

APR 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN MACMULLIN,

Appellant,

v.

WILLIAM G. POACH, Jr.; LYNN M.
ANDERSON; DONALD CHILDERS;
PETER M. WILLIAMS; MARION
HUBBARD; PATRICIA A. OROZCO
Judge; DIANE M. JOHNSEN; G.
MURRAY SNOW, Judge; LINDSAY
ELLIS, Commissioner; MICHAEL D.
HINTZE, Commissioner,

Appellees,

and

RUSSELL BROWN,

Trustee.

No. 09-15652

D.C. No. 2:08-cv-00768-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted April 13, 2010**
San Francisco, California

Before: KLEINFELD, TASHIMA and THOMAS, Circuit Judges.

John MacMullin appeals from the district court's affirmance of the bankruptcy court's order modifying the automatic stay to permit the probate of Sylvia Levering's Estate to continue and referring all questions relating to the merits of attorney's fees and costs awarded during probate proceedings to the probate court.

After reviewing the record and the briefs, we affirm for the reasons given by the district court in its decision. As explained in *Marshall v. Marshall*, 547 U.S. 293 (2006), the probate exception to bankruptcy jurisdiction applies to claims against the *res* in the custody of the state court and to matters internal to the probate of the will.

We construe MacMullin's "motion re: record" as a request for judicial notice of records that were not before the bankruptcy court and deny.

AFFIRMED; MOTION DENIED.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).