

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-2612  
Summary Calendar

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IN THE MATTER OF: WENDELL S. LOOMIS,

Debtor.

WENDELL S. LOOMIS,

Appellant,

VERSUS

WALLIS & SHORT, P.C.,  
Creditor of Wendell S. Loomis,

Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
CA H 92 1284

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October 6, 1993

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

This is an appeal from the dismissal of a bankruptcy appeal by the district court. The district court dismissed the appeal because the Appellant failed to file a brief as required by Bankruptcy Rule 8009(a)(1). We affirm.

I.

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Appellant filed for Chapter 11 protection in April 1991. The Appellee filed a motion to dismiss the bankruptcy petition, and a hearing was held before the Bankruptcy Court on February 3, 1992. The Court dismissed the petition, and Loomis appealed to the district court. This appeal was docketed on April 24, 1992; the docket entry triggered the time limits for the filing of briefs and associated materials. See Bankr. R. 8009(a)(1). Appellant's brief was due 15 days after the docketing of his appeal, May 9, 1992. Loomis neither filed a brief nor requested an extension of time prior to the expiration of this deadline. The district court dismissed the matter on June 4, 1992, and subsequently denied the Appellant's Motion to Reconsider.

## II.

"In reviewing actions taken by a district court in its appellate role, we affirm unless the court has clearly abused its discretion." Matter of Braniff Airways, Inc., 774 F.2d 1303, 1303 (5th Cir. 1985) (citing Pyramid Mobile Homes, Inc. v. Speake, 531 F.2d 743, 746 (5th Cir. 1976)); accord Lama Drilling Co. v. Latham Exploration Co., 832 F.2d 1391 (5th Cir. 1987) (affirming dismissal of bankruptcy appeal).

The record does not indicate that Loomis requested more time in which to file his brief. Additionally, he has pointed to no evidence that his failure to comply with the filing deadlines resulted from excusable neglect. There was no abuse of discretion in either the district court's dismissal of the matter or in its denial of Appellant's Motion to Reconsider.

III.

Appellant contends that the district court erred in interpreting Bankruptcy Rule 8007. This rule provides that, upon receipt of a request for a transcript, "the reporter shall file it with the clerk...." Bankr. R. 8007(a). When the record is complete for purposes of appeal, the clerk then transmits the record to the district court for docketing. Id. at 8007(b).

Loomis argues that the bankruptcy appeal cannot be docketed until the record is complete, and it was error to docket the appeal in this case because the transcript of the bankruptcy court proceeding had not yet been included in the record. This is a correct statement of the law; however, if we follow Appellant's argument to its logical end, the district court's scheduling ability would be controlled by the litigants. A party could delay delivery of materials needed to complete the record on appeal, and thereby obtain an indefinite extension of the filing deadline.

Moreover, the application of Rule 8007 has to assume that the Appellant has complied with Rule 8006, which clearly indicates that it is the responsibility of the parties to make arrangements for the payment of the costs of the transcript.<sup>2</sup> Appellant was

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<sup>2</sup> Bankruptcy Rule 8006 states, in pertinent part:

If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall immediately after filing the designation deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

notified that the transcript was ready, but failed to pay for its preparation. Loomis argues that the notice was lost by his office, and that he acted promptly once this came to his attention.

There is no record evidence that the Appellant delivered a written request to the court reporter for the transcript of the bankruptcy court proceeding. The record also does not contain any evidence that the Appellant filed with the clerk a copy of this written request for the transcript, which is required under Bankruptcy Rule 8006. The district court did not err in interpreting the applicable provisions of the Bankruptcy Rules. See, e.g., Matter of Braniff Airways, Inc., 774 F.2d 1303, 1305 (5th Cir. 1985) ("Bankruptcy appeals have frequently been dismissed for the appellant's failure to comply with the duty of diligent prosecution, and we have dismissed civil appeals for failure of prosecution when the appellant's brief was not timely filed.")

#### IV.

For the foregoing reasons, the judgment of the district court is AFFIRMED. The Motion to Supplement the Record is DENIED.

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Bankr. R. 8006 (emphasis added).