

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 29 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In Re: CAROLE D. KING,

Debtor,

No. 25-1143

B.A.P. No.
24-1008

CAROLE D. KING,

Appellant,

MEMORANDUM*

v.

WOLVERINE ENDEAVORS VIII, LLC,

Appellee.

Appeal from the Ninth Circuit

Bankruptcy Appellate Panel

William J. Lafferty, III, Robert J. Faris, and Gary A. Spraker, Bankruptcy Judges,
Presiding

Argued and Submitted May 20, 2026

San Francisco, California

Before: COLLINS, JOHNSTONE, and DE ALBA, Circuit Judges.

Appellant-Debtor Carole King appeals the Bankruptcy Appellate Panel's

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

(“BAP”) order denying her motion for appellate attorneys’ fees. Prior to this appeal, Appellee Wolverine Endeavors VIII, LLC (“Wolverine”) appealed the bankruptcy court’s dismissal of its petition for involuntary bankruptcy against King to the BAP, which affirmed the decision of the bankruptcy court. *In re King*, 664 B.R. 162 (B.A.P. 9th Cir. 2024). King now seeks attorneys’ fees for that appeal to the BAP. We have jurisdiction under 28 U.S.C. § 158(d)(1), and we affirm.

1. First, we address Wolverine’s motion to dismiss this appeal. Wolverine contends this appeal should be dismissed for King’s alleged failure to file proper notice of appeal under Fed. R. App. P. 3(a)(1). Wolverine alleges that there was no proper notice of appeal because it was filed without King’s counsel having sufficient authorization to do so. The allegations lack sufficient factual and legal support. As to the latter, Wolverine relies on two California Court of Appeal cases. Both are inapposite. *Zirbes v. Stratton*, 232 Cal. Rptr. 653, 655 (Ct. App. 1986) involved an appellant seeking relief from judgment where she argued that her former husband’s lawyer had represented her without her knowledge and consent. Likewise, *Corcoran v. Arouh*, 29 Cal. Rptr. 2d 326, 329 (Ct. App. 1994) involved an appellant seeking relief from a judgment entered against him where there was “uncontradicted evidence” that the lawyer who claimed to have represented appellant in the underlying matter had “no express or actual authority” to represent

appellant. That is not this case. As there is no similar uncontradicted evidence that King's counsel was unauthorized to file, and because the authority Wolverine cites does nothing to advance its position, the motion to dismiss is **DENIED**.¹

2. “We review decisions of the BAP de novo and apply the same standard of review that the BAP applied to the bankruptcy court’s ruling.” *In re Boyajian*, 564 F.3d 1088, 1090 (9th Cir. 2009). As we have held in *Higgins v. Vortex Fishing Systems, Inc.*, “the only authority for awarding discretionary appellate fees in bankruptcy appeals is Rule 38.” 379 F.3d 701, 708 (9th Cir. 2004) (citation omitted); *see also* Fed. R. App. P. 38. The *Higgins* Court specifically observed that “[d]espite Congress’s clear intent to award attorney’s fees and costs to an alleged debtor who successfully defends an involuntary bankruptcy bid, the debtor remains exposed to appellate attorney’s fees *unless* it can be demonstrated that the appeal was frivolous under Rule 38.” *Id.* at 709 n.3 (emphasis added). Thus, as *Higgins* explicitly stated, a debtor must demonstrate that the appeal was frivolous under Rule 38 to be entitled to attorneys’ fees accrued on appeal. Because King’s opening brief affirmatively states that she is “not seeking appellate-level fees on

¹ We also deny King’s request for sanctions against Wolverine’s counsel. King failed to demonstrate that Wolverine’s counsel acted with the requisite bad faith to warrant sanctions under either our inherent authority or 28 U.S.C. § 1927. *See Blixseth v. Yellowstone Mountain Club, LLC*, 796 F.3d 1004, 1007–08 (9th Cir. 2015); *see also Pac. Harbor Cap., Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118–20 (9th Cir. 2000).

the grounds that Wolverine's appeal was frivolous" under Rule 38, she has waived any claim to fees under that Rule.²

AFFIRMED.

² Appellant's Motion for Judicial Notice, Dkt. 15, and Motion for Leave to Address an Issue Not Discussed in Reply Brief, Dkt. 24, are **DENIED**.