

OCT 26 2016

SUSAN M. SPRAUL, CLERK
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NOT FOR PUBLICATION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-16-1002-KuKiTa
)		
WILLIAM ROBERT NORRIE,)	Bk. No.	2:13-bk-25751-BR
)		
Debtor.)		
_____)		
)		
WILLIAM ROBERT NORRIE,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
MARK BLISS; JOHN M. PULOS;)		
KELLY T. MALLEEN,)		
)		
Appellees.)		
_____)		

Submitted Without Oral Argument
on September 22, 2016

Filed - October 26, 2016

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

Honorable Barry Russell, Bankruptcy Judge, Presiding

Appearances: Appellant William Robert Norrie pro se on brief;
Paul R. Burns on brief for appellees.

Before: KURTZ, KIRSCHER and TAYLOR, 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.

1 **INTRODUCTION**

2 Over the course of several months, Chapter 7¹ debtor William
3 Robert Norrie filed a counseled motion seeking relief from the
4 bankruptcy court's contempt orders and four pro se motions also
5 seeking relief from the contempt orders. Norrie appealed from
6 some of the contempt orders, but that appeal was dismissed for
7 lack of prosecution. The bankruptcy court denied all of the
8 motions for relief from the contempt orders, but Norrie only
9 appealed the denial of the fourth pro se motion.

10 Because the contempt orders and the denials of the first
11 three pro se motions are all final and nonappealable, we lack
12 jurisdiction to review in this appeal those arguments Norrie
13 could have made or did make in the original contempt proceedings
14 or in support of the first three pro se motions.

15 There is only one argument of Norrie's we can address.
16 Norrie claims that the bankruptcy court should have granted his
17 fourth pro se motion for relief on the ground that the contempt
18 orders are void because he no longer can purge his contempt (and
19 hence the contempt orders have become criminal and punitive in
20 nature rather than coercive). However, in denying Norrie's
21 fourth pro se motion, the bankruptcy court implicitly found that
22 Norrie still had the ability to purge his contempt and that he
23 had not done everything he could to purge his contempt.

24 _____
25 ¹Unless 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. All "Local Rule" references are to
the Local Bankruptcy Rules of the United States Bankruptcy Court
for the Central District of California.

1 That finding was not clearly erroneous, so we AFFIRM.

2 **FACTS**

3 Most of the long and tortuous history of Norrie's bankruptcy
4 case (and the seven other bankruptcy cases commenced by or
5 against Norrie and his affiliated entities) is not directly
6 relevant to this appeal. That history has been set forth in more
7 detail in the memorandum decisions this panel has issued in
8 Norrie's other appeals and in other court documents. See Norrie
9 v. Mallen (In re Norrie), 2016 WL 4009979 (Mem. Dec.) (9th Cir.
10 BAP July 21, 2016); Bliss v. Norrie (In re Norrie), 2016 WL
11 373868 (Mem. Dec.) (9th Cir. BAP Jan. 29, 2016).

12 In terms of general bankruptcy background, it suffices to
13 say that Norrie commenced his current chapter 7 bankruptcy case
14 in June 2013 and that the bankruptcy court entered a default
15 judgment in July 2014 denying Norrie a discharge. The default
16 judgment resulted from terminating sanctions the bankruptcy court
17 imposed against Norrie based on his violation of discovery orders
18 in the discharge objection adversary proceeding filed against
19 Norrie.²

20 This appeal in large part concerns the court's orders
21 seeking to compel Norrie to submit to examination and to produce
22 documents under Rule 2004 and Norrie's failure to do so. The
23 relevant train of events began when one of Norrie's creditors,

24
25 ²The excerpts of record the parties provided omitted many
26 relevant documents and transcripts. To overcome this impediment,
27 we have reviewed the bankruptcy court's electronic case docket
28 and its adversary proceeding dockets. We can and do take
judicial notice of their contents and the imaged documents
attached thereto. Heers v. Parsons (In re Heers), 529 B.R. 734,
738 n.3 (9th Cir. BAP 2015).

1 Mark Bliss, filed a motion in May 2014 for an order granting
2 leave under Rule 2004 to examine Norrie and to request that
3 Norrie produce documents responsive to Bliss' 88 categories of
4 documents requested. According to Bliss, this discovery was
5 necessary in order to help ascertain the true state of Norrie's
6 assets, liabilities and financial condition.

7 Norrie filed an opposition to the motion, in which he argued
8 that he was in the process of objecting to Bliss' claim and that
9 Bliss should not be permitted to conduct discovery under
10 Rule 2004 unless and until Norrie's claim objection was
11 overruled. Norrie further asserted that Bliss' document
12 requests related to the then-pending objection to discharge
13 litigation brought by other creditors as well as to the chapter 7
14 trustee's fraudulent transfer litigation seeking to recover for
15 the benefit of the estate a parcel of real property located in
16 Venice Beach, California. In addition to these general
17 objections, Norrie further raised specific objections to certain
18 categories of document requests based on relevance, alleged
19 improper purpose, and a claimed privilege of financial privacy.

20 After a hearing, the bankruptcy court entered an order on
21 July 10, 2014, granting Bliss' Rule 2004 motion in its entirety.
22 The Rule 2004 order required Norrie to produce the requested
23 documents by July 17, 2014, and to appear for examination
24 (deposition) on July 24, 2014.

25 When Norrie failed to comply with the Rule 2004 order, Bliss
26 filed a motion for an order to show cause re contempt. According
27 to Bliss, Norrie defied the Rule 2004 order by not attending his
28 examination as directed and by not producing the requested

1 documents. Instead of producing the requested documents,
2 Norrie's counsel resent responses to document production requests
3 previously sought by the chapter 7 trustee, which Bliss
4 maintained were not adequate or appropriate responses to his
5 document requests.

6 In August 2014, the bankruptcy court entered the order to
7 show cause re contempt as requested by Bliss. In response to the
8 order to show cause, Norrie argued that the proposed contempt
9 sanctions - which consisted of a proposed \$17,350 attorney's fees
10 award and a new order (again) requiring Norrie to appear for
11 examination and produce documents by dates certain - were neither
12 coercive nor compensatory in nature but rather were punitive and
13 hence constituted an improper attempt by the bankruptcy court to
14 impose criminal contempt sanctions.

15 In addition, Norrie argued: (1) that the Rule 2004 order was
16 not specific and definite enough to be enforced; (2) that he was
17 prepared to purge his contempt by arranging for a new examination
18 date; (3) that Bliss should have initiated meet and confer
19 proceedings before bringing his motion for contempt; (4) that he
20 could not attend the examination as originally scheduled because
21 his son was ill; and (5) that the order to show cause was
22 improperly served.

23 After holding a hearing, the bankruptcy court entered an
24 order on October 15, 2014 finding Norrie in contempt of the
25 court's Rule 2004 order. To purge this contempt, the court
26 directed Norrie to produce the documents Bliss requested by no
27 later than October 17, to appear for examination (deposition) on
28 October 24 and to pay \$17,350 in attorney's fees to Bliss.

1 Norrie did not appeal the October 2014 contempt order, nor
2 did he comply with the order's terms. Bliss then filed a new
3 motion for an order to show cause re contempt. Bliss asserted
4 that Norrie had willfully refused to comply with both the
5 bankruptcy court's July 2014 Rule 2004 order and the court's
6 October 2014 contempt order, and, consequently, Bliss requested
7 that the court again find Norrie in contempt. Bliss further
8 requested roughly \$15,000 in additional compensatory sanctions
9 and that the court order Norrie remanded into the custody of the
10 U.S. Marshal's service until he purged his contempt by producing
11 all documents requested and by appearing for and answering all
12 questions asked of him at his Rule 2004 examination.

13 By way of response, Norrie, through new counsel, reiterated
14 his claim that Bliss was not really his creditor but,
15 nonetheless, proposed to purge his contempt by producing the
16 requested documents on December 1, 2014, and by appearing for
17 examination on December 5, 2014, or on any other date agreeable
18 to both parties.

19 Bliss filed a reply in which he, in essence, asserted that
20 Norrie's promise to purge his contempt and proposal for complying
21 with his discovery obligations under Rule 2004 were not credible
22 in light of the prior conduct of Norrie and his counsel.

23 On December 2, 2014, the bankruptcy court issued the order
24 to show cause re contempt as requested by Bliss, and set a
25 hearing date of February 3, 2015. The court's order specifically
26 required Norrie to appear at this hearing.

27 Meanwhile, a different creditor - Kelly Mallen - sought and
28 obtained a separate order to show cause re contempt against

1 Norrie.³ According to Mallen, the bankruptcy court had ordered
2 Norrie to reimburse Mallen \$7,525.00 on account of attorney's
3 fees he had incurred in obtaining an order expunging a lis
4 pendens, which Norrie had recorded against real property on
5 Pacific Avenue in Manhattan Beach, California. Mallen claimed
6 that Norrie had willfully violated the bankruptcy court's
7 sanctions order by not paying the attorney's fees award. He
8 further claimed that he should be awarded another \$7,875 in
9 attorney's fees incurred in bringing the motion for the order to
10 show cause and that the court should order Norrie remanded into
11 custody until Norrie purged his contempt by paying his attorney's
12 fees in the aggregate amount of \$15,400. Mallen alleged that
13 Norrie was financially capable of paying the attorney's fees but
14 had chosen instead to ignore the court's prior sanctions order.
15 Mallen supported this allegation by pointing to the amounts
16 Norrie had stipulated to pay to his ex-wife in child support and
17 spousal support and to the amounts Norrie had expended in
18 litigating against Mallen and others.

19 In response, Norrie denied Mallen's allegation regarding his
20 financial ability to satisfy the sanctions award. Norrie further
21 asserted that a finding of contempt should not be made for what
22 amounted to a failure to satisfy a money judgment. As Norrie
23 pointed out, the ordinary consequence for nonpayment of a

24
25 ³Sometimes, the papers filed on behalf Mallen indicated that
26 another creditor, John Pulos, was participating jointly in the
27 Mallen initiated contempt proceedings. At other times, the
28 papers indicated that Mallen was acting alone. Whether Mallen
was acting alone or in concert with Pulos does not alter our
analysis or our resolution of this appeal, and we only refer to
Mallen herein for ease of reference.

1 judgment debt is enforcement of the judgment by writ of execution
2 and other judgment enforcement remedies.

3 The bankruptcy court set the Mallen initiated contempt
4 proceedings for hearing on the same date as the hearing on the
5 Bliss initiated contempt proceedings - February 3, 2015. The
6 court's order explicitly required the attendance of both Norrie
7 and his counsel at the hearing.

8 Norrie filed responses to both orders to show cause. Norrie
9 claimed that the contempt sanctions sought were punitive in
10 nature, rather than coercive or compensatory. With respect to
11 the Mallen initiated contempt proceedings, Norrie reiterated his
12 contention that a finding of contempt should not flow from what
13 amounted to nonpayment of a money judgment.

14 At the February 3, 2015, hearing on both orders to show
15 cause, the court noted that Norrie had failed to appear as
16 ordered and that his failure to appear was cause for issuance of
17 an arrest warrant in and of itself. Norrie's counsel of record,
18 who did appear, argued that he and Norrie thought that his
19 counsel's appearance would be sufficient regardless of what the
20 order said. But the court rejected that argument based on the
21 order's plain language.

22 With respect to the Mallen initiated contempt proceedings,
23 the court held that the monetary sanctions requested were meant
24 to compensate Mallen for attorney's fees incurred and, hence,
25 qualified as civil contempt sanctions. On the other hand, the
26 court explained, regardless of whether nonpayment of the prior
27 sanctions award was akin to nonpayment of a money judgment, the
28 court would not incarcerate Norrie based on his failure to pay.

1 As for the Bliss initiated contempt proceedings, the court
2 indicated that, if Norrie had appeared at the hearing as ordered,
3 it merely would have ordered him (again) to comply with the
4 Rule 2004 discovery order and the October 2014 contempt order.
5 Even so, because Norrie failed to appear for the hearing, the
6 court stated that it was prepared to order Norrie incarcerated
7 until he fully complied with the Rule 2004 discovery requests.

8 After the hearing, the court issued three orders. The first
9 order held Norrie in contempt for failing to pay Mallen the prior
10 sanctions imposed and awarded Mallen additional attorney's fees
11 in the aggregate amount of \$15,400. The second order held Norrie
12 in contempt for willfully failing to comply with Bliss' Rule 2004
13 discovery requests and awarded Bliss additional attorney's fees
14 of \$14,695. The third order provided for Norrie's arrest by
15 federal marshals and for him to remain in custody until he fully
16 complied with Bliss' Rule 2004 discovery requests.

17 Norrie filed an appeal from the February 2015 contempt
18 orders, but that appeal was dismissed for failure to prosecute.

19 In March 2015, Norrie filed a motion effectively seeking to
20 alter the terms of the February contempt orders to permit him an
21 opportunity to purge his contempt without first being
22 incarcerated. Norrie admitted that he left the country shortly
23 before the February 3, 2015, contempt hearings but nonetheless
24 contended that he was not a fugitive and did not flee the country
25 in order to evade his required appearance. According to Norrie,
26 he left the country only in order to be in England to address
27 health issues involving his parents. Norrie also reiterated
28 that, before the February 3 hearings occurred, he was under the

1 (mistaken) impression that his counsel's appearance would
2 suffice. Additionally, Norrie proposed to purge his contempt, if
3 the court permitted him to do so and if it rescinded the warrant
4 for his arrest, by having his attorney forward to Bliss the
5 documents requested and by appearing in the United States for his
6 Rule 2004 examination on a mutually agreed upon date.

7 Alternately, he proposed appearing in England in person, by video
8 or by telephone conference. According to Norrie, the contempt
9 orders as currently worded were punitive and criminal in nature
10 because they unnecessarily required his incarceration before he
11 could carry out his latest promise to comply.

12 In response, Bliss and Mallen pointed out that no documents
13 had yet been produced as ordered by the court, even though Norrie
14 had the capability of complying with the document requests
15 through his counsel of record. They also pointed out that Norrie
16 had promised on a number of prior occasions that he would comply
17 with the Rule 2004 discovery requests but had not done so. As an
18 alternative to Norrie's proposal for purging his contempt without
19 incarceration, Bliss and Mallen suggested that Norrie should
20 immediately turn over, without objection, all documents
21 responsive to Bliss' document requests and that Norrie should
22 return to the United States and voluntarily surrender to federal
23 marshals. Bliss and Mallen further proposed expedited procedures
24 for convening Norrie's Rule 2004 examination so that Norrie's
25 time in custody could be minimized if he properly cooperated in
26 the Rule 2004 examination process. In essence, Bliss and Mallen
27 contended that withdrawing the coercive incarceration sanction
28 before Norrie fully complied with the Rule 2004 discovery

1 requests would only encourage Norrie to continue his pattern of
2 noncompliance with the bankruptcy court's orders.

3 At the hearing on Norrie's motion seeking to alter the terms
4 of the bankruptcy court's February contempt orders, the
5 bankruptcy court denied Norrie's motion without prejudice. The
6 bankruptcy court specifically declined to modify its prior
7 contempt orders so as to postpone or remove the provision for
8 Norrie's arrest and incarceration. After carefully and
9 thoughtfully considering the issue of Norrie's compliance, the
10 court expressed the belief that, given Norrie's past conduct,
11 Norrie would not comply with the Rule 2004 discovery requests -
12 particularly the production of documents - in the absence of
13 incarceration. On the other hand, the court expressed a
14 willingness to revisit the issue of whether incarceration was
15 necessary if Norrie fully complied with the document requests.

16 The bankruptcy court entered an order in April 2015 denying
17 Norrie's motion to modify the terms of the February contempt
18 orders. The order specified that Norrie could not set a hearing
19 on a further motion of this type before he fully complied,
20 without objection, to all of Bliss' 88 categories of document
21 requests. The order also specified that "Debtor Norrie remains a
22 disentitled fugitive, subject to arrest and remand to the Federal
23 Marshal." Norrie did not appeal this order.⁴

24
25 ⁴This was not the first time the bankruptcy court declared
26 Norrie to be a disentitled fugitive. On March 12, 2015, the
27 bankruptcy court entered an order denying Norrie's motion for
28 sanctions against Mallen and his counsel Paul Burns because, as
the court put it, Norrie had fled the country to evade the

(continued...)

1 Between August and December, 2015, Norrie filed, in pro per,
2 four additional motions seeking to modify or vacate the February
3 2015 contempt orders and the bankruptcy court's April 2015 order
4 stating that he was a disentitled fugitive and restricting him
5 from seeking modification of the contempt orders without first
6 fully complying with Bliss' 88 document requests. The arguments
7 in Norrie's August through December pro se motions are in large
8 part duplicative of each other and also duplicative of the
9 arguments he raised during the contempt proceedings. For
10 instance, Norrie repeatedly claims that neither Bliss nor Mallen
11 are his creditors, that they are defrauding the court by claiming
12 to be his creditors and that they should not be permitted to
13 continue to seek discovery under Rule 2004 because they are not
14 his creditors. Norrie also argued that he does not meet the
15 requirements under 28 U.S.C. § 2466 to qualify as a disentitled
16 fugitive.

17 Norrie additionally renewed his argument that the contempt
18 sanctions imposed - particularly the sanction providing for his
19 incarceration - are criminal rather than civil in nature. In his
20 October and December, 2015, pro se motions, he sets forth new
21 grounds for this argument. In essence, Norrie claimed that he no
22 longer had the funds to pay an attorney to collect and deliver
23 the responsive documents to Bliss and that he has no one else to
24 do this for him. Consequently, Norrie explained, if he is

25
26 ⁴(...continued)

27 February 2015 contempt orders and that, under the fugitive
28 disentitlement doctrine, Norrie's status as a fugitive precluded
him from pursuing the sanctions motion against Mallen and Burns.

1 arrested the moment he returns to the United States, there is no
2 way that he can produce the documents requested and, hence, no
3 way he can purge his contempt - which renders the incarceration
4 sanction punitive and criminal in nature. As Norrie put it:
5 "Given the fact that 75% of the 88 categories [of documents
6 requested] either cannot be produced prior to . . . arrest . . .
7 or cannot be produced at all, it is physically impossible for
8 Norrie to purge the contempt as the ruling currently stands."
9 Motion for hearing to determine purging of contempt, etc.
10 (Oct. 13, 2015) at p. 5 of 27; see also id. at 8 of 27.

11 No responses were filed to the first three of Norrie's pro
12 se motions, and the court denied all three of these motions
13 without holding a hearing. In its orders denying these motions,
14 the bankruptcy court merely stated that Norrie had failed to
15 demonstrate good cause in support of the motions.

16 In December 2015, Mallen and Bliss filed a joint opposition
17 to Norrie's fourth pro se motion. According to Mallen and Bliss,
18 Norrie's fourth pro se motion did not offer any legitimate
19 explanation why, after roughly 17 months of being under court
20 order to produce documents, Norrie had not produced a single
21 document responsive to Bliss' 88 document requests. Mallen and
22 Bliss further asserted that their counsel remained ready, willing
23 and able to receive any documents Norrie produced in response to
24 Bliss' document requests, and counsel pledged to promptly report
25 to the court the status of any such production, in accordance
26 with the bankruptcy court's April 2015 order on Norrie's first
27 (counseled) motion seeking to modify the February contempt
28 orders.

1 On December 18, 2015, the bankruptcy court entered an order
2 denying Norrie's fourth pro se motion seeking to vacate or modify
3 the court's February 2015 contempt orders and its April 2015
4 order. Norrie timely appealed the December 18, 2015 order.

5 **JURISDICTION**

6 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
7 §§ 1334 and 157(b)(2)(A). To the extent we have jurisdiction
8 over this appeal, that jurisdiction arises under 28 U.S.C. § 158.

9 **ISSUES**

- 10 1. What is the permissible scope of this appeal?
11 2. Does the bankruptcy court's incarceration sanction qualify
12 as a criminal contempt sanction or a civil contempt
13 sanction?

14 **STANDARDS OF REVIEW**

15 The issue regarding the permissible scope of this appeal
16 requires us to examine our jurisdiction, which we review de novo.
17 See Wolkowitz v. Beverly (In re Beverly), 374 B.R. 221, 230 (9th
18 Cir. BAP 2007), aff'd in part & dismissed in part, 551 F.3d 1092
19 (9th Cir. 2008).

20 The issue regarding whether the bankruptcy court's
21 incarceration sanction qualifies as civil or criminal hinges on
22 the correctness of the bankruptcy court's determination that
23 Norrie has the ability to purge his contempt by producing the
24 documents requested. That determination was a finding of fact,
25 which we review under the clearly erroneous standard. SEC v.
26 Elmas Trading Corp., 824 F.2d 732, 732-33 (9th Cir. 1987).

27 A factual finding is not clearly erroneous unless it is
28 illogical, implausible, or without support in the record. Retz

1 v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010).

2 **DISCUSSION**

3 Before we conduct any review of the bankruptcy court's
4 December 18, 2015 order denying Norrie's fourth pro se motion, we
5 first must ascertain what effect - if any - Norrie's failure to
6 file (or perfect) appeals from the court's other contempt-related
7 orders has on our jurisdiction. We have an independent duty to
8 consider the extent of our jurisdiction even when the parties
9 have not raised the issue. See Couch v. Telescope, Inc.,
10 611 F.3d 629, 632 (9th Cir. 2010).

11 Norrie stated in his fourth pro se motion that the motion
12 was procedurally based on Civil Rule 60(b), which is made
13 applicable in bankruptcy contested matters by Rule 9024. How
14 (and whether) we address the denial of Norrie's Civil Rule 60(b)
15 motion depends in part on whether the bankruptcy court's February
16 2015 contempt orders were final orders. If they were not final,
17 the bankruptcy court's denial of relief under Civil Rule 60(b)
18 was appropriate for the simple reason that Civil Rule 60(b), on
19 its face, only applies to **final** judgments and orders.

20 In any event, we hold that the bankruptcy court's contempt
21 orders do qualify as final orders. In order to explain how we
22 reach this holding, we must describe the difference between
23 criminal and civil contempt sanctions - particularly in the
24 bankruptcy context.

25 As first decided by the Ninth Circuit Court of Appeals in
26 Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1192-95 (9th
27 Cir. 2003), bankruptcy courts have no authority to impose
28 significant criminal contempt sanctions; under § 105(a), they

1 only may impose civil contempt sanctions. Dyer also described
2 the difference between compensatory civil contempt sanctions and
3 criminal contempt fines:

4 Civil penalties must either be compensatory or designed
5 to coerce compliance. In contrast, a flat
6 unconditional fine totaling even as little as \$50 could
7 be criminal if the contemnor has no subsequent
8 opportunity to reduce or avoid the fine through
9 compliance, and the fine is not compensatory. This is
so regardless of whether the non-compensatory fine is
payable to the court or to the complainant. Whether
the fine is payable to the complainant may, however, be
one relevant factor in determining whether the fine is
compensatory or punitive.

10 In re Dyer, 322 F.3d at 1192 (citations and internal quotation
11 marks omitted). On this record, the attorney's fees awards that
12 the bankruptcy court granted all qualify as compensatory civil
13 contempt sanctions. The bankruptcy court repeatedly stated in
14 its rulings that the monetary sanctions it was awarding were
15 meant to compensate Bliss and Mallen for the attorney's fees they
16 incurred in enforcing the bankruptcy court's orders.

17 As for the incarceration sanction, incarceration can be a
18 civil contempt sanction, but only if the contemnor can purge the
19 contempt and thereby free himself from custody by complying with
20 the court's orders. In other words, a "civil contemnor 'carries
21 the keys of his prison in his own pocket' because civil contempt
22 is 'intended to be remedial by coercing the defendant to do what
23 he had refused to do.'" Lasar v. Ford Motor Co., 399 F.3d 1101,
24 1110 (9th Cir. 2005) (quoting Gompers v. Buck's Stove & Range
25 Co., 221 U.S. 418, 442 (1911)); see also United States v. United
26 Mine Workers of Am., 330 U.S. 258, 303-04 (1947) (holding that
27 civil contempt sanctions only may be imposed for two purposes:
28 either to coerce compliance or to compensate the other side for

1 losses sustained as a result of the contempt).

2 Here, the bankruptcy court imposed the incarceration
3 sanction as a civil contempt sanction. The patent purpose of the
4 sanction was to coerce Norrie to comply with Bliss' Rule 2004
5 discovery requests, and the February 2015 contempt orders
6 contained a provision indicating that the incarceration only
7 would last until Norrie purged himself of the contempt by
8 complying with the Rule 2004 discovery requests. Because the
9 contempt orders afforded Norrie with the means to prevent or
10 limit his incarceration, the incarceration sanction imposed
11 against Norrie was civil in nature. See United Mine Workers of
12 Am. v. Bagwell, 512 U.S. 821, 828 (1994).

13 Civil contempt orders typically are considered interlocutory
14 - not final - until the conclusion of the underlying litigation.
15 Elmas Trading Corp., 824 F.2d at 732. In the bankruptcy context,
16 however, when a civil contempt order is entered as a stand-alone
17 matter and not as part of another pending adversary proceeding or
18 contested matter, then the contempt order ordinarily is treated
19 as final upon entry. Stasz v. Gonzalez (In re Stasz), 387 B.R.
20 271, 276 (9th Cir. BAP 2008). Stasz explained that a civil
21 contempt order entered as a stand-alone matter in a bankruptcy
22 case needed to be considered final and immediately appealable
23 upon entry because there was no other clear time at which such a
24 contempt order could or would become final. Id.

25 Here, as in Stasz, the debtor violated orders requiring
26 examination and the production of documents pursuant to
27 Rule 2004. Id. at 273-74. By its very nature, discovery
28 conducted under Rule 2004 is a stand-alone matter. See

1 In re Dinubilo, 177 B.R. 932, 943 (E.D. Cal. 1993); Clark v.
2 Farris-Ellison (In re Farris-Ellison), 2015 WL 5306600, at *3
3 (Bankr. C.D. Cal. Sept. 10, 2015). Accordingly, we consider the
4 contempt orders entered against Norrie to enforce the bankruptcy
5 court's Rule 2004 order to have been final and immediately
6 appealable.

7 Having concluded that the contempt orders were final, we
8 next consider the scope of our appellate review. Norrie filed
9 this appeal after the denial of his **fourth** pro se motion seeking
10 to modify or set aside the February 2015 contempt orders and the
11 April 2015 order denying Norrie's counseled motion to modify the
12 contempt orders. Norrie's appeal from the February 2015 contempt
13 orders was dismissed for lack of prosecution, and Norrie did not
14 appeal the April 2015 order. Nor did he appeal any of the orders
15 denying his first three pro se motions.

16 Because the contempt orders and the orders denying the first
17 three pro se motions are all now final and nonappealable,
18 Norrie's attempt to argue in this appeal matters that were or
19 should have been raised in the original contempt proceedings or
20 in support of his first three pro se motions constitutes an
21 impermissible collateral attack on the prior, final orders. See
22 Valley Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.),
23 922 F.2d 1438, 1442 (9th Cir. 1991) (rejecting as frivolous
24 appellant's attempted collateral attack of bankruptcy court's
25 final, non-appealable sale order); Alakozai v. Citizens Equity
26 First Credit Union (In re Alakozai), 499 B.R. 698, 704 (9th Cir.
27 BAP 2013) ("A final order of a federal court may not be

1 collaterally attacked.").⁵

2 Put another way, the denials of the first three pro se
3 motions all were separately appealable final post-judgment
4 orders. See Jeff D. v. Kempthorne, 365 F.3d 844, 850 (9th Cir.
5 2004); TAAG Linhas Aereas de Angola v. Transamerica Airlines,
6 Inc., 915 F.2d 1351, 1354 (9th Cir. 1990). Norries' failure to
7 timely appeal those orders deprives this Panel of jurisdiction to
8 review those denials and the issues addressed therein. A timely
9 filed notice of appeal is mandatory and jurisdictional. Browder
10 v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978); Slimick v.
11 Silva (In re Slimick), 928 F.2d 304, 306 (9th Cir. 1990).
12 Slimick is particularly instructive. In Slimick, the bankruptcy
13 court entered an order sustaining the bankruptcy trustee's
14 exemption claim objection. Id. at 305. After the time for
15 filing an appeal from that order had run, the Slimicks filed a
16 motion requesting that the bankruptcy court enter written
17 findings of fact and conclusions of law. Id. Several months
18 later, the bankruptcy court entered written findings and
19 conclusions and also entered a judgment disallowing the Slimicks'
20 exemption claim. Id. at 305-06. The Slimicks timely appealed
21 the subsequent judgment but not the prior order. Id. On appeal,
22 the Ninth Circuit held that the Slimicks' appeal was untimely and
23 that the entry of the subsequent judgment did not "constitute a
24 second final disposition" that would start over the appeal

26 ⁵In light of our conclusion that the contempt order and the
27 orders denying the first 3 pro se motions are final and
28 nonappealable, we need not address the impact, if any, of the
order denying the counseled motion in this appeal.

1 period, nor did it extend the original appeal period, which ran
2 when the bankruptcy court entered its original order disallowing
3 the exemption claim. Id. at 306-07.

4 Here, Norrie could not extend the time to appeal the
5 contempt orders or the orders denying his first three pro se
6 motions by filing and obtaining a ruling on his fourth pro se
7 motion. To hold otherwise would undermine the mandatory and
8 jurisdictional nature of the appeal filing deadline. Thus, the
9 issues raised and determined by the bankruptcy court's contempt
10 orders and its denial of Norrie's first three pro se motions are
11 beyond the permissible scope of this appeal.

12 Our holding regarding the limited permissible scope of this
13 appeal is consistent with United States v. Wheeler, 952 F.2d 326,
14 327 (9th Cir. 1991). The Wheeler court held that the denial of a
15 motion seeking to vacate a contempt order is "nonappealable" when
16 the motion to vacate is premised on grounds that existed at the
17 time of entry of the contempt order and the contemnor did not
18 timely appeal the contempt order. As Wheeler explained, to hold
19 otherwise would enable the contemnor to indefinitely extend the
20 appeal period as to issues that could have and should have been
21 addressed in the original contempt proceedings or in an appeal
22 following the contempt proceedings. Id.

23 In sum, to the extent Norrie did raise or could have raised
24 his arguments against the contempt orders in the initial contempt
25 proceedings or in support of his first three pro se motions, we
26 cannot address those arguments in this appeal from the denial of
27 his fourth pro se motion.

28 Many of Norrie's pro se arguments should have been asserted,

1 if at all, in response to the original contempt motion. For
2 example, in his third and fourth pro se motions, Norrie goes
3 through the 88 categories of documents set forth in the original
4 document requests and asserts that documents responsive to 26 of
5 the categories requested do not exist, documents responsive to 9
6 of the categories requested are not within his possession or
7 control, documents responsive to 28 of the categories requested
8 might be in storage in Los Angeles, documents responsive to 2 of
9 the categories requested should not have to be produced because
10 the requests are subject to "legitimate objection" and documents
11 responsive to 23 of the categories requested are not subject to
12 any impediment that would prevent Norrie from producing them -
13 even though he has not actually produced them.

14 Even if we were to assume that Norrie's assertions regarding
15 the document categories are truthful and accurate, and even if we
16 were to assume that these assertions partly mitigate the
17 bankruptcy court's contempt finding (which they do not), it
18 simply is much too little - and much too late - an effort on
19 Norrie's part to comply with the bankruptcy court's original
20 order requiring Norrie to produce documents. Nothing in our
21 review of the entire record indicates why Norrie could not have
22 provided this same information (and produced whatever documents
23 were available to him) years ago - at the time the bankruptcy
24 court entered its original Rule 2004 order - or at any time
25 thereafter.

26 In any event, for purposes of this appeal, we cannot
27 consider Norrie's assertions addressing the individual categories
28 of documents he was directed to produce because that issue (and

1 virtually all of the other issues set forth in his fourth pro se
2 motion) are beyond the permissible scope of this appeal. As we
3 explained above, we lack jurisdiction over these issues because
4 Norrie did not file (or perfect) appeals from the contempt orders
5 or from the orders denying Norrie's first three pro se motions.

6 We only can address the merits of one argument raised by
7 Norrie on appeal. Norrie contends on appeal that the bankruptcy
8 court erred by not granting his fourth pro se motion because
9 there is no longer any way for Norrie to purge his contempt.
10 According to Norrie, even if the incarceration sanction
11 originally was intended to be coercive rather than punitive, his
12 inability to purge the contempt by producing all of the documents
13 requested caused the incarceration sanction to change into a
14 purely punitive criminal contempt sanction. Norrie correctly
15 points out that civil contempt sanctions providing for
16 incarceration can become criminal in nature when the contemnor no
17 longer has the ability to purge the contempt. See Elmas Trading
18 Corp., 824 F.2d at 732-33. Norrie additionally points out that
19 bankruptcy courts do not have authority to impose criminal
20 contempt sanctions. See In re Dyer, 322 F.3d at 1192-95.

21 For purposes of this appeal, we will assume without deciding
22 that bankruptcy court issuance of a coercive civil contempt
23 sanction that later becomes criminal (because it no longer can be
24 purged) is a jurisdictional defect and is the type of
25 jurisdictional defect that could render the court's contempt
26 order void. But see United Student Aid Funds, Inc. v. Espinosa,
27 559 U.S. 260, 271-72 (2010) (indicating that a jurisdictional
28 defect only is sufficient to justify Civil Rule 60(b)(4) relief

1 from a void judgment in "the exceptional case in which the court
2 that rendered judgment lacked even an 'arguable basis' for
3 jurisdiction.").

4 Even if we make these assumptions, Norrie's argument does
5 not justify reversal of the bankruptcy court's denial of Norrie's
6 fourth pro se motion. In denying Norrie's fourth pro se motion,
7 the bankruptcy court did not explicitly find that Norrie still
8 had the ability to produce the requested documents and purge his
9 contempt, but that finding is implicit based on the entirety of
10 the record and on the comments the bankruptcy court made at the
11 time of the hearing on Norrie's first (counseled) motion seeking
12 to modify the contempt orders. At that time, after thoughtfully
13 considering Norrie's contentions, the bankruptcy court stated
14 that Norrie had "virtually zero" credibility on the Rule 2004
15 order compliance issue. The bankruptcy court indicated that
16 Norrie only could recover some amount of credibility by actually
17 producing some of the requested documents. The bankruptcy court
18 further indicated that it might be willing to revisit the issue
19 regarding the purge provision of the contempt orders once Norrie
20 actually had produced the documents as requested.

21 In support of his inability to purge argument, Norrie
22 asserted in his appeal brief and in his fourth pro se motion that
23 he cannot gather together and produce **some** of the documents
24 requested while in England and that, if he returns to the United
25 States, he immediately will be taken into custody, which also
26 will prevent him from gathering together and producing **some** of
27 the documents. Norrie also asserted that documents responsive to
28 **some** of the document requests do not exist and that others are

1 not within his possession or control. Notwithstanding Norrie's
2 assertions, the alleged state of affairs regarding Norrie's
3 efforts and ability to purge his contempt did not change
4 drastically from the time of his first (counseled) motion seeking
5 to modify the contempt orders to the time of Norrie's fourth pro
6 se motion. More importantly, nothing had changed to increase
7 Norrie's credibility regarding the extent of his efforts to
8 comply with the document requests.

9 Under these circumstances, we are not persuaded that the
10 bankruptcy court's implicit finding - that Norrie still had the
11 ability to purge his contempt at the time of the denial of
12 Norrie's fourth pro se motion - was clearly erroneous.

13 **CONCLUSION**

14 For the reasons set forth above, we AFFIRM the bankruptcy
15 court's order denying Norrie's fourth pro se motion.