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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NOT FOR PUBLICATION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

<p>In re: NICAR ARARACAP BOCALAN, Debtor.</p>	<p>BAP No. EC-25-1117-BGP Bk. No. 24-24885</p>
<p>VALERIE SPEIR, Appellant, v. NICAR ARARACAP BOCALAN, Appellee.</p>	<p>Adv. No. 25-02041 MEMORANDUM*</p>

Appeal from the United States Bankruptcy Court
for the Eastern District of California
Christopher D. Jaime, Chief Bankruptcy Judge, Presiding

Before: BRAND, GAN, and PEARSON,¹ Bankruptcy Judges.

INTRODUCTION

Appellant Valerie Speir appeals an order dismissing her untimely claims under § 727(a)² and § 523(a)(2), (4), and (6), abstaining from hearing her timely claims under § 523(a)(5) and (15), and dismissing her adversary

* 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 The Hon. Teresa H. Pearson, United States Bankruptcy Judge for the District of Oregon, sitting by designation.

² Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

proceeding. Seeing no error by the bankruptcy court, we AFFIRM.

FACTS³

A. The bankruptcy filing

Nicar Bocalan filed a chapter 7 bankruptcy case on October 29, 2024. The date first set for the § 341(a) meeting of creditors was December 6, 2024. Based on that date, the deadline to object to Mr. Bocalan's discharge under § 727(a)(2) through (7), or to challenge the dischargeability of any debt under § 523(a)(2), (4), or (6), was February 4, 2025.

Mr. Bocalan listed Ms. Speir as an unsecured creditor with a claim in an "unknown" amount. Ms. Speir is Mr. Bocalan's former girlfriend and the mother of his three minor children. The couple split in August 2023. Prior to his bankruptcy filing, Mr. Bocalan and Ms. Speir were litigating in state court over child custody and child support matters.

Mr. Bocalan received a chapter 7 discharge on February 10, 2025.

B. The adversary complaint

On March 27, Ms. Speir in pro se filed an adversary complaint against Mr. Bocalan, objecting to his discharge under § 727(a)(2), (3), (4), (5), and (7), and objecting to the dischargeability of an alleged debt owed to her under § 523(a)(2), (4), (5), (6), and (15). Ms. Speir alleged that she attended the two § 341(a) meetings on December 6 and January 17, and that at these meetings

³ Ms. Speir did not file an excerpt of record or request that the requirement to do so be waived. Therefore, we had to review the relevant documents on the bankruptcy court's electronic docket. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003) (the Panel may exercise its discretion to take judicial notice of documents electronically filed in the bankruptcy court).

she provided the chapter 7 trustee with information about Mr. Bocalan's "fraudulent" bankruptcy filing and his "fraudulent actions," which she argued violated her "Constitutional, Property and Child Support Rights." Ms. Speir alleged that the discharge order entered on February 10 also violated her rights and that Mr. Bocalan should be denied a discharge.

On April 10, the bankruptcy court entered an order sua sponte dismissing Ms. Speir's claims under § 727(a)(2)-(5) and (7) and § 523(a)(2), (4), and (6) as untimely. The deadline to file such claims was February 4; her complaint was not filed until March 27. However, the court found that Ms. Speir's remaining claims under § 523(a)(5) (domestic support debts) and (15) (debts incurred in connection with divorce or support) were timely.

On June 4, the bankruptcy court issued an order to show cause ("OSC") why it should not abstain from hearing Ms. Speir's remaining claims under § 523(a)(5) and (15). The court opined that abstention was particularly appropriate since the claims consisted of domestic support or non-support obligations routinely addressed by state courts. The court observed that two family law matters involving Ms. Speir and Mr. Bocalan were currently pending in state court, and therefore the nondischargeability matters could be addressed there. The court ordered Ms. Speir to file a response to the OSC by June 17, explaining why the claims should not be heard and determined by the state court.

Not having received a timely response to the OSC from Ms. Speir, the bankruptcy court entered an order sustaining the OSC and abstaining from

hearing her claims under § 523(a)(5) and (15) and dismissing her adversary proceeding.

Mr. Bocalan filed an untimely response to the OSC, arguing in support of abstention. He contended that the family court recently entered a final order determining that he was current on his child support and that he had, in fact, overpaid. Thus, he argued, he was not liable to Ms. Speir for any debt under § 523(a)(5) or (15), which she failed to sufficiently plead in any event.

Ms. Speir also filed an untimely response to the OSC. She asserted that she had just received the OSC that day because she was away on vacation, which she claimed the court knew about. Ms. Speir continued to argue that Mr. Bocalan should be denied a discharge due to his fraudulent bankruptcy filing and attempt to avoid her debt.

Apparently because both parties filed untimely responses to the OSC, the bankruptcy court decided to consider them and entered an amended order, superseding the prior order. The court again sustained the OSC, abstained from hearing Ms. Speir's claims under § 523(a)(5) and (15), and dismissed her adversary proceeding. The court found that Ms. Speir's response only confirmed and reinforced its decision to abstain from hearing state law claims dealing with domestic relations, family law, and child support. The court noted that its decision was not a ruling on the merits and that Ms. Speir was free to pursue those claims in state court. This timely appeal followed.

JURISDICTION⁴

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 157(b)(2)(I) and (J) and 1334(b). We have jurisdiction under 28 U.S.C. § 158.⁵

ISSUES

1. Did the bankruptcy court err in dismissing Ms. Speir's § 727(a) and § 523(a)(2), (4), and (6) claims as untimely?
2. Did the bankruptcy court abuse its discretion in deciding to abstain from hearing Ms. Speir's claims under § 523(a)(5) and (15)?

STANDARDS OF REVIEW

We review the bankruptcy court's decision to sua sponte dismiss claims under Civil Rule 12(b)(6) de novo. *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987). De novo review means that we consider the matter anew and give no deference to the bankruptcy court's decision. *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

We review for an abuse of discretion the bankruptcy court's order regarding permissive abstention. *Certain Underwriters at Lloyds, Syndicates*

⁴ The June 23 amended order incorporated the April 10 order dismissing Ms. Speir's untimely § 727(a) and § 523(a)(2), (4), and (6) claims. The bankruptcy court did not enter a separate judgment as required under Civil Rule 58, applicable here by Rule 7058, so the June 23 order disposing of all of Ms. Speir's claims was considered a final appealable order 150 days after its entry. See *Stephanie-Cardona LLC v. Smith's Food & Drug Ctrs.*, 476 F.3d 701, 703 (9th Cir. 2007).

⁵ 28 U.S.C. § 1334(d) prohibits a court of appeal or the Supreme Court from reviewing a bankruptcy court's permissive or mandatory abstention decision. The statute does not apply to this Panel because we are a bankruptcy appellate panel under 28 U.S.C. § 158(c). See *Falk v. Falk (In re Falk)*, BAP No. NC-12-1385-DJuPa, 2013 WL 5405564, at *5 n.17 (9th Cir. BAP Sept. 26, 2013).

2623/623 v. GACN, Inc. (In re GACN, Inc.), 555 B.R. 684, 692 (9th Cir. BAP 2016). A bankruptcy court abuses its discretion if it applies an incorrect legal standard or its factual findings are illogical, implausible, or without support in the record. *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011).

DISCUSSION

A. The bankruptcy court did not err in dismissing Ms. Speir's § 727(a) and § 523(a)(2), (4), (6) claims as untimely.

Rule 4004(a) governs the time for filing a complaint objecting to a chapter 7 debtor's discharge under § 727(a), and Rule 4007(c) governs the time for filing a complaint to determine the dischargeability of a debt under § 523(c) – i.e., a debt under § 523(a)(2), (4), or (6). Both rules provide that such complaints must be filed by no later than 60 days after the first date set for the § 341(a) meeting of creditors. These deadlines may be extended for cause, but only if a motion seeking an extension is filed before the deadline expires. Rule 4004(b)(1); Rule 4007(c). The 60-day deadline is strict and, absent a timely extension request, once the deadline has expired the court has no discretion to extend it or to permit a late-filed complaint. *See Willms v. Sanderson*, 723 F.3d 1094, 1100 (9th Cir. 2013); *Anwar v. Johnson*, 720 F.3d 1183, 1186-88 (9th Cir. 2013).

Complaints seeking to object to Mr. Bocalan's discharge under § 727(a)(2) through (7), or to object to the dischargeability of any debt under § 523(a)(2), (4), and (6), were due by February 4, 2025, based on the first date

set for the § 341(a) meeting of December 6, 2024. Ms. Speir did not contest receiving notice of the deadline. She also did not seek to extend the deadline before it expired, nor did the trustee or anyone else. Mr. Bocalan received a discharge on February 10, 2025. Nonetheless, Ms. Speir filed her adversary complaint objecting to his discharge under § 727(a)(2)-(5) and (7) and to the dischargeability of an alleged debt owed to her under § 523(a)(2), (4), and (6) on March 27, 2025 – nearly two months after the 60-day deadline had expired, and over a month after the discharge order was entered. She did not allege any claims to revoke the discharge under § 727(d).

The bankruptcy court, sua sponte, dismissed these claims as untimely under Civil Rule 12(b)(6), applicable here by Rule 7012. Ms. Speir does not argue why this was error in her brief, but her attorney argued before us that the bankruptcy court should have retroactively extended the 60-day deadlines because Ms. Speir was pro se, facing eviction from her home, and is deaf. In other words, he argues that a "good cause" or "excusable neglect" standard applies. While we appreciate Ms. Speir's challenges, her counsel's argument is contrary to the law. As noted above, a bankruptcy judge is without power to retroactively extend the 60-day deadlines in Rules 4004(a) and 4007(c), and the very narrow exception to this rule that might apply did not exist here. *See Willms*, 723 F.3d at 1100, 1103 (noting that the 60-day deadlines in Rules 4004(a) and 4007(c) are strict "inflexible claim-processing rule[s]" that the court cannot extend sua sponte unless it "explicitly misleads" a party); *Anwar*, 720 F.3d at 1186-88 (holding that the bankruptcy court had

no discretion to extend retroactively the 60-day deadline in Rule 4007(c)).

Where claims are barred by a filing deadline that is strictly enforced as a matter of law, such as the 60-day deadlines in Rules 4004(a) and 4007(c), dismissal under Civil Rule 12(b)(6) is appropriate. *United States ex rel. Air Control Techs., Inc. v. Pre Con Indus., Inc.*, 720 F.3d 1174, 1178 (9th Cir. 2013). On the face of the complaint, Ms. Speir's claims under § 727(a) and § 523(a)(2), (4), and (6) were time-barred. Further, the bankruptcy court had the authority to dismiss these claims sua sponte without notice. *Omar*, 813 F.2d at 991 (holding that a trial court may dismiss a claim sua sponte without notice under Civil Rule 12(b)(6) "where the claimant cannot possibly win relief.").

Accordingly, we see no error in the bankruptcy court's decision to sua sponte dismiss the untimely claims under Civil Rule 12(b)(6).

B. The bankruptcy court did not abuse its discretion in deciding to abstain from hearing Ms. Speir's claims under § 523(a)(5) and (15).

The bankruptcy court decided to abstain under 28 U.S.C. § 1334(c)(1), permissive abstention. Under that provision, a bankruptcy court may abstain from hearing a matter over which it has jurisdiction under 28 U.S.C. § 1334(a) and (b). Subsection (c)(1) of 28 U.S.C. § 1334 provides, in relevant part, "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

The bankruptcy court's jurisdiction to determine the dischargeability of a debt under § 523(a)(5) is concurrent with state courts. *Siragusa v. Siragusa (In re Siragusa)*, 27 F.3d 406, 408 (9th Cir. 1994); *Ackerman v. Ackerman (In re Ackerman)*, BAP No. AZ-07-1063-PaAK, 2007 WL 7540954, at *4 (9th Cir. BAP Aug. 6, 2007) (observing that "a state domestic relations court may make a dischargeability determination under § 523(a)(5) after entry of a bankruptcy discharge.") (citing *Aldrich v. Imbrogno (In re Aldrich)*, 34 B.R. 776, 781 (9th Cir. BAP 1983)).

Prior to 2005, the bankruptcy court had exclusive jurisdiction to determine the dischargeability of a debt under § 523(a)(15), but that changed in 2005 with the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), which altered the language in § 523(c)(1), thereby resulting in concurrent jurisdiction over such debts with state courts. *See Khurana v. Idaho (In re Khurana)*, No. 19-07002-TLM, 2019 WL 1431916, at *3 n.5 (Bankr. D. Idaho Mar. 29, 2019) (recognizing that after BAPCPA state courts have concurrent jurisdiction to determine the dischargeability of a debt under § 523(a)(15), *aff'd*, 2020 WL 254531 (D. Idaho Jan. 16, 2020), *aff'd*, 2022 WL 17664003 (9th Cir. Dec. 14, 2022)); *Lewis v. Lewis (In re Lewis)*, 423 B.R. 742, 754-55 (Bankr. W.D. Mich. 2010) (discussing BAPCPA and concurrent jurisdiction with state courts over debts under § 523(a)(15)).

As the Ninth Circuit Court of Appeals noted in *Siragusa*, the twelve factors that a court should consider when deciding whether to abstain were discussed in *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912

F.2d 1162, 1166-67 (9th Cir. 1990), but those pertinent to domestic relations matters include: (1) the extent to which state law issues predominate over bankruptcy issues; (2) the difficulty or unsettled nature of the applicable law; (3) the presence of a related proceeding commenced in state court; and (4) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties. *In re Siragusa*, 27 F.3d at 408. Although the bankruptcy court did not expressly consider these factors, it did articulate findings that coincide with them.

First, as the bankruptcy court found, child custody, child support, and other domestic relations matters are exclusively matters of state law. State courts have expertise in such matters and are the appropriate forum in which to decide them. Although the bankruptcy court was capable of determining Ms. Speir's nondischargeability claims under § 523(a)(5) and (15), the state court is also capable and has the jurisdiction and authority to do so. Second, the law concerning these matters is not unusually difficult or unsettled. Third, as the bankruptcy court found, two cases regarding the parties' domestic relations matters are currently pending in state court. Finally, Ms. Speir's reluctance to have the state court hear these matters implies that she might be engaging in forum shopping.

Ms. Speir offers no argument for why the bankruptcy court abused its discretion in deciding to abstain from hearing the dischargeability of her domestic relations claims under § 523(a)(5) and (15). Indeed, bankruptcy courts generally "avoid incursions into family law matters out of

consideration of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters." *Mac Donald v. Mac Donald (In re Mac Donald)*, 755 F.2d 715, 717 (9th Cir. 1985) (citation modified); see *In re Siragusa*, 27 F.3d at 408-09 (holding that the bankruptcy court did not abuse its discretion by deferring to the state court as to whether payments to creditor-wife were dischargeable).

Accordingly, we perceive no abuse of discretion by the bankruptcy court in deciding to abstain from hearing Ms. Speir's domestic relations claims under § 523(a)(5) and (15).

CONCLUSION

For the reasons stated above, we AFFIRM.