

No. 23-60037

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOHN EARL ERICKSON

Debtor-Appellant,

v.

JASON WILSON-AGUILAR

Chapter 13 Trustee-Appellee.

On Appeal from the United States Court of Appeals for the Ninth
Circuit Bankruptcy Appellate Panel
BAP No. WW-22-1186
Hon. Scott Gan, Robert Faris and Julia Brand.
In re the Bankruptcy of John Earl Erickson, Debtor.
Bankr. Case No. 22-10784-TWD

APPELLEE'S ANSWERING BRIEF

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STATEMENT ON ORAL ARGUMENT

The Appellee / Chapter 13 Trustee believes the appeal should be submitted without oral argument. The Appellee / Chapter 13 Trustee does not believe there is anything further to add for the Court's consideration beyond what has been filed.

INTRODUCTION

The debtor, John Erickson, has not established that the Bankruptcy Court committed clear error or abused its discretion in dismissing the debtor's Chapter 13 bankruptcy case and barring the debtor from refiling bankruptcy for a period of two years, nor has the debtor established that the Bankruptcy Court committed clear error or abused its discretion in denying confirmation of the debtor's Chapter 13 Plan.

The debtor, John Erickson, has not established that the Bankruptcy Court abused its discretion in denying the debtor's Motions for Reconsideration.

Accordingly, this Court should affirm the Bankruptcy Court's decision to dismiss the debtor's Chapter 13 Bankruptcy Case and Bar the Debtor from Refiling Bankruptcy for Two Years, and affirm the Bankruptcy Court's Order Denying Confirmation. Similarly, this Court should affirm the Bankruptcy Court's decision to deny the debtor's Motions for Reconsideration.

JURISDICTIONAL STATEMENT

This Court has jurisdiction of this appeal under 28 U.S.C. § 158.

COUNTER STATEMENT OF ISSUES

I. Whether the Bankruptcy Court committed clear error or abused its discretion in Denying Confirmation of the Debtor's Chapter 13 Plan.

II. Whether the Bankruptcy Court committed clear error or abused its discretion in dismissing the Debtor's case and Barring the Debtor from Re-Filing Bankruptcy for Two Years.

III. Whether the Bankruptcy Court abused its discretion in denying the Debtor's Motions to Reconsider.

COUNTER STATEMENT OF THE CASE

The debtor, John Erickson, filed his Chapter 13 bankruptcy case on May 12, 2022. This was the sixth reorganization bankruptcy case filing between both the debtor, John Erickson, and his spouse, Shelley Erickson, since 2018 in relation to the real property located at 5421 Pearl Avenue SE, Auburn, WA 98092. **SER-52.** The debtor (and his spouse) had filed multiple bankruptcy cases that failed to result in plan confirmation. **SER-52-58.** The Chapter 13 Trustee filed an objection to confirmation of the debtor's plan on June 28, 2022. **SER-75-80.** The Chapter 13 Trustee also filed a Motion to Dismiss Case and Bar Re-filing Bankruptcy for Four Years. **SER-52-63.** The Chapter 13 Trustee's Motion to Dismiss Case and Bar Re-filing Bankruptcy for Four Years and the declaration of Emily Jarvis outlined the prior bankruptcy filings by the debtor and his spouse, Shelley Erickson. **SER-52-63,** and **SER-65-73.** The Chapter 13 Trustee's Motion to Dismiss Case and Bar Re-filing Bankruptcy for Four Years was served on June 29, 2022. **SER-41.** The Chapter 13 Trustee's Objection to Confirmation was served on June 30, 2022. **SER-44.** Both the Chapter 13 Trustee's Objection to Confirmation and Motion to Dismiss Case and Bar Re-filing Bankruptcy for Four Years were noted for hearing on the Court's July 20, 2022 calendar.

The Trustee timely served his Objection to Confirmation and Motion to Dismiss Case and Bar Re-filing Bankruptcy for Four Years on the debtor. **SER-41**

and SER-44. The debtor responded to the Trustee's Objection to Confirmation and Motion to Dismiss Case and Bar Re-filing for Four Years, and appeared at the hearing on July 20, 2022. On July 20, 2022, the Court ruled on the merits of the Trustee's Objection to Confirmation and Motion to Dismiss Case and Bar Re-filing for Four Years. On July 20, 2022, the Court denied confirmation of the debtor's plan. **SER-39.** The Court also dismissed the debtor's case with a Bar from Re-filing Bankruptcy for Two Years, and this dismissal order was entered on July 21, 2022. **SER-37.**

The debtor filed a Motion for Reconsideration on August 3, 2022. On August 5, 2022, the Court entered an order striking the hearing and response date for the Motion for Reconsideration. **SER-35.** The debtor filed an amended Motion for Reconsideration on August 5, 2022. On August 31, 2022, the Court entered an order denying the debtor's Motion for Reconsideration. **SER-28-33.**

On September 12, 2022, the debtor filed a Notice of Appeal to the Bankruptcy Appellate Panel. **SER-89-90.** On April 13, 2023, the Bankruptcy Appellate Panel issued a memorandum decision and entered an order affirming the Judgment of the Bankruptcy Court. **SER-9-26 and SER-7.** On April 27, 2023, the debtor filed a Petition / Motion for Rehearing. On May 9, 2023, the Bankruptcy Appellate Panel entered an order denying the Motion for Rehearing. **SER-5.**

On June 8, 2023, the debtor filed a Notice of Appeal from Judgment or Order of the Bankruptcy Appellate Court to the United States Court of Appeals for the 9th Circuit.

SUMMARY OF THE ARGUMENT

The Bankruptcy Court's order dismissing the debtor's case with a two year bar from re-filing bankruptcy should be affirmed because the Bankruptcy Court did not abuse its discretion in determining that the debtor's case should be dismissed with a bar from re-filing, nor did the Bankruptcy Court err or abuse its discretion in denying confirmation of the debtor's Chapter 13 plan. The Bankruptcy Court considered the record in rendering its decision based on the facts and the applicable law.

The Bankruptcy Court did not err or abuse its discretion in denying the debtor's motions for reconsideration. The Bankruptcy Court fully and accurately considered the record and the relevant Federal Rules of Bankruptcy Procedure and Federal Rules of Civil Procedure in denying the debtor's motion.

STANDARDS OF REVIEW

The Court reviews the bankruptcy court's interpretation of the Bankruptcy Code and Rules de novo. Temecula v. LPM Corp. (In re LPM Corp), 300 F. 3d 1134, 1136 (9th Cir. 2002) (citing Tighe v. Celebrity Home Entm't, Inc., (In re Celebrity Home Entm't, Inc.), 210 F.3d 995, 997 (9th Cir. 2000)). A bankruptcy court's conclusions of law, including its interpretation of the Bankruptcy Code, is reviewed de novo. Blausey v. U.S. Trustee, 552 F.3d 1124, 1132 (9th Cir. 2009). The Court reviews the Bankruptcy Court's interpretation of the Bankruptcy Code de novo and its factual findings for clear error. Salazar v. McDonald (In re Salazar), 430 F.3d 992, 994 (9th Cir. 2005) (citing Bunyan v. United States, (In re Bunyan), 354 F.3d 1149, 1150 (9th Cir. 2004)).

A bankruptcy court's decision regarding confirmation of a Chapter 13 plan is reviewed for an abuse of discretion. The Court reviews an order dismissing a Chapter 13 bankruptcy case for an abuse of discretion. Leavitt v. Soto (In re Leavitt), 171 F.3d 1223 (9th Cir. 1999). To determine whether the bankruptcy court has abused its discretion, the Court conducts a two-step inquiry: (1) the Court reviews de novo whether the bankruptcy court "identified the correct legal rule to apply to the relief requested" and (2) if it did, the Court considers whether the bankruptcy court's application of the legal standard was illogical, implausible or without support to inferences that may be drawn from the facts in the record.

United States v. Hinkson, 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009);

TrafficSchool.com v. Edriver, Inc., 653 F.3d 820, 832 (9th Cir. 2011).

The Court reviews whether the bankruptcy court properly considered a motion for reconsideration for an abuse of discretion. In re Kaypro, 218 F.3d 1070, 1073 (9th Cir. 2000) (citing In re Pintlar Corp., 133 F.3d 1141, 1145 (9th Cir. 1997)).

ARGUMENT

I. Whether the Bankruptcy Court Erred or Abused Its Discretion in Denying Confirmation of the Debtor's Chapter 13 Plan.

The debtor filed his Chapter 13 Plan on June 6, 2022. On June 28, 2022, the Chapter 13 Trustee filed an Objection to Confirmation of the debtor's Chapter 13 Plan. **SER-75-80**. The mortgage lender, Deutsche Bank, also filed an Objection to Confirmation of the debtor's Chapter 13 Plan. **3-ER-518**.

The Chapter 13 Trustee raised a number of confirmation issues in his Objection to Confirmation, including but not limited to the fact that the Chapter 13 Plan had not been served on all parties and that the Chapter 13 Plan failed to provide for adequate treatment of the mortgage, given that the Section X. provision(s) regarding the mortgage claim were not entire clear. **SER-75-80**. The debtor's Chapter 13 Plan failed to specify a deadline in which the sale of real property would occur, and the debtor's Chapter 13 Plan did not clearly specify that the secured mortgage claim would be paid in full from the sale and instead appeared to indicate that the debtor intended to further contest the secured mortgage claim. **SER-79**. In addition, the Chapter 13 Trustee asserted that the debtor had not filed his Chapter 13 Bankruptcy Case or his Chapter 13 Plan in good faith, pursuant to 11 U.S.C. § 1325(a)(3) and 11 U.S.C. § 1325(a)(7). **SER-75**. The debtor was given notice of the Chapter 13 Trustee's Objection to

Confirmation. **SER-44.** The debtor's Chapter 13 Plan did not provide for a clear intention as to how the debtor would pay the mortgage claim in full, given that the debtor's Chapter 13 Plan failed to specify a deadline for the sale of real property to occur, and the debtor's Chapter 13 Plan did not clearly specify that the secured claim would be paid in full from the sale and appeared to indicate that the debtor intended to further contest the secured mortgage claim. Therefore, the debtor failed to satisfy the confirmation requirements of 11 U.S.C. § 1325(a)(5), including the proposed treatment of the secured mortgage claim. As referenced above, the Trustee raised a number of issues in relation to the debtor's Chapter 13 plan, which had not been addressed as of the confirmation hearing on July 20, 2022. As the bankruptcy Court indicated in its Order Denying Motion for Reconsideration, the debtor's Chapter 13 plan was unconfirmable. **SER-32.**

Given the history of bankruptcy case filings for the debtor (and for his spouse) that had failed to result in plan confirmation, the debtor likely should have anticipated that he would need to propose a feasible and confirmable Chapter 13 Plan from the onset of his bankruptcy case filing, and the debtor failed to do so. The debtor's Chapter 13 Plan was unconfirmable, and the Bankruptcy Court did not err or abuse its discretion in its decision to deny confirmation of the plan. **SER-39.**

II. The Bankruptcy Court Did Not Abuse Its Discretion in Dismissing the Debtor's Case with a Two Year Bar.

The Bankruptcy Court did not abuse its discretion in dismissing the debtor's bankruptcy case with a two year bar.

As the Bankruptcy Court noted in its order denying debtor's Amended Motion for Reconsideration, the Bankruptcy Court dismissed the debtor's case and barred the debtor from re-filing bankruptcy for two years because there was cause for dismissal under 11 U.S.C. § 1307(c) for a lack of good faith after following the procedure and considering the factors identified in Ellsworth v. Lifescape Medical Associates et al. (In re Ellsworth), 455 B.R. 904 (B.A.P. 9th Cir. 2011) and In re Leavitt, 171 F. 3d 1219 (9th Cir. 1999). **SER-30-33.**

Dismissal is normally without prejudice, unless the Court, for cause, determines otherwise. 11 U.S.C. § 349. Bad faith is cause for dismissal of a Chapter 13 case with prejudice under 11 U.S.C. § 349(a) and 11 U.S.C. § 1307(c). Leavitt v. Soto (In re Leavitt), 171 F.3d 1224 (9th Cir. 1999); Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994). Bad faith as cause for dismissal involves a totality of the circumstances test. 11 U.S.C. § 1307(c); Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999). A court should consider whether the debtor misrepresented facts in the petition or plan, unfairly manipulated the Bankruptcy Code or otherwise filed the petition or plan in an inequitable manner;

the debtor's history of filings and dismissals; whether the debtor intended to defeat state court litigation; and whether egregious behavior is present. *Id.*

Once a court has determined that cause for dismissal exists, the court must determine what remedial action to take. Ellsworth v. Lifescape Medical Associates et al. (In re Ellsworth), 455 B.R. 904, 922 (B.A.P. 9th Cir. 2011). The court may dismiss a case with prejudice (precluding the debtor from ever again seeking to discharge debts which would have been discharged by their plan) or impose some lesser remedy such as barring a debtor from re-filing for bankruptcy relief for 180 days or longer. *Id.*

As the Bankruptcy Court noted in its order debtor's Amended Motion for Reconsideration, the Court determined that the debtor's case was filed in bad faith based on the totality of the circumstances after considering all of the documents in the record. **SER 30-33**. In addition, the Court also found that the filing of this case was in bad faith because of the Debtor and his wife's history of filing numerous unsuccessful bankruptcy cases, all or most of which were strategically timed to delay or halt imminent adverse creditor actions. **SER-31**.

The Bankruptcy Court thus considered the particular facts of debtor's case and made a reasoned and fully informed ruling based on the record. The Bankruptcy Court reviewed the facts and rendered a decision after applying the applicable law.

Moreover, courts are not required to address all issues if a ruling on one issue is dispositive. See Elias v. Lisowski Law Firm (In re Elias), 215 B.R. 600, 604 (B.A.P. 9th Cir. 1997) (federal courts are prohibited from rendering advisory opinions) (citing Muskrat v. United States, 219 U.S. 346 (1911); Flast v. Cohen, 392 U.S. 83 (1968); American State Bank v. Marks (In re MacNeil), 907 F.2d 903, 904 (9th Cir. 1990)). The Bankruptcy Court did not need to address the debtor's longstanding issues regarding his mortgage or provide the debtor with additional time to propose an additional Chapter 13 Plan, as the Bankruptcy Court disposed of the entire bankruptcy case by ruling on the Trustee's motion to dismiss case.

In addition, the debtor had adequate notice of the Trustee's Motion to Dismiss with a Request to Bar the Debtor from Re-filing Bankruptcy for Four Years. **SER-41.** As indicated by the Bankruptcy Court, the debtor had sufficient notice of the hearing on the Trustee's Motion to Dismiss and a sufficient opportunity to argue against dismissal and the bar to refiling sought by the Chapter 13 Trustee. **SER-32.** As referenced by the Bankruptcy Court, the unreasonable necessary prong of 11 U.S.C. § 1307(c) is a separate and independent cause for dismissal. **SER-33.** In addition, as referenced by the Bankruptcy Court, even if the Debtor had notice of that issue and convincingly responded, the result would have been the same, as dismissal of the case for bad faith was proper. **SER-33.** The Bankruptcy Court did not err or abuse its discretion in relation to the dismissal

of the debtor's Chapter 13 Case and barring the debtor from re-filing Bankruptcy for Two Years.

III. The Bankruptcy Court Did Not Abuse Its Discretion in Denying Debtor's Motions for Reconsideration

The Bankruptcy Court did not abuse its discretion in denying the Debtor's Motions for Reconsideration. The Bankruptcy Court found that there was no basis under Federal Rules of Bankruptcy Procedure 9023 and 9024 and Federal Rules of Civil Procedure 59 and 60 to grant the debtor's motions. **SER-28-33.** The Bankruptcy Court properly found that dismissal of the debtor's case with a two year bar from re-filing bankruptcy was proper and that the debtor's Motion for Reconsideration was denied. **SER-28-33.**

Under the abuse of discretion standard, the Panel will not reverse the Bankruptcy Court unless the Panel is definitely and firmly convinced that the Bankruptcy Court committed a clear error of judgment. Tennant v. Rojas (In re Tennant), 318 B.R. 860, 866 (B.A.P. 9th Cir. 2004) (citation omitted). The Bankruptcy Court did not abuse its discretion or commit a clear error of judgment, as the Bankruptcy Court considered the Debtor's motions and the applicable statutes (even if not cited by the debtor) in rendering its decision.

CONCLUSION

For the foregoing reasons, the Bankruptcy Court's orders denying confirmation, dismissing the Debtor's Chapter 13 Bankruptcy Case with a Two Year Bar from Re-filing, and denying Debtor's motion for reconsideration should be affirmed.

RESPECTFULLY SUBMITTED this 28th day of April 2024.

/s/ Anna M. Park

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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**UNITED STATES COURT OF APPEALS
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