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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NOT FOR PUBLICATION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 Nos.	CC-14-1226-KuDki
	)		CC-14-1299-KuDki
JOSEPH DEBILIO,	)		(related appeals)
	)		
Debtor.	)	Bk. No.	09-23812
	)		
JOSEPH DEBILIO; JOHN STEWART,	)		
	)		
Appellants,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
JEFFREY IAN GOLDEN, Chapter 7	)		
Trustee; VIBIANA DEBILIO,	)		
	)		
Appellees.	)		

Argued and Submitted on February 19, 2015  
at Los Angeles, California

Filed - February 27, 2015

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

Appearances: David Bruce Dimitruk argued for appellants Joseph DeBilio and John Stewart; David Edward Hays of Marshack Hays LLP argued for appellee Vibiana DeBilio\*\*

Before: KURTZ, DUNN and KIRSCHER, Bankruptcy Judges.

\*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 8024-1.

\*\*Appellee Jeffrey Ian Golden, chapter 7 trustee has not actively participated in this appeal.

1 **INTRODUCTION**

2 In debtor Joseph DeBilio's bankruptcy case, the chapter 7<sup>1</sup>  
3 trustee Jeffrey Golden filed a motion seeking approval of a  
4 settlement and sale between the bankruptcy estate and Vibiana  
5 DeBilio, Joseph's former spouse.<sup>2</sup> The bankruptcy court granted  
6 the motion, and Joseph appealed.

7 While Joseph's appeal from the sale/settlement order was  
8 pending, Joseph recorded notices of pending actions - or lis  
9 pendens - based on the DeBilios' state court marital dissolution  
10 proceedings. By recording the lis pendens, Joseph asserted a  
11 continuing interest in a number of parcels of real property even  
12 though the chapter 7 trustee had sold the estate's interest in  
13 those parcels in accordance with the sale/settlement order.

14 In response to the lis pendens, Vibiana commenced civil  
15 contempt proceedings in the bankruptcy court against Joseph and  
16 his counsel John Stewart. Ultimately, the court found Joseph and  
17 Stewart in contempt of court, awarded civil contempt sanctions  
18 and attorney fees, and expunged the lis pendens. Joseph and  
19 Stewart filed two new appeals which collectively challenged all  
20 of these rulings.

21 In September 2014, the Panel issued a decision disposing of  
22 the first appeal - the appeal from the sale/settlement order.  
23 The panel vacated that order. Because the bankruptcy court's

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24  
25 <sup>1</sup>Unless specified otherwise, all chapter and section  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
27 all "Rule" references are to the Federal Rules of Bankruptcy  
28 Procedure, Rules 1001-9037.

<sup>2</sup>For ease of reference, we refer to the DeBilios by their  
first names. No disrespect is intended.

1 contempt finding, its sanctions award, its fee award and its  
2 expungement of the lis pendens all were founded on the vacated  
3 sale/settlement order, we must REVERSE all of those rulings.

4 **FACTS**

5 Joseph and Vibiana were engaged in lengthy and contentious  
6 marital dissolution proceedings in the Orange County Superior  
7 Court (Case No. 04D009547). The state court entered an order of  
8 dissolution several years ago and entered a final support order  
9 in October 2012. Joseph appealed the state court's final support  
10 order to the California Court of Appeal, which appeal is still  
11 pending (Appeal No. G048015). When Joseph filed his bankruptcy  
12 case, the parties' dispute spilled over into the bankruptcy  
13 court.

14 In relevant part, Joseph opposed the chapter 7 trustee's  
15 motion for approval of a settlement and sale of estate assets  
16 between the chapter 7 trustee and Vibiana, pursuant to which the  
17 trustee agreed to sell to Vibiana virtually all of the estate's  
18 assets. The facts and proceedings leading up to the bankruptcy  
19 court's order granting the sale/settlement motion already have  
20 been described in the Panel's September 11, 2014 memorandum  
21 decision vacating the sale/settlement order (BAP No. CC-13-1441-  
22 TaPaKi). Therefore, we will limit our factual recitals in this  
23 decision to the circumstances leading up to the court's contempt,  
24 sanctions, fee and expungement rulings.

25 In December 2013, after the bankruptcy court's entry of the  
26 sale/settlement order, Stewart recorded the lis pendens on behalf  
27 of his client Joseph in the official records of both Orange  
28 County and San Bernardino County. Stewart then emailed Vibiana's

1 counsel to advise him of the lis pendens and to raise the topic  
2 of whether it might be time to discuss a global settlement. Upon  
3 learning of the lis pendens, Vibiana's counsel advised Stewart  
4 that the recordation contravened the bankruptcy court's  
5 sale/settlement order and that, unless Joseph voluntarily  
6 withdrew the lis pendens, Vibiana would seek expungement of the  
7 lis pendens as well as contempt sanctions against both Joseph and  
8 Stewart.

9 In February 2014, Vibiana filed her motion for expungement  
10 of the lis pendens and for entry of an order to show cause why  
11 Joseph and Stewart should not be held in contempt. The motion  
12 was served on both Joseph and Stewart by overnight mail. Neither  
13 Joseph nor Stewart have raised any issue regarding the manner in  
14 which the motion was served. After reviewing the motion, the  
15 bankruptcy court set a hearing date of April 2, 2014, and issued  
16 an order directing Joseph and Stewart to show cause: (1) why they  
17 should not be held in contempt; and (2) why the lis pendens  
18 should not be ordered expunged.

19 Vibiana's proofs of service indicate that Vibiana hired a  
20 process server to serve the order to show cause personally on  
21 both Joseph and Stewart. In turn, the process server left a  
22 service copy of the order to show cause with a receptionist at  
23 Stewart's place of business and did the same at Joseph's place of  
24 business.

25 Neither Joseph nor Stewart filed a written response to the  
26 order to show cause. At the hearing on the order to show cause,  
27 no one appeared on behalf of Joseph, but an attorney by the name  
28 of David Dimitruk specially appeared on behalf of Stewart and

1 argued that the order to show cause had not been properly served  
2 and, consequently, the bankruptcy court lacked personal  
3 jurisdiction over Stewart.

4 The court rejected this jurisdictional argument and further  
5 found that both Joseph and Stewart were in contempt of the  
6 court's sale/settlement order by virtue of the lis pendens they  
7 recorded. However, the court did not immediately award any  
8 contempt sanctions against Joseph and Stewart. Instead, the  
9 court set a continued hearing for the purpose of ascertaining the  
10 status of the contempt in roughly thirty days. The court further  
11 gave Joseph and Stewart until April 9, 2014 (seven days from the  
12 date of the first contempt hearing) to purge their contempt by  
13 withdrawing the lis pendens, and provided that they would be  
14 sanctioned \$1,000 per day for every day after April 9 the lis  
15 pendens remained in effect. The court reserved the issues  
16 concerning Vibiana's requests for attorney fees and for  
17 expungement of the lis pendens. The court entered its order  
18 finding Joseph and Stewart in contempt of court on April 18,  
19 2014, and Joseph and Stewart timely appealed that order.

20 Joseph and Stewart did not purge their contempt. At the  
21 continued contempt hearing held on May 13, 2014, Dimitruk once  
22 again appeared, this time for both Joseph and Stewart. First,  
23 the bankruptcy court rejected Joseph and Stewart's oral request  
24 that the court defer a further ruling in the contempt proceedings  
25 until the Panel resolved their motion for a stay pending the  
26 disposition of their appeal from the sale/settlement order.  
27 Then, the court granted Vibiana's request for an award of \$3,500  
28 in attorney fees she incurred in the contempt proceedings.

1 Relying on Cal. Civil Procedure Code ("C.C.P.") §§ 405.30, et  
2 seq., the court also granted Vibiana's request for expungement of  
3 the lis pendens. In addition, the court followed through with  
4 its imposition of sanctions of \$1,000 per day, payable to the  
5 court, for a period of 24 days (from April 10, 2014 to May 13,  
6 2014).

7 On May 27, 2014, the court entered its order memorializing  
8 its rulings on expungement, sanctions and fees. Joseph and  
9 Stewart also timely appealed that order.

#### 10 JURISDICTION

11 We discuss the bankruptcy court's jurisdiction below. We  
12 have jurisdiction under 28 U.S.C. § 158.

#### 13 ISSUES

- 14 1. Did the bankruptcy court have personal jurisdiction over  
15 Joseph and Stewart?
- 16 2. Did the bankruptcy court have subject matter jurisdiction  
17 over Vibiana's motion?
- 18 3. Must we set aside the bankruptcy court's contempt,  
19 sanctions, fee and expungement rulings in light of the  
20 Panel's prior decision vacating the sale/settlement order?

#### 21 STANDARDS OF REVIEW

22 When, as here, the facts relevant to the bankruptcy court's  
23 exercise of jurisdiction are undisputed, we review de novo  
24 questions regarding personal jurisdiction and subject matter  
25 jurisdiction. Sherrie Keys v. 701 Mariposa Project, LLC  
26 (In re 701 Mariposa Project, LLC), 514 B.R. 10, 14 (9th Cir. BAP  
27 2014); Wilshire Courtyard v. Cal. Franchise Tax Bd.  
28 (In re Wilshire Courtyard), 729 F.3d 1279, 1284 (9th Cir. 2013).

1 We review for an abuse of discretion the bankruptcy court's  
2 contempt, sanctions and fee rulings. See Nash v. Clark Cnty.  
3 Dist. Atty's Office (In re Nash), 464 B.R. 874, 878 (9th Cir. BAP  
4 2012). We also review for an abuse of discretion the bankruptcy  
5 court's expungement order. Gonzalez v. Aurora Loan Servs. LLC  
6 (In re Gonzalez), 2012 WL 603747, \*5 (9th Cir. BAP Feb. 2, 2012)  
7 (Mem. Dec.); Weston v. Rodriguez, 110 B.R. 452, 460 (E.D. Cal.  
8 1989), aff'd, 967 F.2d 596 (9th Cir. 1992) (table).

9 The bankruptcy court abuses its discretion if its decision  
10 was based on an incorrect legal rule or its factual findings were  
11 illogical, implausible, or without support in the record. United  
12 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

### 13 **DISCUSSION**

14 We will first address Joseph and Stewart's jurisdictional  
15 arguments. Joseph and Stewart contend that the bankruptcy court  
16 lacked personal jurisdiction over them. Joseph and Stewart point  
17 out that Central District of California Local Bankruptcy  
18 Rule 9020-1(e) (2) requires personal service of orders to show  
19 cause regarding contempt "on any entity not previously subject to  
20 the personal jurisdiction of the court." According to Joseph and  
21 Stewart, Vibiana's attempt to personally serve the order to show  
22 cause on both of them was defective because, under Rules 7004(a),  
23 9014(b) and 9020 (making Civil Rule 4(e) applicable in contempt  
24 proceedings), personal service sufficient to confer personal  
25 jurisdiction over them could not be accomplished by merely  
26 leaving a copy of the order to show cause with their  
27 receptionists.

28 However, Joseph and Stewart's personal jurisdiction argument

1 incorrectly assumes that they were not already subject to the  
2 bankruptcy court's personal jurisdiction. In contested matters,  
3 the bankruptcy court typically obtains personal jurisdiction over  
4 the respondents when the **motion** is served upon the respondents in  
5 accordance with Rules 9014(b) and 7004. See In re 701 Mariposa  
6 Project, LLC, 514 B.R. at 16. Here, the record reflects that  
7 Vibiana served her contempt motion on both Joseph and Stewart by  
8 overnight mail at their usual places of business in accordance  
9 with Rules 9014(b) and 7004(b)(1). When the governing procedural  
10 rule (in this case, Rule 7004(b)(1)) permits service by mail,  
11 service by overnight mail falls within the scope of the rule.  
12 See Lyons P'ship, L.P. v. D & L Amusement & Entm't, 702 F.Supp.2d  
13 104, 112 & n.2 (E.D.N.Y. 2010). Moreover, Joseph and Stewart  
14 never have raised any issue regarding service of the motion.  
15 Therefore, for purposes of the contempt proceedings, the  
16 bankruptcy court already had personal jurisdiction over both  
17 Joseph and Stewart at the time of service of the order to show  
18 cause; there was no need for the bankruptcy court to obtain  
19 personal jurisdiction over them a second time when the order to  
20 show cause was served.

21 Joseph and Stewart alternately contend that the bankruptcy  
22 court lacked subject matter jurisdiction. We disagree. Up until  
23 the time the trustee sold the estate's assets to Vibiana, those  
24 assets were property of the estate, and the trustee's  
25 sale/settlement motion covering those assets was a core  
26 bankruptcy proceeding over which the bankruptcy court duly  
27 exercised jurisdiction. See 28 U.S.C. § 157(b)(2)(A) and (N);  
28 see also 28 U.S.C. § 1334(e) (stating that federal court has

1 exclusive jurisdiction over estate property); Teel v. Teel  
2 (In re Teel), 34 B.R. 762, 763-64 (9th Cir. BAP 1983) (same).

3 After the sale, the bankruptcy court continued to have  
4 ancillary jurisdiction to interpret and enforce the  
5 sale/settlement order. See Travelers Indem. Co. v. Bailey,  
6 557 U.S. 137, 151 (2009). As the Ninth Circuit Court of Appeals  
7 has explained, bankruptcy courts have ancillary jurisdiction "to  
8 secure or preserve the fruits and advantages of a judgment or  
9 decree" it previously entered. In re Wilshire Courtyard,  
10 729 F.3d at 1290 (citing Local Loan Co. v. Hunt, 292 U.S. 234,  
11 239 (1934)).

12 Joseph and Stewart nonetheless maintain that the bankruptcy  
13 court lacked subject matter jurisdiction to expunge the lis  
14 pendens because only "the court in which the action is pending"  
15 has authority to expunge a lis pendens under C.C.P. § 405.30.  
16 The "pending action" on which Joseph and Stewart based their lis  
17 pendens was the dissolution proceedings. Thus, they make a  
18 credible argument that any request to expunge **under C.C.P.**  
19 **§ 405.30** should have been brought in the state court that  
20 presided over the dissolution proceedings. See Formula Inc. v.  
21 Super. Ct., 168 Cal.App.4th 1455, 1464 (2008).

22 Even so, C.C.P. § 405.30 is not the exclusive remedy for an  
23 improperly filed lis pendens. Other California and federal  
24 authority arguably would have permitted the bankruptcy court to  
25 set aside the lis pendens. See Formula Inc., 168 Cal.App.4th at  
26 1465 (citing Ward v. Super. Ct., 55 Cal.App.4th 60, 66-67  
27 (1997)); see also § 105(a) (permitting bankruptcy courts to enter  
28 appropriate orders to carry out the provisions of the Bankruptcy

1 Code).

2 In any event, for jurisdictional purposes, we need not  
3 decide whether the bankruptcy court erred when it expunged the  
4 lis pendens. It suffices for us to say that Joseph and Stewart's  
5 argument regarding the bankruptcy court's lack of authority under  
6 C.C.P. § 405.30 does not implicate or alter the bankruptcy  
7 court's subject matter jurisdiction under the ancillary  
8 jurisdiction doctrine to interpret and enforce its prior  
9 sale/settlement order, which is precisely what the bankruptcy  
10 court was doing when it ordered the lis pendens expunged. Simply  
11 put, the bankruptcy court had ancillary jurisdiction over the  
12 subject matter of Vibiana's motion regardless of whether the  
13 court had authority under C.C.P. § 405.30 to expunge the lis  
14 pendens.

15 Having dispensed with Joseph and Stewart's jurisdictional  
16 arguments, the only other issue we need to address is the effect  
17 of the Panel's prior decision disposing of the appeal from the  
18 sale/settlement order. It is well established in the Ninth  
19 Circuit that a civil contempt ruling does not survive when an  
20 appellate court has set aside the underlying judgment or order on  
21 which the civil contempt ruling was based. See, e.g., World Wide  
22 Rush, LLC v. City of Los Angeles, 606 F.3d 676, 689 (9th Cir.  
23 2010); Kirkland v. Legion Ins. Co., 343 F.3d 1135, 1142-43 (9th  
24 Cir. 2003); Scott & Fetzer Co. v. Dile, 643 F.2d 670, 675 (9th  
25 Cir. 1981).

26 It makes no difference that the bankruptcy court here  
27 awarded both attorney fees and coercive contempt sanctions. The  
28 Ninth Circuit has explicitly held that both compensatory and

1 coercive contempt sanctions are civil in nature, and both must be  
2 set aside when the underlying order or judgment has been set  
3 aside. Scott & Fetzer Co., 643 F.2d at 675. Nor can we let  
4 stand the bankruptcy court's expungement ruling. The Panel's  
5 prior decision vacating the sale/settlement order is the law of  
6 the case. The expungement ruling patently hinged on the efficacy  
7 of the sale/settlement order. Therefore, now that the  
8 sale/settlement order has been set aside, law of the case  
9 principles do not permit us to let stand the bankruptcy court's  
10 expungement ruling. See Two Lontsmon Magnolia, LLC v.  
11 Papanicolaou (In re Papanicolaou), 2005 WL 7142136, at \*1 (9th  
12 Cir. BAP Feb. 16, 2005) (Mem. Dec.) (holding that, under law of  
13 the case doctrine, panel was compelled to reverse orders awarding  
14 prevailing party attorney fees when prior panel had reversed  
15 underlying bankruptcy court judgment on which fee awards had been  
16 based); see also Am. Express Travel Related Servs. Co. v.  
17 Fraschilla (In re Fraschilla), 235 B.R. 449, 454 (9th Cir. BAP  
18 1999), aff'd, 242 F.3d 381 (9th Cir. 2000) (table) (generally  
19 explaining law of the case doctrine).

20 Vibiana argues that we are not obliged to overturn the  
21 bankruptcy court's contempt rulings just because the panel  
22 vacated the underlying sale/settlement order. We disagree. The  
23 Ninth Circuit decisions we cited above are controlling and  
24 mandate this result. See World Wide Rush, LLC, 606 F.3d at 689;  
25 Kirkland, 343 F.3d at 1142-43; Scott & Fetzer Co., 643 F.2d at  
26 675. The cases Vibiana relies on are inapposite. See, e.g.,  
27 Maness v. Meyers, 419 U.S. 449, 454 (1975); Chapman v. Pac. Tel.  
28 & Tel. Co., 613 F.2d 193, 195 (9th Cir. 1979). They are criminal

1 contempt cases, and criminal contempt sanctions (unlike civil  
2 contempt sanctions) can and do survive the reversal of the  
3 underlying order. See ePlus, Inc. v. Lawson Software, Inc.,  
4 760 F.3d 1350, 1357 (Fed. Cir. 2014).

5 Vibiana alternately argues that Joseph and Stewart forfeited  
6 this argument because they did not raise it first in the  
7 bankruptcy court. But the Ninth Circuit cases we cited above  
8 simply do not require the prevailing party to raise first in the  
9 trial court the court of appeals' reversal of the underlying  
10 order. Therefore, we reject Vibiana's forfeiture argument.

11 **CONCLUSION**

12 While Joseph and Stewart's current appeals raise a number of  
13 other issues regarding the correctness of the bankruptcy court's  
14 sanctions and expungement rulings, it is not necessary for us to  
15 reach any of those issues. For the reasons set forth above, we  
16 REVERSE the bankruptcy court's contempt, sanctions, fee and  
17 expungement rulings.