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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of: MORRY WAKSBERG,
M.D.,

Debtor,

MORRY WAKSBERG, M.D.,

Appellant,

v.

LEVENE, NEALE, BENDER, RANKIN
& BRILL L.L.P.,

Appellees.

No. 09-56406

D.C. No. 2:08-cv-07393-MMM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

The individual, Morry Waksberg, M.D., appeals from the district court's order dismissing his appeal from the bankruptcy court's order granting Levene, Neale, Bender, Rankin & Brill L.L.P.'s application for compensation in underlying Chapter 7 proceedings. We have jurisdiction under 28 U.S.C. § 158(d). We review for an abuse of discretion. *Fitzsimmons v. Nolden (In re Fitzsimmons)*, 920 F.2d 1468, 1471 (9th Cir. 1990). We vacate and remand.

The district court's dismissal of the appeal was based on its determination that, despite its previous order to show cause detailing Waksberg's procedural obligations and its extension of time for compliance, Waksberg had never filed a Statement of the Issues in the bankruptcy court. However, Waksberg filed a Statement of the Issues in the bankruptcy court by the final deadline the district court had imposed. Although the Statement's caption contained the case number for a related bankruptcy case, causing it to be filed in that separate case, it also prominently bore the case numbers for the bankruptcy and district court cases on appeal here. Accordingly, it cannot be said that Waksberg, who was proceeding pro se at the time, failed to comply with Bankruptcy Rule 8006. *See Brookfield Communs. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999) (a district court necessarily abuses its discretion where it bases its ruling on a clearly erroneous finding of fact).

In light of our disposition, we need not reach whether the district court abused its discretion by denying Waksberg's motion for reconsideration.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.