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NOT FOR PUBLICATION

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. AZ-13-1307-JuKiD
)
 BRITTANY LE'VON MILLER,) Bk. No. AZ-12-17346-EPB
)
 Debtor.)
)
 _____)
 BRITTANY LE'VON MILLER,)
)
 Appellant,)
)
 v.) **M E M O R A N D U M***
)
 DAVID M. REAVES, Chapter 7)
 TRUSTEE,)
)
 Appellee.)
 _____)

Argued and Submitted on November 20, 2014
at Phoenix, Arizona

Filed - December 5 2014

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Eddward P. Ballinger, Jr., Bankruptcy Judge, Presiding

Appearances: Brian M. Blum of The Turnaround Team, PLLC,
argued for appellant Brittany Le'Von Miller;
appellee David M. Reaves, Chapter 7 Trustee,
argued pro se.

Before: JURY, KIRSCHER, and DUNN, Bankruptcy Judges.

* This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

1 Chapter 7¹ trustee David M. Reaves (Trustee) filed a motion
2 in the reopened case of debtor Brittany Le'Von Miller seeking to
3 revoke the § 554(c) technical abandonment of debtor's income tax
4 refund. The bankruptcy court granted Trustee's motion, and this
5 appeal followed. Because the bankruptcy court summarily granted
6 Trustee's motion without making specific findings of fact and
7 conclusions of law on the record sufficient to allow review, we
8 VACATE the order granting the motion and REMAND for the court to
9 make appropriate findings of fact and conclusions of law.

10 I. FACTS

11 Debtor filed her chapter 7 petition, schedules and
12 statement of financial affairs in August 2012. In Schedule B,
13 debtor listed at item eighteen "[a]pproximately 60% of Potential
14 2012 Tax Refund," and stated the value as "[u]nknown." In
15 Schedule F, debtor listed \$52,752.00 in unsecured debt.

16 On October 25, 2012, Trustee filed his report of no
17 distribution. Debtor subsequently received her discharge and
18 the case was closed.

19 On May 9, 2013, Trustee received debtor's 2012 income tax
20 refund in the amount of \$3,259.00 directly from the Internal
21 Revenue Service (IRS). The same day, Trustee filed a withdrawal
22 of his no distribution report and a motion to reopen debtor's
23 case for the purpose of administering the asset. Debtor
24 objected, contending the income tax refund was technically

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure and "Civil Rule" references are the Federal Rules of
Civil Procedure.

1 abandoned under § 554(c) because it was listed in Schedule B.
2 The bankruptcy court granted Trustee's motion to reopen debtor's
3 case by order entered on May 14, 2013.

4 Trustee then filed a motion to revoke abandonment of the
5 income tax refund. As a threshold matter, Trustee argued that
6 the mere listing of a "potential" tax refund with an "unknown"
7 value was not sufficient to invoke the technical abandonment of
8 the asset under § 554(c). Under this theory, Trustee asserted
9 that the income tax refund remained property of the estate under
10 § 554(d). Alternatively, Trustee moved for an order revoking
11 the technical abandonment of the asset on the basis of mistake
12 or inadvertence. Trustee contended that neither the existence
13 nor the amount of any refund could have been known by him at the
14 time the petition was filed or before the case was closed. He
15 further argued that debtor would not suffer any undue prejudice
16 by revocation of the abandonment since the refund was sent
17 directly to him. In other words, debtor did not receive and
18 spend the refund believing she had the right to do so.

19 Debtor argued in response that Trustee should have known
20 she would receive a significant tax refund based upon her tax
21 refund history which was shown by income tax returns from prior
22 years and pay stubs provided to Trustee. Debtor asserted that
23 Trustee had the option of keeping the case open until receipt of
24 the tax refund or review of her tax return, but he chose not to
25 do so.²

26
27 ² In essence, debtor's argument acknowledges that had the
28 case remained open until Trustee received the 2012 federal income
(continued...)

1 After a hearing on the matter, the bankruptcy court took
2 the matter under advisement. The next day, the court issued a
3 minute entry which simply stated that the court was granting
4 Trustee's motion.

5 On July 2, 2013, debtor filed a timely notice of appeal.

6 Thereafter, the Panel issued an order questioning whether
7 the minute entry constituted an appealable final order. The
8 bankruptcy court subsequently entered an order granting
9 Trustee's motion.

10 II. JURISDICTION

11 The bankruptcy court had jurisdiction under 28 U.S.C.
12 §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C.
13 § 158.

14 III. ISSUE

15 Whether the bankruptcy court erred in revoking the
16 technical abandonment of the income tax refund.

17 IV. STANDARD OF REVIEW

18 A bankruptcy court's decision on a motion to revoke a
19 technical abandonment is reviewed for abuse of discretion.
20 Vasquez v. Adair (In re Adair), 253 B.R. 85, 88 (9th Cir. BAP
21 2000). In determining whether the bankruptcy court abused its
22 discretion we first determine de novo whether the bankruptcy
23 court identified the correct legal rule to apply to the relief
24 requested and then, if the correct legal standard was applied,

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26 _____
27 ²(...continued)

28 tax refund, the bankruptcy estate's pro-rated share of that
refund would have been subject to administration for the benefit
of the debtor's creditors.

1 we determine whether the court's application of that standard
2 was "(1) illogical, (2) implausible, or (3) without support in
3 inferences that may be drawn from the facts in the record."
4 United States v. Loew, 593 F.3d 1136, 1139 (9th Cir. 2010).

5 **V. DISCUSSION**

6 Section 541(a)(1) provides that property of the estate
7 includes all legal or equitable interests of the debtor in
8 property as of the commencement of the case. Debtor's right to
9 receive a tax refund constituted an "interest in property,"
10 which was included in property of her estate. See Newman v.
11 Schwartzner (In re Newman), 487 B.R. 193, 199-200 (9th Cir. BAP
12 2013). Estate property, such as a pro-rata portion of the
13 income tax refund, would revert to debtor if the asset was
14 abandoned under § 554(c). The so-called "technical abandonment"
15 may occur automatically upon closing a case because § 554(c)
16 provides, "[u]nless the court orders otherwise, any property
17 scheduled under section 521(1) of this title not otherwise
18 administered at the time of the closing of a case is abandoned
19 to the debtor. . . ."

20 The plain language of § 554(c) states four requirements for
21 technical abandonment: (1) the tax refund must have been
22 properly scheduled; and (2) not administered by the trustee;
23 (3) debtor's case must close; and (4) abandonment is to the
24 debtor. If these requirements are met, technical abandonment of
25 the asset occurs and is generally irrevocable. DeVore v.
26 Marshack (In re DeVore), 223 B.R. 193, 197 (9th Cir. BAP 1998).
27 "The rationale for the general rule is that once an asset has
28 been abandoned, it is no longer part of the estate and is

1 effectively beyond the reach and control of the trustee. Courts
2 have also noted the policy of preserving finality.” Id. at 198.

3 Notwithstanding the general rule, under the plain
4 language of § 554(c) the bankruptcy court has discretion to
5 modify or revise any technical abandonment simply by ordering
6 otherwise. Id. The DeVore Panel noted that “the statute does
7 not limit such an order to the period prior to case closure . .
8 . and courts have set aside technical abandonments in
9 ‘appropriate circumstances.’” Id. Revocation may be
10 appropriate where a debtor provided a trustee with false or
11 incomplete information about an asset or the trustee abandoned
12 the asset based on mistake or inadvertence and revocation will
13 not cause undue prejudice. Id. at 198.

14 Trustee’s motion seeking revocation of abandonment of the
15 income tax refund initiated a contested matter, subject to the
16 procedures set forth in Rule 9014. In contested matters, a
17 bankruptcy court must make findings of fact, either orally on
18 the record, or in a written decision. See Rule 9014(c)
19 (incorporating Rule 7052, which in turn incorporates Civil
20 Rule 52).³ These findings must be sufficient to enable a
21

22 ³ Civil Rule 52(a)(1) provides in relevant part:

23 (a) Findings and Conclusions.

24 (1) In General. In an action tried on the facts without
25 a jury or with an advisory jury, the court must find
26 the facts specially and state its conclusions of law
27 separately. The findings and conclusions may be stated
28 on the record after the close of the evidence or may
appear in an opinion or a memorandum of decision filed
by the court.

1 reviewing court to determine the legal and factual bases for the
2 court's ruling. Vance v. Am. Haw. Cruises, Inc., 789 F.2d 790,
3 792 (9th Cir. 1986).

4 We are hampered in our review by the bankruptcy court's
5 lack of findings. The bankruptcy court recognized that it had
6 discretion to revoke the technical abandonment, but did not
7 engage in an analysis addressing the circumstances under which
8 revocation of technical abandonment is proper as articulated in
9 DeVore. It is unclear whether the bankruptcy court thought
10 debtor provided Trustee with incomplete information about the
11 tax refund in her schedules or thought Trustee abandoned the
12 asset based on mistake or inadvertence. In short, although the
13 court granted Trustee's motion, it did not explain what factors
14 or considerations it relied upon for its decision.

15 **VI. CONCLUSION**

16 Because there are no findings of fact or conclusions of law
17 regarding the underlying substantive questions, we VACATE the
18 order granting Trustee's motion and REMAND for further
19 proceedings consistent with this Memorandum disposition.
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