

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

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IN RE WYO. COUNTRY BUILDERS,  
LLC,  
  
Alleged Debtor.

BAP No.    WY-13-051

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MELANIE M. PETERSON,  
  
Appellant,  
  
v.  
  
WYO. COUNTRY BUILDERS, LLC,  
  
Appellee.

Bankr. No. 12-21046  
Chapter 7

ORDER CONSTRUING NOTICE OF  
APPEAL AS TWO NOTICES OF  
APPEAL, DISMISSING THIS  
APPEAL, AND DIRECTING THE  
CLERK TO SET DEADLINES IN  
SECOND APPEAL

August 19, 2013

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Before THURMAN, Chief Judge, MICHAEL, and ROMERO, Bankruptcy Judges.

On July 11, 2013, this Court issued an Order to Show Cause Why Appeal Should Not Be Construed as Two Appeals and Directing Briefing on the Issue of Timeliness (the “OSC”). On August 5, 2013, the pro se Appellant Melanie Peterson (“Appellant”) filed a Response to the OSC, and on August 12, 2013, Appellee Wyo. Country Builders (“Appellee”) filed its Reply thereto.

Background

Appellant filed an involuntary Chapter 7 petition against Appellee on October 17, 2012. On March 7, 2013, the bankruptcy court granted Appellee’s motion to dismiss the petition and entered its Order Granting Motion to Dismiss (the “Dismissal Order”). The basis for the Dismissal Order was that Appellant had not sufficiently shown that Appellee was not paying its debts as they became due. The Dismissal Order assessed attorney’s fees, costs, and punitive damages

against Appellant pursuant to 11 U.S.C. § 303(i)(1) and (2). It directed Appellee to submit a bill for said attorney fees and costs, to which Appellant would have an opportunity to respond. On June 26, 2013, the court entered its Order Granting Fee Application (the “Costs Order”). On July 10, 2013, Appellant filed a single notice of appeal from the Dismissal Order and the Costs Order.

The OSC

The Court issued the OSC in order to determine 1) whether this appeal should have been filed as two separate appeals, each requiring separate notices of appeal and filing and docketing fees; and 2) whether the appeal of the Dismissal Order was timely. In her Response to the OSC, Appellant argued that the two orders are “all intrinsically related” and it for this Court to consider one without the other would “be prejudicial to Appellant.” *Response* at 2.

It appears from a plain reading of the Dismissal Order that it fully resolved the involuntary petition by dismissing it and awarding attorney’s fees, costs, and punitive damages in favor of Appellee. Since Appellant failed to file a notice of appeal within 14 days of March 7, 2013, the date on which the Dismissal Order was entered, as is required by Federal Rule of Bankruptcy Procedure 8002, this Court is without jurisdiction to hear her appeal thereof. *Deyhimy v. Rupp (In re Herwit)*, 970 F.2d 709, 710 (10th Cir. 1992); *Furst v. Furst (In re Furst)*, 206 B.R. 979, 980 (10th Cir. BAP 1997).

The Costs Order is separate from the merits of the Dismissal Order, and the appeal therefrom is timely. *See Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199 (1988) (“A question remaining to be decided after an order ending litigation on the merits does not prevent finality if its resolution will not alter the order or moot or revise decisions embodied in the order.”).<sup>1</sup>

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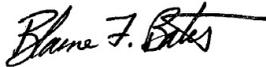
<sup>1</sup> We are unable to consider Appellant’s claims that an unspecified third order, or ruling, of the bankruptcy court also affects the timeliness of this appeal  
(continued...)

A separate notice of appeal is required for each separately-appealable order. *See* Fed. R. Bankr. P. 8001(a); 10th Cir. BAP L.R. 8001-1. The Court will construe the Notice of Appeal as two notices of appeal. The Dismissal Order will retain its assigned BAP Appeal number, WY-13-051. The Costs Order will be assigned BAP Appeal No. WY-13-060. The Appellant will be directed to pay the required filing and docketing fees in WY-13-060 by separate order.

Accordingly, it is HEREBY ORDERED that:

- (1) The Notice of Appeal filed July 10, 2013, is construed as two notices of appeal.
- (2) The appeal of the Dismissal Order will retain its assigned case number WY-13-051, and is DISMISSED as UNTIMELY.
- (3) All deadlines set in WY-13-051 are VACATED.<sup>2</sup>
- (4) The appeal from the Costs Order will be assigned BAP Appeal No. WY-13-060.

For the Panel:



Blaine F. Bates  
Clerk of Court

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<sup>1</sup> (...continued)  
because no appeal has apparently been taken therefrom, nor otherwise appear anywhere in the record before us.

<sup>2</sup> Appellee's Reply references four motions that were filed by Appellant and asks that they be "dismissed for lack of jurisdiction." *Reply* at 4. However, these filings are designated on this Court's docket as copies of documents that were intended to be filed (and were in fact filed) by the Appellant in the bankruptcy court and no action will be taken on them by this Court. In the event Appellant seeks any relief from this Court, she is directed to file those requests in BAP Appeal No. WY-13-060, utilizing that case's official caption.