United States Court of Appeals
for the Fifth Circuit

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No. 23-10570
Summary Calendar

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In the Matter of Marcus Jarrod Payne

Debtor,

Marcus Jarrod Payne,

Appellant,

versus

Stacy Eley Payne,

Appellee.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CV-2709

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Before Elrod, Haynes, and Douglas, *Circuit Judges.*

Per Curiam:[*]

Marcus Jarrod Payne moves this court for leave to proceed in forma pauperis (IFP) on appeal from the district court's dismissal of his appeal from

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[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

a bankruptcy court order denying his motion to vacate a permanent injunction against him. The district court denied Payne leave to proceed IFP on appeal on the basis that the appeal was not taken in good faith.

To obtain leave to proceed IFP, Payne must show both that he is financially eligible and that he will present a nonfrivolous issue for appeal. *See Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). The record supports that Payne qualifies financially to proceed IFP on appeal. *See Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). This court's frivolousness inquiry "does not require that probable success be shown" but "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted). Payne argues that the district court's order of dismissal, which was based on Payne's failure to comply with certain procedure rules, was an abuse of discretion as demonstrated by the Federal Rules of Bankruptcy and this court's case law.

We review the actions of a district court acting in its appellate role for an abuse of discretion. *In re CPDC Inc.*, 221 F.3d 693, 698 (5th Cir. 2000). Federal Rule of Bankruptcy Procedure 8003(a)(2) states that "[a]n appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the district court . . . to act as it considers appropriate, including dismissing the appeal." Fed. R. Bankr. P. 8003(a)(2). Thus, only "failure to file a notice of appeal, which deprives the reviewing court of jurisdiction, mandates dismissal." *In re CPDC Inc.*, 221 F.3d at 698. Although the district court has the authority to dismiss an appeal for reasons other than failing to file a timely notice of appeal, "[d]ismissal is a harsh and drastic sanction that is not appropriate in all cases." *In re CPDC Inc.*, 221 F.3d at 699. In exercising its discretion to dismiss a bankruptcy appeal for nonjurisdictional defects, the district court should consider what sanctions are appropriate, the prejudicial

effect of delay on the appellees, and whether the appellant has exhibited "obstinately dilatory conduct." *Id.* (internal quotation marks and citations omitted).

The district court's order of dismissal cited Payne's failure to file a proper designation of the record, despite being given notice and an opportunity to do so, and his failure to file an appellate brief in accordance with the Federal Rules of Bankruptcy as the basis for dismissal. The district court then concluded that it had no power to hear the case and no choice but to grant the motion to dismiss the appeal. While the district court might have dismissed Payne's appeal for failure to comply with these procedural rules in the exercise of its discretion, it was not compelled to do so, as its order suggests. *See In re CPDC Inc.*, 221 F.3d at 698; *In re Shah*, 96 F. App'x 943, 944 (5th Cir. 2004). Because a district court abuses its discretion when it bases its decision on an erroneous view of the law, *see In re CPDC Inc.*, 221 F.3d at 698, Payne has shown that he will present a nonfrivolous issue for appeal, *see Howard*, 707 F.2d at 220. Further, additional briefing is unnecessary.

Accordingly, Payne's IFP motion is GRANTED. The order of dismissal is VACATED, and the matter is REMANDED for further proceedings. We leave to the district court to determine in the first instance whether dismissal is nevertheless appropriate under the applicable standards.