UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1750
Summary Calendar

IN THE MATTER OF: ALIMADAD JATOI,

Debtor.

ALIMADAD JATOI,

Appellant,

VERSUS

WILLIAM C. MEIER,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(4:92-CV-488-A)

April 16, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Alimadad Jatoi appeals the district court's summary dismissal of his appeal from a bankruptcy court order. We **AFFIRM**.

I.

In August 1987, Jatoi filed a voluntary petition under Chapter 11 of the Bankruptcy Code. William C. Meier was apparently

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

representing Jatoi in ongoing litigation, and the bankruptcy court authorized Jatoi to employ Meier under a general retainer as "special litigation counsel". In the fall of 1989, Meier objected to Jatoi's disclosure statement and reorganization plan, asserting that $14,962.07 in attorney's fees and expenses for services rendered to Jatoi post-petition and previously approved by the bankruptcy court should be listed as an administrative expense. He also contended that fees and expenses of $41,261.00[2] were incurred pre-petition and should be listed as a secured claim.[3] Jatoi objected to Meier's claims, and moved to have Meier disgorge some $63,000.00 in previously paid fees. No ruling was rendered on any of these claims, and Jatoi's bankruptcy was dismissed pursuant to an agreed order on January 3, 1990.

On January 10, 1990, the bankruptcy court entered findings of fact, conclusions of law, and a *nunc pro tunc* order denying Jatoi's motion to disgorge, effective as of December 19, 1989. On November 12, 1991, the bankruptcy court entered a separate judgment denying the disgorgement motion.[4] On December 16, it ordered, also *nunc*

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[2] Meier's October 27, 1989, Objection to Disclosure Statement lists this amount at $41,271.00, but the subsequent Objection to Debtor's Plan of Reorganization as well as the court's order, list it at $41,261.00.

[3] In his Objection to Disclosure Statement, filed on October 27, 1989, Meier suggested that this amount should be listed as a Class 20 unsecured claim. However, on November 30, in his Objection to Debtor's Plan of Reorganization, he amended his position and stated that it should be a Class 20 secured claim because Jatoi had been notified that Meier was asserting an attorney's lien against all of Jatoi's books, records and papers in his possession.

[4] The explanation for this belated separate judgment is tied to another *nunc pro tunc* order which is not in the record before us.

pro tunc, that Meier recover the $41,261.00 in pre-petition fees and that the $14,962.07 in post-petition fees were "due and payable".

Jatoi filed a timely notice of appeal from the December 16 order. It was not docketed, however, until July 7, 1992, from which time the bankruptcy rules allow the appellant 15 days to file a brief. Fed. R. Bankr. P. 8009(a)(1). Receiving no brief from Jatoi by July 27 (five days after it was due), the district court *sua sponte* dismissed the appeal.[5] Jatoi took the instant appeal on August 26, but on September 29, he and Meier filed an agreed motion for reinstatement of the appeal in the district court. That motion has since been denied.[6]

When the January 10 order denying the motion to disgorge was entered, apparently a second *nunc pro tunc* order was entered on the matter of Meier's fees. A reference to such an order appears on the bankruptcy court docket sheets, but, as stated, no such order is in the record before us. It seems that Jatoi appealed this second order, and the district court dismissed for lack of jurisdiction because the notice of appeal was not timely filed. A timely notice of appeal to this court was filed; we remanded for entry of a separate judgment pursuant to Fed. R. Bankr. P. 9021. The district court apparently referred the matter to the bankruptcy court and thus, the second set of *nunc pro tunc* orders was entered, one in November 1991 and one in December 1991, discussed *infra*.

[5] Fed. R. Bankr. P. 8001(a) allows, but does not mandate, such dismissal.

[6] Initially, by order on November 16, 1992, the district court held the agreed motion in abeyance, suggesting in its order that, despite its inclination to the contrary, it would grant the motion if only to allow Meier to have the matter decided on its merits. However, the court pointed out that it lacked jurisdiction because an appeal to this court had already been taken, and implied that the appellant should take "some action ... to cause the action to be remanded to this court or to cause the appeal to be reinstated".

Jatoi did not withdraw his appeal to this court, not did he file a motion to remand to the district court. On December 9, the

II.

We review the district court's dismissal for clear abuse of discretion, ***Pyramid Mobile Homes, Inc. v. Speake***, 531 F.2d 743 (5th Cir. 1976), and find none.

Jatoi correctly notes that the 15 day period for filing appellate briefs in bankruptcy actions runs from the date the appeal is docketed, and, contends that, because he never received such notice, he could not have known when his 15 days began to run. However, under Jatoi's reasoning, we would be required to find that a district court abuses its discretion in all cases if it does not make an express finding regarding the appellant's receipt of notice. Although Federal Rule of Bankruptcy Procedure 8007(b) states that the district court clerk "shall enter the appeal in the docket and give notice promptly to all parties ... of the date on which the appeal was docketed", Rule 8009(a)(1) does **not** provide that the 15 days for filing appellant's brief runs from the date of **notice** of the entry. Rather, the period runs from "entry of the appeal on the docket". Fed. R. Bankr. P. 8009(a)(1). And, if an appellant fails to take certain steps in the prosecution of the appeal, Rule 8001(a) grants the district court discretion to take "such action as [it] deems appropriate, which may include dismissal of the appeal". We do not read these rules to require the district

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district court entered a minute order stating that if no action was taken within 30 days, the motion to reinstate would be denied. Apparently no action was taken, and the agreed motion was denied on January 13, 1993.

court to make an express finding, in every case, of receipt of notice of docketing before an appeal can be dismissed.

In ***International Bhd. of Teamsters v. Braniff Airways***, 774 F.2d 1303 (5th Cir. 1985), we affirmed such a dismissal in the absence of an express finding regarding notice. There, the appellant had not filed his brief 19 1/2 months after filing his notice of appeal. The district court dismissed because "no explanation had been given for appellant's failure either to file a brief or to monitor the case". ***Id***. at 1304. Here, Jatoi contends that he received no notice of docket entry, but offers no explanation for his failure to monitor his case. Seven months passed between the filing of his notice of appeal and dismissal. The record does not reflect any effort to contact the court or determine the status of his appeal.

The district court relied on ***Braniff*** in its dismissal order. In its subsequent order, holding the agreed motion to reinstate in abeyance,[7] see *supra* note 6, it is clear that the district judge was quite familiar with this case. Given the facts of this case, and the district court's familiarity with them, we cannot say that the dismissal was a clear abuse of discretion. As stated in ***Braniff***, "[p]atently the issue is not what this panel might have done if we were the district court, but whether, having set a

[7] We note that this order gave Jatoi the opportunity to gain the precise relief he seeks here. Had he but followed the district court's initial, and subsequent, suggestion, his appeal to the district court might well have been reinstated.

standard granting district courts discretion, we should deny in action what we have announced as precept." ***Id.*** at 1305.

III.

Accordingly, the judgment is

AFFIRMED.