

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2360  
Summary Calendar

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IN THE MATTER OF: P.T. EICHELBERGER, JR.

DEBTOR,

P. T. EICHELBERGER, JR.,

Appellant,

versus

CITIZENS BANK & TRUST COMPANY  
OF BAYTOWN, TX, and  
W. STEVE SMITH, Trustee,

Appellees.

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Appeal from the United States District Court for  
the Southern District of Texas  
CA H 90 3040

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April 29, 1993

Before REAVLEY, JONES and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

The bankruptcy court has twice converted this case from Chapter 11 to Chapter 7, where it presently stands. In bankruptcy court, P.T. Eichelberger, Jr., M.D., claimed that his

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\*Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

interest in a pension plan is exempt from his bankruptcy estate. Citizens Bank & Trust Company of Baytown, Texas (Citizens), a secured creditor, objected to the claimed exemption each time the bankruptcy court converted this case. In orders dated May 31, 1988, June 21, 1989, and August 2, 1989 the bankruptcy court held that Eichelberger's pension interest is not exempt property. Eichelberger did not appeal from any of these orders within the ten-day appeal period specified by FED. BANKR. R. 8002(a).

Instead, on July 5, 1990, Eichelberger filed a "Motion to Vacate and Set Aside Interlocutory Orders," which the bankruptcy court denied. Eichelberger then secured leave to file an interlocutory appeal of the bankruptcy court's denial of his motion. The district court held that the orders referenced in Eichelberger's motion were final and that Eichelberger had failed to appeal them. The district court construed Eichelberger's motion as a request for relief from judgment or order under FED. R. Civ. P. 60(b), and carefully applied each subpart of Rule 60(b) to the facts of this case. The court determined that Eichelberger is entitled to no Rule 60(b) relief, and affirmed the bankruptcy court's dismissal of Eichelberger's motion. Eichelberger appeals.

The bankruptcy court had jurisdiction to issue its 1988 and 1989 orders disallowing Eichelberger's claimed exemption because 1) the orders are "related to" the Chapter 11 case which Eichelberger filed, and 2) exemption allowance disputes are core bankruptcy proceedings. *In re Majestic Energy Corp.*, 835 F.2d

87, 90 (5th Cir. 1988). Both Citizens and Steve Smith as Trustee had standing to challenge Eichelberger's claimed exemption. FED. BANKR. R. 4003. The bankruptcy court's 1988 and 1989 orders disallowing Eichelberger's pension exemption were final for appeal purposes. *In re England*, 975 F.2d 1168, 1172 (5th Cir. 1992). Eichelberger did not challenge these orders until he filed his 1990 motion.

After expiration of the ten-day appeal period specified by Rule 8002(a), the district court lost jurisdiction to hear a direct appeal of the 1988 and 1989 orders. *In re Robinson*, 640 F.2d 737, 738 (5th Cir. 1981). Eichelberger consents to the district court's treatment of his 1990 request for reconsideration of the 1988 and 1989 orders as a Rule 60(b) motion. We may review the district court's Rule 60(b) ruling "only for abuse of discretion, ... and an appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review." *Browder v. Director, Dept. of Corrections of Ill.*, 434 U.S. 257, 263 n.7, 98 S. Ct. 556, 560 n.7 (1978).

Eichelberger presents no substantial argument to support a claim that the district court abused its discretion in refusing him Rule 60(b) relief. The fact that two years *after* Eichelberger petitioned for reconsideration of the bankruptcy court's denial of his exemption, the Supreme Court decided *Patterson v. Shumate*, 112 S. Ct. 2242 (1992), is irrelevant to whether Eichelberger is due Rule 60(b) relief, even if *Patterson* supports Eichelberger's arguments on the merits of his exemption

claim. And nothing in the record suggests that the illness of Eichelberger's one-time attorney impeded his ability to appeal from the bankruptcy court's 1988 and 1989 orders.

AFFIRMED.