Part 2.

21 (c) The reasonable value of the living expenses of an
22 injured employee or of his or her dependents,
23 subsequent to the injury.

24 . . .
25 (f) The amount of unemployment compensation disability
26 benefits that have been paid under or pursuant to the
27 Unemployment Insurance Code in those cases where,
28 pending a determination under this division there was
uncertainty whether the benefits were payable under the
Unemployment Insurance Code or payable hereunder;
provided, however, that any lien under this subdivision
shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits
and extended duration benefits paid to the injured
employee for the same day or days for which he or she
receives, or is entitled to receive, temporary total
disability indemnity payments under this division;
provided, however, that any lien under this subdivision
shall be allowed and paid as provided in Section 4904.

¹¹ The CCPOA included a copy of the Reimbursement Agreement
continue...

1 The Reimbursement Agreement provided that the disability
2 benefits fund would pay her claims for any work-related injury or
3 illness conditioned on the CCPOA's

4 right to reimbursement up to the full extent of
5 benefits paid by the [disability benefit fund] on the
6 claims, in the event [Ms. Corbett] recover[s]
7 (i) damages or proceeds . . . by award, settlement,
8 insurance or otherwise, for medical and other expenses
9 (regardless of how such award, settlement or otherwise
is structured or itemized); or (ii) any proceeds from
occupational insurance purchased by [her] employer, or
provided under state workers' compensation acts,
employer liability laws, or other laws providing
compensation for work-incurred injuries.

10 The Reimbursement Agreement further provided that, in
11 consideration of the advances given by the CCPOA, Ms. Corbett
12 must

13 repay and hereby assign to the [disability benefit
14 fund] the proceeds of any and all recovery/ies made
15 from any responsible party or insurer to [her] or to
16 any person or entity on [her] behalf, to the extent of
any benefits provided by the [disability benefit fund]
. . . .

17 It also provided that, if Ms. Corbett failed to comply with
18 the Reimbursement Agreement, "the [disability benefit fund] may
19 offset the amount which should be reimbursed against any benefit
20 that may otherwise be (or become), payable under the [disability
21 benefit fund] on [her] behalf."

22 Ms. Corbett apparently did not reimburse the CCPOA for any
23 of the funds advanced to her.

24 B. The debtors' chapter 7 bankruptcy

25 On February 21, 2008, the debtors filed their chapter 7
26

27 ¹¹...continue
28 in its proof of claim (claim no. 11-1) filed August 1, 2011.

1 bankruptcy petition. They did not list Ms. Corbett's right to
2 workers' compensation benefits as an asset on Schedule B. They
3 also did not list any lawsuits or actions relating to
4 Ms. Corbett's workers' compensation benefits on their statement
5 of financial affairs ("SOFA"). They further did not claim any
6 exemption in Ms. Corbett's right to workers' compensation
7 benefits on their Schedule C. However, the debtors did list the
8 CCPOA as a general unsecured creditor with a \$56,658.20 claim on
9 their Schedule F.

10 Shortly after the § 341(a) meeting of creditors, the Trustee
11 filed an asset report on March 31, 2008.¹² A day later, a notice
12 to file proofs of claim was filed, advising creditors to file
13 their proofs of claim by July 2, 2008. The CCPOA did not file a
14 proof of claim at that time.

15 After further investigation into the debtors' financial
16 affairs, the Trustee filed a no asset report on April 16, 2008.
17 Tr. of January 30, 2013 hr'g, 7:1-6. The debtors received their
18 discharge on June 3, 2008. Their chapter 7 bankruptcy case
19 closed a week later.

20 Ms. Corbett apparently encountered some difficulties in
21
22
23

24 ¹² At the January 30, 2013 hearing, the Trustee explained
25 that he initially declared the debtors' chapter 7 bankruptcy case
26 an asset case because he "was looking at some property that was
27 in the debtors' name, and there was - there was a bank account in
28 Hawaii." Tr. of January 30, 2013 hr'g, 7:2-3. He also "was
looking at the value of the car." Tr. of January 30, 2013 hr'g,
7:3-4.

1 recovering her workers' compensation benefits.¹³ She went before
2 the California Workers Compensation Appeals Board to pursue her
3 workers' compensation benefits claim against the California
4 Department of Corrections and Rehabilitation. Sometime in
5 January 2011, the California Workers Compensation Appeals Board
6 decided in Ms. Corbett's favor.¹⁴ The Benefits Award provided
7 reimbursement for her medical and/or legal expenses and further
8 medical treatment, among other things.

9 However, the Benefits Award provided that \$85,986.90 in
10 workers' compensation benefits would be withheld pending
11 resolution of issues involving the CCPOA's lien claim. According
12 to the CCPOA, the California Workers Compensation Appeals Board
13 questioned whether Ms. Corbett's chapter 7 discharge affected the
14 CCPOA's lien. It directed the CCPOA to seek an order from the
15 bankruptcy court "clarifying that [the debtors' chapter 7]
16 discharge [did] not affect lien rights."

17 The CCPOA subsequently filed a motion to reopen the debtors'
18 chapter 7 bankruptcy case on February 7, 2011. The bankruptcy
19 court granted the motion to reopen, entering an order four days
20 later ("Reopen Order"). The Reopen Order provided that the CCPOA
21 "shall have 30 days to file an adversary proceeding pursuant to
22

23 ¹³ In a document titled "Support to Trustee's Motion to
24 Compel Turnover of Funds" ("Non-Opposition") filed by the debtors
25 on August 16, 2011 (docket no. 65), Ms. Corbett stated that she
26 hired an attorney in September 2006 to help her obtain workers'
27 compensation benefits to pay for further medical treatment.

28 ¹⁴ The Benefits Award later was amended to provide that the
California Workers Compensation Appeals Board would retain
jurisdiction over the CCPOA's statutory lien.

1 [Rule] 7001(2). If the adversary proceeding is not filed, the
2 case may be reclosed."

3 The CCPOA then filed a motion titled, "Motion for Order to
4 Clarify that Discharge Does Not Affect Liens as a Matter of Law"
5 ("Motion to Clarify"), by means of which it sought an order from
6 the bankruptcy court confirming that the debtors' discharge did
7 not terminate or otherwise affect its lien rights. The Motion to
8 Clarify alleged that, although the CCPOA had created and
9 perfected its lien against the Benefits Award, the California
10 Workers Compensation Appeals Board refused to determine whether
11 the CCPOA's lien was properly perfected and valid under state law
12 until the CCPOA received such an order. The CCPOA contended that
13 its lien was unaffected by the debtors' discharge as the debtors
14 had not taken any steps to invalidate the lien in their
15 bankruptcy case.

16 The Motion to Clarify also stated that the CCPOA was not
17 seeking a determination as to the validity, priority or extent of
18 its lien, because the California Workers Compensation Appeals
19 Board was the proper forum to decide those issues. The Motion to
20 Clarify further stated that the CCPOA was not seeking a
21 dischargeability determination, acknowledging that Ms. Corbett's
22 personal liability on the debt owed to the CCPOA had been
23 discharged.

24 The debtors opposed the Motion to Clarify, arguing that the
25 bankruptcy court could not issue an order pursuant to the CCPOA's
26 request. They maintained that because the issues involving the
27 Benefits Award still were pending before the California Workers
28 Compensation Appeals Board, such an order would constitute an

1 "advisory opinion" because there was no live case or controversy
2 before the bankruptcy court. Moreover, the debtors asserted that
3 the issues regarding the CCPOA's lien were not ripe for
4 adjudication by the bankruptcy court because the California
5 Workers Compensation Appeals Board still had not determined that
6 the CCPOA had properly perfected its lien under state law.
7 Finally, the debtors contended that, contrary to its assertions,
8 the CCPOA was not seeking a "comfort" order - a confirmation that
9 the debtors' discharge did not affect its lien. Rather, it was
10 requesting a determination on the nature, extent or validity of
11 its lien, an issue that must be addressed in an adversary
12 proceeding pursuant to Rule 7001.

13 The bankruptcy court held a hearing on the Motion to Clarify
14 on March 23, 2011. It denied the Motion to Clarify without
15 prejudice to filing an adversary proceeding for declaratory
16 relief. Tr. of March 23, 2011 hr'g, 14:12-13. The bankruptcy
17 court stated that the CCPOA was seeking "declaratory relief as to
18 whether or not . . . the prepetition contract to - that [gave]
19 rise to the lien survived the bankruptcy discharge and would
20 attach to an asset that didn't come into existence until
21 postpetition." Tr. of March 23, 2011 hr'g, 13:2-5. The
22 bankruptcy court therefore advised the CCPOA that it would
23 "require [the CCPOA] to file an adversary proceeding for
24 declaratory relief on that issue." The bankruptcy court stressed
25 that it was "only going to litigate the issue whether the
26 prepetition contract [rode] through - can ride through and attach
27 to postpetition assets." Tr. of March 23, 2011 hr'g, 14:23-25.
28 The bankruptcy court also advised the parties that it intended to

1 abstain from determining whether the CCPOA properly perfected its
2 lien. Tr. of March 23, 2011 hr'g, 14:21-22.

3 The bankruptcy court did not enter an order on the Motion to
4 Clarify. Instead, it entered civil minutes (docket no. 49)
5 setting forth its determinations. Unfortunately, the civil
6 minutes neither mentioned the requirement for an adversary
7 proceeding, designated the party responsible for its filing, nor
8 set a deadline for its filing.

9 Following the hearing on the Motion to Clarify, the
10 bankruptcy court reappointed the Trustee pursuant to the United
11 States Trustee's request.

12 On July 27, 2011, the Trustee filed a motion to compel the
13 California Workers Compensation Appeals Board to turn over the
14 Benefits Award that it held ("Motion to Compel"). The stated
15 purpose of the Motion to Compel was to bring the Benefits Award
16 into the bankruptcy estate so that the bankruptcy court could
17 determine who owned it: the bankruptcy estate, the debtors or the
18 CCPOA. Neither the debtors nor the CCPOA opposed the Motion to
19 Compel.¹⁵

20 Following a hearing on the Motion to Compel, the bankruptcy
21 court entered an order ("Turn Over Order") directing the
22 California Workers Compensation Appeals Board to turn over the
23 Benefits Award. The Turn Over Order directed the Trustee to hold
24 the funds "in a blocked account until final disposition is
25 approved by further order of this court." The bankruptcy court

26
27 ¹⁵ The debtors filed their Non-Opposition on August 16, 2011
28 (docket no. 65). The CCPOA filed a notice of non-opposition to
the Motion to Compel (docket no. 60) on August 25, 2011.

1 clearly intended that the Benefits Award funds would not be
2 released for distribution until after resolution of the dispute
3 between the CCPOA and Ms. Corbett. Despite the bankruptcy
4 court's colloquy with the parties at the hearing on the Motion to
5 Clarify and the language in the Turn Over Order directing the
6 Trustee to hold the Benefits Award funds in a blocked account
7 until resolution by the court as to proper disposition of the
8 funds, no adversary proceeding ever was filed by the CCPOA to
9 obtain the necessary decision from the bankruptcy court. Nor was
10 an interpleader action filed by the Trustee.

11 Instead, on August 1, 2011, the CCPOA filed a proof of claim
12 in the amount of \$85,986.90, all of which was characterized as
13 secured, based on a "lien on workers' compensation benefits." No
14 objections were filed to the CCPOA's proof of claim.

15 After the Motion to Compel hearing, the Trustee did little
16 in the debtors' bankruptcy case, except to obtain the bankruptcy
17 court's approval to employ accountants and to withdraw the no
18 asset report ("Withdrawal") (docket no. 83). He did note in the
19 Withdrawal that he collected funds "relating to an undisclosed
20 asset" and that, to date, the debtors had "neither amended to
21 disclose the [asset] nor [had they] claimed any exemption
22 therein." The proof of service for the Withdrawal reflected
23 service on the debtors at their address as listed on the
24 bankruptcy court docket.

25 Although the Trustee withdrew the no asset report, he did
26 not file a new asset report. Further, no new deadline was set
27 for filing proofs of claim.

28

1 C. The debtors' objection to the Trustee's Final Account

2 On July 17, 2012, the Trustee filed his final report
3 ("Trustee Final Report") (docket no. 85). The Trustee indicated
4 that he realized gross receipts of \$85,986.90, i.e., the Benefits
5 Award. After paying \$770.55 in bank service fees and \$182.58 in
6 administrative expenses, he had a balance of \$85,033.77. The
7 Trustee disclosed that he would distribute \$76,202.18 to the
8 CCPOA on its secured claim, which would leave a balance of
9 \$8,831.59. The balance then would be paid to the Trustee for his
10 fees and costs and for his accountants' fees.¹⁶ The Trustee
11 indicated that there would be no distribution to the general
12 unsecured creditors on their claims.¹⁷

13 Also on July 17, 2012, the Trustee filed a notice of the
14 Trustee Final Report ("Trustee Final Report Notice") (docket
15 no. 86). Through the Trustee Final Report Notice, the trustee
16 advised "any person wishing to object to any fee application that
17 has not already been approved or to the [Trustee] Final Report,
18 must file a written objection within 21 days from the mailing of
19 this notice, together with a request for a hearing and serve a
20 copy of both upon the Trustee" The Trustee Final Report
21 Notice further provided that "[i]f no objections are filed, the
22 Court will act on the fee application and the trustee may pay
23 dividends pursuant to [Rule] 3009 without further order of the
24 Court."

26 ¹⁶ The Trustee requested \$7,549.35 in fees and \$254.24 in
27 expenses. He also requested \$1,028 for his accountants' fees.

28 ¹⁷ The allowed general unsecured claims totaled \$115,593.06.

1 On the same day, an order was entered ("Objection Deadline
2 Order") (docket no. 87), fixing the deadline for objections to the
3 Trustee Final Report at August 9, 2012.¹⁸

4 According to the proofs of service, the Trustee Final
5 Report, the Trustee Final Report Notice and the Objection
6 Deadline Order all were mailed to the debtors at their address as
7 listed on the bankruptcy court docket. No objections were filed
8 to the Trustee Final Report.

9 On August 10, 2012, the bankruptcy court entered an order
10 ("Trustee Fee Order") (docket no. 91) authorizing the Trustee to
11 pay his fees and expenses and his accountants' fees. On
12 October 23, 2012, the Trustee filed his final account and
13 distribution report ("Trustee Final Account") (docket no. 92). He
14 reported that all funds on hand had been distributed pursuant to
15 the Trustee Final Report.

16 On November 21, 2012, the debtors filed an objection to the
17 Trustee Final Account ("Final Account Objection"), in which they
18 alleged that the CCPOA's proof of claim was false. Specifically,
19 the debtors asserted that: 1) the CCPOA did not indicate whether
20 its claim included interest or arrears; 2) the CCPOA falsely
21 stated that its claim arose from money loaned, even though it
22 actually arose from contractual insurance; 3) at the time the
23 debtors filed for bankruptcy, the amount owed to the CCPOA was
24 \$56,658.20, not \$85,986.90; 4) the CCPOA's claim was unsecured;
25 and 5) because the debtors scheduled the debt owed to CCPOA, it
26

27 ¹⁸ That is, 21 days following the date of the notice of the
28 Objection Deadline Order, which was mailed out on July 19, 2012.

1 had been discharged. The debtors further contended that the
2 Trustee failed to investigate the CCPOA's proof of claim.

3 The Trustee responded to the Final Account Objection,
4 arguing that the deadlines to disclose Ms. Corbett's lawsuit
5 involving her workers' compensation benefits, to claim an
6 exemption in the Benefits Award and to object to the Trustee
7 Final Account all had expired. He emphasized that the Trustee
8 Final Report Notice had been served on all parties, including the
9 debtors, and that distributions in accordance with the Trustee
10 Final Report had been made in accordance with the Trustee Fee
11 Order entered by the bankruptcy court after no timely objection
12 to the Trustee Final Report had been filed.

13 The CCPOA also responded to the Final Account Objection,
14 arguing that, because the chapter 7 case was not a surplus case,
15 the debtors lacked standing to object to final distribution.
16 They had not shown that they were directly or adversely affected
17 pecuniarily by the Trustee Final Account. Moreover, the CCPOA
18 asserted that debtors' discharge did not affect the CCPOA's
19 statutory lien. Although the debtors no longer were personally
20 liable on the debt owed to the CCPOA, the CCPOA's lien passed
21 through their bankruptcy, still attached to the Benefits Award.

22 The CCPOA also maintained that the bankruptcy court had no
23 jurisdiction to determine the validity, priority or extent of its
24 lien because it arose under California workers' compensation law.
25 It further contended that the debtors failed to object timely to
26 the Trustee Final Report. Although the deadline to object to the
27 Trustee Final Report was August 9, 2012, the debtors did not
28 object until November 21, 2012.

1 Finally, the CCPOA argued that, contrary to the debtors'
2 assertions, the CCPOA did not file a false proof of claim. The
3 claim did not include interest. The basis for perfection was the
4 CCPOA's statutory lien under Cal. Labor Code § 4903. Therefore,
5 even if CCPOA had not filed its proof of claim, its lien still
6 would encumber the Benefits Award. Moreover, neither the debtors
7 nor any other party had objected to the CCPOA's proof of claim.¹⁹

8 At the January 4, 2013 hearing on the Final Account
9 Objection, the debtors admitted that the Final Account Objection
10 was untimely. However, referring to the bankruptcy court's
11 statements at the March 23, 2011 hearing, the debtors claimed
12 that the bankruptcy court had determined that the CCPOA had only
13 a contract claim, not a lien. The debtors also contended that
14 the CCPOA failed to file its proof of claim timely by August 2,
15 2008, the original claims bar deadline.

16 The debtors stated that they initially did not schedule
17 Ms. Corbett's workers' compensation benefits as an asset because
18 they were unaware that her injuries had a monetary value, given
19 that she did not receive compensation for her work-related
20 injuries for many years.

21
22
23 ¹⁹ The debtors filed a reply to the CCPOA's response to the
24 Final Account Objection. The bankruptcy court declined to
25 consider it because: 1) the debtors failed to file it timely;
26 2) the debtors failed to file it pursuant to the bankruptcy
27 court's local rules; and 3) the debtors did not follow due
28 process by allowing parties a chance to review it in advance.
Tr. of January 4, 2013 hr'g, 4:6-9. However, the bankruptcy
court permitted the debtors to make their arguments orally at the
hearing. Tr. of January 4, 2013 hr'g, 4:9-10. The debtors
repeated all of the arguments made in their reply at the hearing.

1 The debtors also pointed out that, although the bankruptcy
2 court ordered the CCPOA to file an adversary proceeding for
3 declaratory relief, the CCPOA failed to do so. They further
4 alleged that although the Trustee assured the bankruptcy court
5 that he was going to hold the Benefits Award until the disputes
6 as to entitlement to the Benefits Award were resolved, he
7 distributed the Benefits Award without advising the debtors or
8 obtaining a hearing. Tr. of January 4, 2013 hr'g, 8:6-8.

9 The bankruptcy court declined to issue a ruling at that
10 time, instead continuing the hearing to January 30, 2013.

11 D. The Trustee's objection to the debtors' exemption claim

12 On November 28, 2012 and December 3, 2012, respectively, the
13 debtors amended their Schedule B to list the Benefits Award and
14 their Schedule C to claim an exemption in the entire amount of
15 the Benefits Award under California Code of Civil Procedure
16 ("CCP") § 704.160.

17 The Trustee objected to the debtors' amended Schedule C
18 ("Objection to Exemption") because the Trustee Final Report
19 Notice had been served on all creditors and the debtors and the
20 21-day objection period had passed without any party objecting to
21 the Trustee Final Report and because the debtors did not timely
22 disclose and exempt the Benefits Award. The Trustee argued that
23 the debtors' failure initially to disclose and exempt the
24 Benefits Award should bar their ability to do so once the
25 Benefits Award had been discovered and collected, funds were
26 distributed and the Trustee Final Account was filed.

27 The debtors responded, arguing that they did not act in bad
28 faith in omitting the workers' compensation benefits from their

1 schedules. The debtors repeated arguments made at the January 4,
2 2013 hearing: 1) they did not list Ms. Corbett's workers'
3 compensation benefits as an asset initially because they were
4 unaware that her injuries had a monetary value, and 2) although
5 the bankruptcy court already determined that the CCPOA did not
6 have a lien but only a contract claim, the CCPOA knowingly and
7 fraudulently filed a secured proof of claim.

8 The debtors further contended that because workers'
9 compensation benefits are exempt from chapter 7 bankruptcy
10 proceedings under CCP § 703.140(b), such benefits are not assets
11 of the bankruptcy estate.

12 The bankruptcy court set a hearing on the Objection to
13 Exemption for January 30, 2013.

14 E. The bankruptcy court's determinations on the Final Account
15 Objection and Objection to Exemption

16 Approximately one month before the January 30, 2013 hearing,
17 the bankruptcy judge who had been presiding over the debtors'
18 bankruptcy case recused himself. Another bankruptcy judge
19 replaced him. Unfamiliar with the issues before it, the
20 bankruptcy court used the January 30, 2013 hearing as a means to
21 acquaint itself with the facts and the issues. Tr. of
22 January 30, 2013 hr'g, 37:14-15, 46:18-20, 47:22-24.

23 At that hearing, the bankruptcy court learned: 1) No
24 determination had been made as to the amount of the CCPOA's lien
25 and whether the CCPOA's lien attached or had been perfected. Tr.
26 of January 30, 2013 hr'g, 23:6-8, 24:3-4. 24:11-12. 2) At the
27 time she filed her chapter 7 bankruptcy petition, Ms. Corbett had
28 received funds from the CCPOA. Tr. of January 30, 2013 hr'g,

1 33:8-11. 3) The CCPOA did not initiate the adversary proceeding
2 because it believed, as a secured creditor, it did not need to.
3 Tr. of January 30, 2013 hr'g, 39:10-11. Instead, the CCPOA filed
4 a proof of claim, submitting evidence showing that it had a lien
5 against Ms. Corbett's workers' compensation benefits. Id.

6 4) The Trustee did not place the Benefits Award funds into a
7 blocked account pursuant to the Turn Over Order. Tr. of January
8 30, 2013 hr'g, 12:18-25, 13:1-4, 13:20-24. When asked why he did
9 not place the funds into a blocked account, the Trustee admitted
10 that he may not have understood what a blocked account was. Tr.
11 of January 30, 2013 hr'g, 17:3-4, 18:3-8. The Trustee believed
12 that it was sufficient for him to place the funds into a trust
13 account to which only he had access. Tr. of January 30, 2013
14 h'rg, 12:19-24. However, the Trustee also admitted that he knew
15 that he needed an order from the bankruptcy court to distribute
16 the funds. Tr. of January 30, 2013 hr'g, 18:24-15, 19:1-2.

17 The bankruptcy court continued the hearing on both matters
18 to February 27, 2013. At the February 27, 2013 hearing, the
19 bankruptcy court orally issued its determinations on both the
20 Final Account Objection and the Objection to Exemption.

21 Addressing the Objection to Exemption first, the bankruptcy
22 court acknowledged that Rule 1009(a) allows a debtor to amend her
23 schedules as a matter of course at any time, even upon reopening
24 of the bankruptcy case. Tr. of February 27, 2013 hr'g, 4:4-6.
25 Citing Goswami v MTC Distrib. (In re Goswami), 304 B.R. 386, 393
26 (9th Cir. BAP 2003), the bankruptcy court noted, however, that
27 the fact that a debtor can amend her Schedule C in her reopened
28 bankruptcy case did not mean that she had an absolute right to

1 have the amended claim of exemption allowed. Tr. of February 27,
2 2013 hr'g, 4:13-17.

3 Citing Arnold v. Gill (In re Arnold), 252 B.R. 778, 785-89
4 (9th Cir. BAP 2000), the bankruptcy court stated that an amended
5 claim of exemption may be disallowed on a showing of prejudice to
6 creditors or third parties, including the chapter 7 trustee.

7 Tr. of February 27, 2013 hr'g, 4:18-22. The bankruptcy court
8 recognized that the Trustee was objecting to the amended
9 Schedule C on the basis of prejudice. Tr. of February 27, 2013
10 hr'g, 4:25, 5:1.

11 Citing In re Shethi, 389 B.R. 588, 605 (Bankr. N.D. Ill.
12 2008), the bankruptcy court explained that the appropriate
13 inquiry in determining whether the debtor's amended Schedule C
14 caused prejudice hinged on whether "a party [had] changed its
15 position in reliance on the original claim and would be adversely
16 impacted by an amendment thereto."²⁰ Tr. of February 27, 2013
17 hr'g, 5:10-12. The bankruptcy court then sustained the Trustee's
18 Objection to Exemption, finding that the amended Schedule C was
19 prejudicial to the Trustee:

20 Here the trustee's change in position and reliance
21 on the debtors' failure to exempt the compensation
22 proceeds earlier is clear. Because the debtor[s] never
23 claimed the exemption [in the Benefits Award], the
24 trustee determined that CCPOA had lien rights to the
25 proceeds over the estate and, accordingly, distributed
26 the proceeds to CCPOA as part of his statutory duty to
administer the estate.

27 If the debtor[s] had claimed an exemption . . . in
28 a timely manner, that would have established the
debtors' standing to object to CCPOA's claim since the

27 ²⁰ The bankruptcy court in Shethi cited 9 Collier on
28 Bankruptcy ¶ 1009.02[1] (Alan N. Resnick & Henry J. Sommer, eds.,
15th ed. rev. 2007) for this proposition.

1 . . . exemption proceeds would have set forth the
2 debtors' interest in the property, in addition to the
3 estate's and CCPOA's interests, and that would have at
4 least halted . . . the trustee's proposed distribution
5 until the debtors' claim objection was resolved.

6 Because the proceeds have now been administered
7 and distributed, this would cause prejudice to the
8 trustee if the amendment is allowed.

9 Tr. of February 27, 2013 hr'g, 5:17-21, 6:1-7.

10 The bankruptcy court pointed out that the debtors had ample
11 time to amend their exemptions but did not do so until nearly
12 four months after the Trustee informed them of his intent to
13 distribute the funds from the Benefits Award to the CCPOA in the
14 Trustee Final Report. Tr. of February 27, 2013 hr'g, 6:8-11.

15 The bankruptcy court noted that the debtors had been
16 forewarned even earlier when the Trustee withdrew the no asset
17 report, which informed the debtors that he had collected the
18 Benefits Award as property of the estate to be administered to
19 creditors. Tr. of February 27, 2013 hr'g, 6:12-18. The
20 bankruptcy court then quoted the Withdrawal: "[the debtors have]
21 neither amended to disclose the Workers' Compensation claim, nor
22 [have they] claimed an exemption." Tr. of February 27, 2013
23 hr'g, 6:20-22. Such notice, the bankruptcy court reasoned,
24 "should have signaled to the debtors that they must act to
25 protect their interest before the trustee did what he proposed to
26 do." Tr. of February 27, 2013 hr'g, 6:23-25. The bankruptcy
27 court ultimately determined that "it [was] simply too late for
28 the debtors to do anything," once the Trustee distributed the
funds from the Benefits Award, on the assumption that the debtors
would not amend their claimed exemptions. Tr. of February 27,
2013 hr'g, 7:1-4. It therefore sustained the Trustee's Objection

1 to Exemption.

2 The bankruptcy court stated that it did not find credible
3 the Trustee's explanation of his understanding of his obligations
4 under the Turn Over Order. Tr. of February 27, 2013 hr'g,
5 13:1-4. However, it found that the Trustee's noncompliance with
6 the Turn Over Order "made no difference in this case . . .
7 because the result was the same."²¹ Tr. of February 27, 2013
8 hr'g, 13:9-10.

9 The bankruptcy court then turned to the debtors' Final
10 Account Objection, which it overruled on three grounds. First,
11 the debtors lacked standing to object to the distribution because
12 they would not have benefitted from the change in the Trustee's
13 proposed final distribution. Tr. of February 27, 2013 hr'g,
14 8:22-24. The bankruptcy court reasoned that, even if their
15 objection was sustained, the debtors would not be entitled to the
16 funds from the Benefits Award distributed to the CCPOA. Tr. of
17 February 27, 2013 hr'g, 8:11-14. Instead, because the debtors'
18 amended claim of exemption was disallowed, the general unsecured
19 creditors would be entitled to the Benefits Award funds. Tr. of
20 February 27, 2013 hr'g, 8:15-19.

21 Second, even if the debtors did have standing, they had
22 waived the right to object to the Trustee Final Account when they
23 filed their objection after the deadline had passed, where they
24

25
26 ²¹ The bankruptcy court admonished the Trustee, warning him
27 that "it [was] imperative that [he] follow the terms of the
28 [bankruptcy court's] order specifically. And if [he was], in
fact, unclear, [he] should seek clarification." Tr. of
February 27, 2013 hr'g, 13:15-18.

1 had received the Trustee Final Report Notice. Tr. of
2 February 27, 2013 hr'g, 9:1-25, 10:1-13. Finally, Trustee
3 already had distributed the Benefits Award funds to the CCPOA.
4 Tr. of February 27, 2013 hr'g, 9:4-5.

5 The bankruptcy court entered both the Exemption Order and
6 the Final Account Order on March 5, 2013. Ms. Corbett timely
7 appealed both orders.

8 9 **JURISDICTION**

10 The bankruptcy court had jurisdiction under 28 U.S.C.
11 §§ 1334 and 157(b) (2) (A) and (B). We have jurisdiction under
12 28 U.S.C. § 158.

13 14 **ISSUES**²²

15 1) Did the bankruptcy court err in sustaining the Trustee's
16 objection to the debtors' amended claim of exemption in the
17 Benefits Award?

18 2) Did the bankruptcy court err in overruling the debtors'
19 objection to the Trustee Final Account?

20 21 **STANDARDS OF REVIEW**

22 We review the bankruptcy court's factual findings for clear
23 error and its legal conclusions de novo. Continental Ins. Co. v.
24 Thorpe Insulation Co. (In re Thorpe Insulation Co.), 671 F.3d
25 1011, 1019 (9th Cir. 2012).

26
27 ²² The debtors list ten issues on appeal, but we have
28 distilled their essence down to two.

1 We review de novo questions involving a debtor's right to
2 claim exemptions. Goswami v. MTC Distrib. (In re Goswami),
3 304 B.R. at 389; Arnold v. Gill (In re Arnold), 252 B.R. at 784.

4 We review the bankruptcy court's overruling of an objection
5 to a trustee's final report or final accounting for abuse of
6 discretion. See, e.g., Stasz v. Gonzalez (In re Stasz), 2011 WL
7 6934442 (9th Cir. BAP Nov. 30, 2011). A bankruptcy court abuses
8 its discretion if it applies an incorrect legal standard or
9 misapplies the correct legal standard, or if its fact findings
10 are illogical, implausible or without support from evidence in
11 the record. Trafficschool.com v. Edriver Inc., 653 F.3d 820, 832
12 (9th Cir. 2011).

13 14 **DISCUSSION**

15 A. The Exemption Order

16 Courts within the Ninth Circuit have held that a debtor may
17 amend her schedules, including the schedule of claimed
18 exemptions, at any time absent a showing of bad faith or
19 prejudice to third parties. See Rule 1009(a); Martinson v.
20 Michael (In re Michael), 163 F.3d 526, 529 (9th Cir. 1998);
21 Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 392-93
22 (9th Cir. BAP 2003); Magallanes v. Williams (In re Magallanes),
23 96 B.R. 253, 256 (9th Cir. BAP 1988). If a court finds that the
24 debtor's amendment was prejudicial to third parties, the court
25 may deny leave to amend. See Michael, 163 F.3d at 529.

26 In this case, the bankruptcy court did not find that the
27 debtors filed their amended exemption claim in bad faith.
28 Instead, it based its decision on the lateness of the exemption

1 claim and the resulting prejudice, primarily to the Trustee, who
2 acted and changed his position in reliance on the debtors'
3 failure to claim the exemption earlier. The Trustee paid his own
4 compensation and costs and distributed the balance of the
5 Benefits Award to the CCPOA because he determined that the
6 CCPOA's lien rights were superior to the estate's interest in the
7 Benefits Award.

8 However, as recognized by the bankruptcy court, "[s]imple
9 delay in filing an amendment does not constitute prejudice, nor
10 does prejudice occur because a claimed exemption, if untimely,
11 would be granted," citing Andermahr v. Barrus (In re Andermahr),
12 30 B.R. 532, 534 (9th Cir. BAP 1983). This Panel considered the
13 issue of prejudice to the trustee in the event that a late
14 amended exemption claim is allowed in Arnold v. Gill
15 (In re Arnold), 252 B.R. 778 (9th Cir. BAP 2000). In Arnold, the
16 debtors filed amended Schedules B and C to claim an exemption in
17 proceeds from the settlement of an undisclosed personal injury
18 claim more than three years after their chapter 7 filing. Id. at
19 781-82. The trustee argued that allowing the amended exemption
20 claim would jeopardize his statutory compensation allowable under
21 § 326. Id. at 788. While recognizing the possibility of
22 prejudice to the trustee in such circumstances, this Panel
23 concluded that "such prejudice can be mitigated or eliminated by
24 conditioning allowance of the amended exemption on payment of
25 trustee's and counsel's fees and costs from assets not otherwise
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27
28

1 available to the estate.”²³ Id. at 789.

2 Such mitigation of harm can be accommodated on remand in
3 further proceedings before the bankruptcy court and is
4 particularly appropriate in this case because if the Trustee had
5 honored the “blocked account” requirement of the Turn Over Order
6 and its purpose, as discussed more fully infra, we would not be
7 here.²⁴ As in Arnold, we conclude that prejudice to the Trustee
8 in the circumstances of this case does not warrant denial of
9

10 ²³ We recognize that the Supreme Court recently decided that
11 the provisions of the Bankruptcy Code do not allow surcharge of a
12 debtor’s homestead exemption to pay administrative expenses, such
13 that the mitigation of prejudice may now be more difficult. See
Law v. Siegel, 134 S. Ct. 1188 (2014).

14 ²⁴ Issues with respect to the Trustee’s compensation and
15 reimbursement of expenses raise some questions in our minds that
16 have not been addressed by the parties: If the Benefits Award
17 funds represented no more than the actual total of payments made
18 by the CCPOA to Ms. Corbett, without interest or costs, and the
19 Trustee was convinced that the CCPOA had a valid security
20 interest in the Benefits Award, on what basis did the Trustee
21 claim that his compensation and costs could be paid from the
22 CCPOA’s collateral? Typically in such situations, where the
23 trustee is paid from a secured creditor’s collateral funds, there
24 is an agreement between the trustee and the secured creditor to
25 allow a “carve out” for the trustee’s compensation and costs,
26 perceived as beneficial to the secured creditor because the
27 secured creditor can rely on the trustee to collect and
28 distribute the funds. However, again typically, such an
agreement is disclosed and approved by the bankruptcy court,
following such notice and opportunity to request a hearing as is
appropriate in the circumstances. No such agreement or
arrangement is reflected in the record before us. Perhaps the
Trustee simply relied on the CCPOA’s failure to object to the
Trustee Final Report by the deadline and treated that failure to
object as consent, following the bankruptcy court’s entry of the
Trustee Fee Order. Resolving these issues on remand may prove
interesting.

1 Ms. Corbett's amended exemption claim.

2 Neither does prejudice to the position of the CCPOA. The
3 CCPOA received the balance of the Benefits Award funds, but it
4 cannot be a surprise to the CCPOA that Ms. Corbett has asserted
5 an unresolved claim to the funds. Under CCP § 704.160(a),
6 "before payment, a claim for workers' compensation or workers'
7 compensation awarded or adjudged is exempt without making a claim
8 [A]fter payment, the award is exempt." (Emphasis added.)
9 There are exceptions to the exemptions provided for in CCP
10 § 704.160(a) (see, e.g., CCP § 704.160(a) and (b)), but whether
11 any of them apply in the circumstances of this case has not been
12 adjudicated.

13 Based on the terms of the Turn Over Order, the parties and
14 the bankruptcy court expected that further proceedings would be
15 required to establish who among the estate, the CCPOA and
16 Ms. Corbett would be entitled to the Benefits Award funds. This
17 Panel held in Arnold that "theoretical disappointment of
18 expectations, without proof of actual damage," does not support a
19 finding of prejudice to creditors. In re Arnold, 252 B.R. at
20 787. On remand, the CCPOA can continue to hold the Benefits
21 Award funds until there is a determination as to who, between the
22 CCPOA and Ms. Corbett, gets to keep them.

23 Ultimately, we conclude on the record in this case and based
24 on our published precedents, that the bankruptcy court erred in
25 sustaining the Trustee's objection to Ms. Corbett's amended
26 exemption claim based on prejudice, and we will vacate and remand
27 the Exemption Order for further proceedings before the bankruptcy
28 court.

1 B. The Final Account Order

2 The Final Account Order is more problematic. The bankruptcy
3 court overruled the Final Account Objection on three grounds:

4 1) the debtors' lack of standing to object; 2) the debtors'
5 failure to file a timely objection; and 3) that all estate funds
6 from the Benefits Award had been distributed. As to the first
7 ground, once the bankruptcy court had denied Ms. Corbett's
8 amended exemption claim, she was in a position where she was
9 raising an objection as a debtor with respect to an insolvent
10 estate, and she had no pecuniary interest in the issue. By
11 vacating the bankruptcy court's order denying her amended
12 exemption claim, we have revived her potential financial stake
13 and her standing with respect to the Final Account Order.

14 With regard to the third ground, we acknowledge that all of
15 the Benefits Award funds have been distributed by the Trustee,
16 but only to himself and estate professionals and the CCPOA. The
17 funds could be retrieved, if required, from those parties in
18 further proceedings before the bankruptcy court.²⁵

19 As to the second ground, we recognize that Ms. Corbett filed
20 the Final Account Objection late, months after the August 9, 2012
21 deadline set in the Objection Deadline Order. However, in the
22 confused circumstances of this case, we conclude that
23 Ms. Corbett's delay in filing the Final Account Objection was

24
25 ²⁵ We recognize that a very different situation, with a
26 potentially different result, would be presented if the Benefits
27 Award funds had been distributed pro rata among all of the
28 debtors' general unsecured creditors, possibly rendering this
appeal equitably moot, but that is not the situation we face
here.

1 understandable and justifiable in light of her reasonable
2 expectation, based on the terms of the Turn Over Order and the
3 absence of an asset report in the case, that issues as to
4 entitlement to the Benefits Award funds would be decided in
5 further proceedings before the funds were distributed. There was
6 no knowing waiver. By filing his Trustee Final Report and the
7 associated notice and order, the Trustee confounded Ms. Corbett's
8 expectations as to how entitlement to the Benefits Award would be
9 resolved. As noted by the bankruptcy court in admonishing the
10 Trustee with regard to his incredible interpretation of the
11 "blocked account" language of the Turn Over Order, "this order
12 was crafted to specifically preclude you from doing exactly what
13 you did."

14 Clearly, the bankruptcy court had a means to "correct" the
15 conundrum that resulted in this appeal: the prematurely filed
16 Trustee Final Report. Although not articulated as such, the
17 Final Account Objection was in substance a motion for relief from
18 the combined impact of the Trustee Final Report and the Trustee
19 Fee Order pursuant to Civil Rule 60(b)(1), applicable in the
20 contested matters before the bankruptcy court pursuant to
21 Rule 9024, where there is no other conclusion in the face of the
22 Turn Over Order than that the Trustee Final Report was filed by
23 mistake.

24 While a motion filed under Civil Rule 60(b) is addressed to
25 the discretion of the bankruptcy court, "there are some
26 situations so extreme that the result is foreordained and it
27 would be an abuse of discretion . . . to deny the relief."

28 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal

1 Practice and Procedure § 2857 (3d ed. 2012). This is one such
2 situation. The bankruptcy court chided the Trustee at length for
3 his failure to follow both the intent and the language of the
4 Turn Over Order. Resolution of the dispute between Ms. Corbett
5 and the CCPOA could not be circumvented merely because the
6 Trustee believed the funds he held under the Turn Over Order
7 belonged to the CCPOA. That determination was judicial in
8 nature, and not the Trustee's to make.

9 Unlike the bankruptcy court, we cannot conclude on this
10 record that "there was no harm in this case." In these
11 circumstances, we determine that it was error to overrule the
12 Final Account Objection. Further proceedings will be required so
13 that the issues relating to entitlement to the Benefits Award
14 funds can be resolved before the bankruptcy court.

15
16 **CONCLUSION**

17 For the foregoing reasons, we VACATE the Exemption Order and
18 the Final Account Order and REMAND this case for further
19 proceedings consistent with this disposition.
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