NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of: ROBERT DANIEL EVERETT GOULD, Jr.; BRENDA JEAN GOULD, Debtors, --- ROBERT DANIEL EVERETT GOULD, Jr.; BRENDA JEAN GOULD, Appellants, v. KATHLEEN A. MCCALLISTER, Trustee, Appellee.	No. 21-35911 D.C. No. 4:20-cv-00472-BLW MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Argued and Submitted August 9, 2022
Seattle, Washington

Before: CHRISTEN, LEE, and FORREST, Circuit Judges.

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

Robert and Brenda Gould (Debtors) filed for Chapter 13 bankruptcy in March 2019. After confirmation of their bankruptcy plan (the Plan), Debtors' attorney filed a second application for compensation. The Trustee objected to this application because the amount requested by Debtors' attorney exceeded the cap for attorney fees provided in the Plan and would constitute a modification that violated the best interests of creditors test. *See* 11 U.S.C. § 1325(a)(4). The bankruptcy court granted the application over the Trustee's objection, holding that the additional compensation likely was not a modification of the Plan, but even if it was, the modified Plan would still satisfy the best interests of creditors. The district court reversed the bankruptcy court, vacated the award of additional compensation, and remanded for further proceedings. We affirm.

We have jurisdiction to determine our own jurisdiction, and we consider the question de novo. *Gugliuzza v. F.T.C. (In re Gugliuzza)*, 852 F.3d 884, 889 (9th Cir. 2017). We review the bankruptcy court's factual findings for clear error and its conclusions of law de novo. *Kirkland v. Rund (In re EPD Inv. Co.)*, 821 F.3d 1146, 1150 (9th Cir. 2016). Interpretation of the Bankruptcy Code is a question of law reviewed de novo. *Rains v. Flinn (In re Rains)*, 428 F.3d 893, 900 (9th Cir. 2005).

1. *District Court Jurisdiction*. Debtors argue the district court lacked jurisdiction to review the bankruptcy court's decision because it was nonfinal. The district court has jurisdiction to hear appeals from "final judgments, orders, and

decrees . . . of bankruptcy judges entered in cases and proceedings." 28 U.S.C. § 158(a). A bankruptcy court decision qualifies as "final" if it "definitively dispose[s] of discrete disputes within the overarching bankruptcy case." *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 586 (2020). Here, the precise issue before the bankruptcy court—whether the grant of additional attorney compensation constituted a modification of the Plan that needed to satisfy the best interests of creditors test—was definitively decided. Accordingly, we conclude that the district court had jurisdiction over the Trustee's appeal. *See id.*

2. *Ninth Circuit Jurisdiction*. We may hear appeals "from all final decisions, judgments, orders, and decrees" entered by a district court on appeal from a bankruptcy court. 28 U.S.C. § 158(d). We have held that when the district court remands a decision to the bankruptcy court "for factual determinations on a central issue," the decision is not a final, appealable order. *Ocwen Loan Servicing, LLC v. Marino (In re Marino)*, 949 F.3d 483, 487 (9th Cir. 2020) (citation omitted); *see In re Gugliuzza*, 852 F.3d at 895, 900. An exception to this general rule exists, however, when the district court's remand order is limited to a "purely mechanical or computational task[] such that the proceedings on remand are highly unlikely to generate a new appeal." *In re Marino*, 949 F.3d at 487 (citation omitted).

Here, the district court remanded to the bankruptcy court after concluding that the best interests of creditors test applies and is satisfied only if the unsecured

creditors are paid at least 3.1% of their claims. *See Saxman v. Educ. Credit Mgmt. Corp. (In re Saxman)*, 325 F.3d 1168, 1172 (9th Cir. 2003) (holding the district court's remand order was final where it did "not require anything beyond the task of computing the partial discharge of [the debtor]'s loan"). Where the district court calculated the threshold value required by the best interests of creditors test and remanded for the bankruptcy court to resolve debtors' counsel's second application for compensation in compliance with that threshold, we conclude that the task for the bankruptcy court on remand is limited to a "mechanical or computational task[]," and, therefore, we have jurisdiction to review the district court's ruling. *In re Marino*, 949 F.3d at 487.[1]

3. *Plan Modification*. Debtors argue that the district court erred in concluding that the grant of their counsel's second application for compensation, which exceeded the Plan's attorney fee cap, was a modification of the Plan. Debtors and creditors are bound by "[t]he provisions of a confirmed plan." 11 U.S.C. § 1327(a). Modification of a confirmed plan must satisfy the best interests of creditors test. 11 U.S.C. § 1329(b)(1) ("[T]he requirements of section 1325(a) of this title apply to any modification under [§ 1329(a)]."); *see Max Recovery, Inc. v. Than (In re Than)*,

[1]We also note that the parties conceded at oral argument that the bankruptcy court's task on remand fits within the narrow category of mechanical or computational tasks.

215 B.R. 430, 434 (B.A.P. 9th Cir. 1997) ("[M]odification [of a plan] is essentially a new plan confirmation and must be consistent with the statutory requirements for confirmation.").

Here, section 4.3 of the Plan provided that the total amount of fees and costs payable to Debtors' attorney was "not to exceed $7,000 . . . in addition to the fee retainer paid pre-petition in the amount of $490." The bankruptcy court's grant of Debtors' counsel's request for an additional $7,188.20 in fees and costs exceeded this cap because $6,579.40 had already been awarded to be paid from the Plan. Therefore, the district court correctly concluded that the bankruptcy court's award of additional compensation was a Plan modification that needed to comply with the best interests of creditors test.

4. *Best Interests of Creditors Test*. Debtors also argue that the district court erred in applying the best interests of creditors test by declining to include their Chapter 13 attorney fees as a priority administrative expense in the hypothetical Chapter 7 liquidation analysis.

The best interests of creditors test requires two separate calculations. *Messer v. Maney (In re Messer)*, No. BAP AZ-13-1215, 2014 WL 643712, at *3 (B.A.P. 9th Cir. Feb. 19, 2014). First, the court measures "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim." 11 U.S.C. § 1325(a)(4). Second, the court compares this figure

with "the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." *Id.* To satisfy the best interests of creditors, "the first sum—the chapter 13 plan amount—must be 'not less' than the second sum—the chapter 7 liquidation amount—as to each specific unsecured creditor." *In re Messer*, 2014 WL 643712, at *4. A Chapter 7 debtor's attorney cannot be compensated from the debtor's estate without prior authorization from the bankruptcy court unless the Chapter 7 plan was converted from a Chapter 13 plan. *See Lamie v. U.S. Trustee*, 540 U.S. 526, 537–39 (2004). Because attorney fees are not an administrative expense under Chapter 7, they should not be included in a hypothetical Chapter 7 liquidation analysis. *See* 8 COLLIER ON BANKRUPTCY ¶¶ 1325.05[2][a]; 1329.05[3] (Richard Levin & Henry J. Sommer eds., 16th ed. 2022).

Therefore, the district court correctly declined to consider debtor's attorney fees allowed under Chapter 13 in its hypothetical Chapter 7 liquidation analysis. However, because there is a computational error in the district court's analysis,[2] we affirm the district court's order remanding for further proceedings in bankruptcy court, and we direct the bankruptcy court to re-calculate the best interests of creditors

[2]In calculating the amount of funds available for general unsecured creditors, the district court mistakenly listed the garnishment funds and tax refunds as $548.78 instead of $584.78. Thus, the district court determined its projected balance to general unsecured creditors based on this incorrect figure.

test using the methodology described by the district court. We further direct the bankruptcy court to make explicit in the record any factual findings it makes in resolving Debtors' counsel's second application for compensation consistent with a proper application of the best interests of creditors test. *See Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010) ("A court's factual determination is clearly erroneous if it is . . . without support in the record.").

AFFIRMED.