THE ELEVENTH CIRCUIT REAFFIRMS THE "PERSON AGGRIEVED" STANDARD

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The Eleventh Circuit recently reaffirmed the "person aggrieved" doctrine in *In re Petricca*, 17-10325, 2018 WL 1020046, at *1 (11th Cir. Feb. 22, 2018). The person aggrieved doctrine provides that a person may appeal from a bankruptcy court's order only if he is a person aggrieved by the order. The doctrine limits the right to appeal a bankruptcy court order to those parties having a direct and substantial interest in the question being appealed.

In *Petricca*, the Chapter 7 debtor received a discharge by the bankruptcy court thereby relieving the debtor of personal liability for certain specified types of debts. Unlike most Chapter 7 debtors, the debtor in *Petricca* had interests in certain trusts and in certain civil lawsuits that were not exempt, meaning that the Chapter 7 trustee could sell or liquidate those nonexempt assets. The primary role of a Chapter 7 trustee is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. A trustee does this by selling the debtor's non-exempt property (e.g., the equity in a car, non-homestead real property, or jewelry) and also by recovering money or property under the trustee's "avoiding powers." The trustee in *Petricca* did sell the debtor's assets, here the debtor's interest in lawsuits, to a third party.

Before a sale is complete, a debtor has the right to object on various grounds, such as the property is not property of the debtor or the property is exempt from the trustee's reach. The debtor in *Petricca* filed objections to the proposed sale but the bankruptcy court overruled the debtor's objections. Although the Chapter 7 debtor appealed the bankruptcy court's rulings as to the sale to the district court, the district court dismissed the appeal, and the debtor did not appeal that ruling further. Thus, the order approving the Chapter 7 trustee's sale of the debtor's assets to the third party became a final order that the debtor was "stuck with."

The next year, the trustee filed a final report in the debtor's bankruptcy case. The final report proposed distributions to creditors based on the trustee's sale of the assets, but no distribution to the Chapter 7 debtor. Normally, there is no distribution made to a debtor because there is not enough money to pay back all creditors before paying the debtor any surplus. A Chapter 7 debtor is at the bottom of the bankruptcy distribution scheme and all of the debtor's creditors must be paid back before the debtor receives any money. However, in *Petricca*, the debtor objected to the bankruptcy court's approval of the final report, arguing in relevant part that the earlier sale of estate property deprived the Chapter 7 debtor of a "fresh start" because it was likely to spawn litigation that related to the sale. After the bankruptcy court entered an order overruling such objections, the Chapter 7 debtor filed a motion in the bankruptcy court to vacate that order, which was denied. *In re Petricca*, 9:08-BK-16204-FMD, 2016 WL 4361928, at *1 (Bankr. M.D. Fla. Aug. 11, 2016).

The Chapter 7 debtor then appealed that order to the district court, but the district court dismissed the appeal for lack of standing under the "person aggrieved" doctrine. *In re Lawrence N. Petricca, Sr.*, 2:16-CV-653-FTM-99, 2016 WL 7338424, at *1 (M.D. Fla. Dec. 19, 2016). In his appeal of the district court's order to the Eleventh Circuit, the Chapter 7 debtor again argued that the district court erred in determining that he was not a "person aggrieved" because the bankruptcy court order deprived him of a "fresh start" with respect to the litigation claims. However, the Eleventh Circuit affirmed the district court's ruling in all respects, relying on *In re Ernie Haire Ford, Inc.*, 764 F.3d 1321 (11th Cir. 2014).

Pursuant to *Ernie Haire Ford*, an order of a court will directly, adversely, and pecuniarily affect a person if that order diminishes their property, increases their burdens, or impairs their rights. In addition, “for a person to be aggrieved, the interest they seek to vindicate on appeal must be one that is protected or regulated by the Bankruptcy Code.” *Id.* at 1326. *Ernie Haire Ford* is recognized as standing for the proposition that merely being subjected to a risk of litigation is not sufficient to satisfy the “person aggrieved” standard.

The Eleventh Circuit explained that although the interest the debtor sought to vindicate—receiving a “fresh start” by avoiding litigation related to assets disposed of in the Chapter 7 bankruptcy—is protected or regulated by the Bankruptcy Code, the Chapter 7 debtor failed to show that he will be “directly, adversely, and pecuniarily” affected by the disposition of estate property. This is because the debtor was granted a discharge and the trustee's final report indicated that he would not be receiving any distributions. Thus, it was the bankruptcy estate’s property interests that were sold, and any future litigation involving those interests would involve the estate, not the debtor, and would be tied to the nature and extent of the estate’s ownership. The court reasoned that the debtor has suffered, at best, indirect harm to his interest in avoiding litigation (the nature of which was not specified by the Eleventh Circuit), which the court held was insufficient to satisfy the “person aggrieved” standard.

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