

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE TOM HALE,
Debtor.

BAP No. UT-08-034

ELIZABETH R. LOVERIDGE,
Trustee,
Plaintiff – Appellee,

Bankr. No. 05-39359
Adv. No. 07-02191
Chapter 7

v.

**ORDER GRANTING MOTION TO
DISMISS FOR LACK OF STANDING
AND DENYING MOTION FOR
SANCTIONS**

LEON WILLIAMS,
Appellant,
and
GLEN A. COMBE,
Defendant.

May 15, 2008

Before McFEELEY, Chief Judge, CORNISH, and MICHAEL, Bankruptcy Judges.

The matters before the Court are 1) Appellee Elizabeth R. Loveridge, Trustee's (the "Appellee") Motion to Dismiss Appeal and Memorandum in Support of Motion to Dismiss Appeal, filed April 17, 2008 (the "Motion to Dismiss"); 2) Appellee's Motion for Sanctions Pursuant to Rule 9011, and Memorandum in Support of Motion to Dismiss with Prejudice the Appeal and Motion for Sanctions Pursuant to Rule 9011, filed May 2, 2008 (the "Motion for

Sanctions”)¹; 3) Appellant Leon Williams’ Objection to Motion to Dismiss filed May 5, 2008 (the “Objection”); and 4) Appellant’s Motion to Extend Time, filed May 5, 2008.

On March 28, 2008, Appellant Leon Williams filed his notice of appeal with this Court, which states in its entirety:

Comes now Leon Williams, and moves this Court pursuant to the rules to appeal Order Dated March 18, 2008 in this case. The Appellant disputes issues of law and fact related to a default judgment against Glen Combe, the assignor, Leon Williams, all his rights and interests prior to the default being entered by the Court.

The order appealed from (the “Order”), entered on March 20, 2008, granted the Trustee's Renewed Motion for Default Judgment against Glen A. Combe, defendant, who is not a party to this appeal. Neither Appellant nor Combe responded to the Renewed Motion, and the Trustee was the only party to appear at the hearing. In the Order, the conveyance of a trust deed lien by the Debtor to Combe on April 26, 2005 (the “Transfer”) was avoided as a fraudulent transfer pursuant to 11 U.S.C. § 548, and the trust deed lien comprising the Transfer was held to be an invalid trust deed lien that did not encumber the property at issue and did not attach to the proceeds of the sale of the property.

The Motion to Dismiss argues that Appellant lacks appellate standing to bring this appeal on the grounds that 1) he was not a party to the adversary proceeding below (the “Action”); 2) he did not appear and object in the Action; and 3) he can demonstrate no adverse pecuniary interest because his only claim was an alleged assignment to him on March 1, 2007, and the Action did not seek

¹ The Motion for Sanctions was signed and served on April 8, 2008, and contains a “Notice of Service and Opportunity to Withdraw” which advises Williams that “The Motion and Memorandum shall not be filed with or presented to the court unless, within 21 days after service of the Motion, the challenged notice of appeal, dated March 28, 2008, is not withdrawn.”

avoidance of the assignment. Appellee also states that since Appellant is not a licensed attorney, he cannot file an appeal for Combe.

Beyond several conclusory statements, the Objection does not address the Motion to Dismiss except to note: “I am unclear on how to respond to this motion because it will be argued in the brief.”

“[E]ven when a timely appeal of a final bankruptcy court order is made to this Court, we lack jurisdiction to review it if the appellant lacks standing to bring the appeal.” *In re Lacy*, 335 B.R. 729, 736 (10th Cir. BAP 2006) (citing *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255 (1994) (“Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation.”), *cited in In re Petroleum Prod. Mgmt., Inc.*, 282 B.R. 9, 13 (10th Cir. BAP 2002); *Lopez v. Behles (In re Am. Ready Mix, Inc.)*, 14 F.3d 1497, 1499 (10th Cir. 1994) (An appellate court “has an independent duty to inquire into its jurisdiction over a dispute, even where neither party contests it and the parties are prepared to concede it.”). Article III of the United States Constitution limits the judiciary’s powers of adjudication to “actual cases and controversies.” U.S. Const., art. III, § 2. Federal courts lack jurisdiction over an appeal filed by an appellant who lacks standing to invoke the power of the federal courts.

The Tenth Circuit Court of Appeals has recognized that although the Bankruptcy Code “does not contain an explicit grant or limitation on appellate standing,” only a “person aggrieved” by a bankruptcy court’s order may appeal. *Am. Ready Mix*, 14 F.3d at 1500; *see Weston v. Mann (In re Weston)*, 18 F.3d 860, 863 (10th Cir. 1994). The “person aggrieved” standard “delimits appellate jurisdiction even more stringently than the doctrine of Article III standing,” *Spenlinhauer v. O’Donnell*, 261 F.3d 113, 117 (1st Cir. 2001), and is stricter than the prudential requirements associated with standing under Article III. *In re Alpex Computer Corp.*, 71 F.3d 353, 357 n.6; *see Harker v. Troutman (In re*

Troutman Enters., Inc.), 286 F.3d 359, 364 (6th Cir. 2002); *see also In re Tascosa Petroleum Corp.*, 196 B.R. 856, 863 n.6 (D. Kan. 1996) (“The ‘person aggrieved’ standard applies to those wanting to appeal a bankruptcy court order, and is more exacting than the constitutional ‘injury in fact’ requirement of standing.”); *accord In re Canal St. Ltd. P’ship*, 269 B.R. 375, 379 (8th Cir. BAP 2001).

A “person aggrieved” is one ““whose rights or interests are directly and adversely affected pecuniarily by the decree or order of the bankruptcy court’” *Am. Ready Mix*, 14 F.3d at 1500 (quoting *Holmes v. Silver Wings Aviation, Inc.*, 881 F.2d 939, 940 (10th Cir. 1989)). Litigants are persons aggrieved ““if the order [appealed from] diminishes their property, increases their burdens, or impairs their rights[,]” and the “test is meant to be a limitation on appellate standing in order to avoid ‘endless appeals brought by myriad of parties who are indirectly affected by every bankruptcy court order.’” *Id.* (quoting *GMAC v. Dykes (In re Dykes)*, 10 F.3d 184, 187 (3d Cir. 1993), and *Holmes*, 881 F.2d at 940). The appealing party bears “the burden of demonstrating ‘a direct and adverse pecuniary interest’ in the orders on appeal.” *In re Williams*, 181 B.R. 532, 535 (quoting *Am. Ready Mix*, 14 F.3d at 1500). If there is no dispute as to relevant facts, an appellate court may decide the issue of standing without remanding the case for further proceedings. *Am. Ready Mix*, 14 F.3d at 1500; *see Spenlinhauer*, 261 F.3d at 118.

Because the Appellant was not a party to the Action, did not appear and object in the Action, and has not set forth any facts to demonstrate a direct and adverse pecuniary interest in the Action, there is no dispute as to relevant facts, and the Appellant lacks standing to appeal. The Motion to Dismiss will therefore be granted.

Under Federal Rule of Bankruptcy Procedure 9011, sanctions are appropriate against a party who has signed a paper filed in a case if the document is presented for an improper purpose, is not well grounded in fact, is not

warranted by existing law, or is not supported by a good faith argument. *In re Rex Montis Silver Co.*, 87 F.3d 435, 439 (10th Cir. 1996). Under Federal Rule of Bankruptcy Procedure 8020, if this Court determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from this Court and a reasonable opportunity to respond, award just damages and single or double costs to the appellee.

We can find no prior decision of this court granting sanctions under the above cited rules. In *Sirtos v. Ray (in re Sirtos)*, 2008 WL 6959 25 (9th Cir. March 14, 2008), the Ninth Circuit upheld an award of \$22,500 in sanctions against an appellant who lacked standing to bring an appeal which was determined to be “wholly without merit.” In that case, however, the case had been fully briefed and had been litigated for several years. Here, the Motion to Dismiss has been granted in an early stage in the proceedings and we hereby decline to impose sanctions against the Appellant.

Accordingly, it is HEREBY ORDERED that:

- (1) The Motion to Dismiss is GRANTED.
- (2) The Motion for Sanctions is DENIED.
- (3) Appellant's Motion to Extend Time is DENIED as MOOT.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By: *Kathryn A. Plonka*

Deputy Clerk