

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7333

Summary Calendar

IN THE MATTER OF
JOHN CHARLES CARRUTHERS HAMILTON, ET AL.,

Debtors.

JOHN CHARLES CARRUTHERS HAMILTON and
CYNTHIA SUE HAMILTON,

Appellants,

v.

GARY J. KNOSTMAN, Trustee, Et Al.,

Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-V-91-20)

(February 24, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Defendants John and Cynthia Sue Hamilton ("debtors") appeal the order of the district court, which affirmed the bankruptcy court's denial of defendants' Rule 60(b) motion to set aside the

*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

order of sale of their Lost Creek Ranch. Finding that the bankruptcy court's denial of debtors' motion was not an abuse of discretion, we AFFIRM the order of the district court.

I.

Judge Richard S. Schmidt, a bankruptcy judge for the Southern District of Texas, has been presiding over the Hamilton bankruptcy case since 1987. On January 17, 1990, debtors were given a lengthy hearing before Judge Schmidt on their objection to the trustee's proposed sale of their Lost Creek Ranch. Testimony was taken from the trustee (Gary Knostman), the real estate broker (Stan Fisher), and other witnesses. The bankruptcy court also gave debtors and any other interested parties an additional 10 days to attempt to find a higher offer for the property. As a result, three sealed bids were submitted. The highest bid submitted was \$755,555.00 by a Mr. Lawrence Keseling. Judge Schmidt signed an order authorizing the sale of the Lost Creek Ranch to Keseling for this price. The order was entered on February 6, 1990.

On March 1, 1990, debtors filed an Emergency Motion to Vacate Order of Sale of Real Property, which was denied by Judge Schmidt on March 5, 1990. Debtors filed another motion requesting an emergency hearing regarding the sale of the ranch on April 3, 1990. Judge Schmidt also denied this motion. On August 3, 1990, debtors filed yet another Emergency Motion to Cancel, Rescind, and Vacate Sale of the Lost Creek Farm and Ranch Property. This motion was likewise denied by Judge Schmidt.

The final attempt to obtain further bankruptcy court review of the order authorizing the sale of the ranch was debtors' First Amended Motion to Set Aside Order Authorizing Sale of Lost Creek Ranch, filed on May 16, 1991, pursuant to Fed. R. Civ. P. 60(b). The grounds for debtors' motion were that the price paid for the Lost Creek Ranch was inadequate, the sale was tinged with "fraud, error, or similar defects," and that the sale was made without adequate notice to potential bidders. This motion was denied by Judge Schmidt on May 28, 1991, without a hearing and without a statement of reasons. Debtors appealed this denial to the United States District Court for the Southern District of Texas. The district court found that Judge Schmidt did not abuse his discretion in denying debtors' motion and affirmed the order of May 28th.

On appeal to this court, debtors allege that Judge Schmidt abused his discretion by (1) failing to hold a hearing on the motion to set aside the sale of the Lost Creek Ranch, and (2) failing to state the reasons for which he denied the motion to set aside the sale.

II.

Fed. R. Civ. P. 60(b) attempts to strike a balance between two conflicting goals--the finality of judgments and the command of the court to do justice. Stipelcovich v. Sand Dollar Marine, Inc., 80 F.2d 599, 604 (5th Cir. 1986). While Rule 60(b) is to be liberally construed to do substantial justice, it should not be used lightly to reopen final judgments. Id. The standard

applied by the reviewing court to the appeal of an order denying a Rule 60(b) motion is whether or not the trial court committed an abuse of discretion. Smith v. Alumax Extrusions, Inc., 868 F.2d 1469, 1471 (5th Cir. 1989); Stipelcovich, 805 F.2d at 604; Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). As we stated in Stipelcovich, "[i]t is not enough that the granting of relief might have been permissible, or even warranted--denial must have been so unwarranted as to constitute an abuse of discretion." 805 F.2d at 604, citing Seven Elves, 635 F.2d at 402. This standard places a heavy burden on the appellant. Northshore Development, Inc. v. Lee, 835 F.2d 580, 582 (5th Cir. 1988).

After reviewing the briefs of all parties and the record on appeal, we conclude that Judge Schmidt did not abuse his discretion in denying debtors' Rule 60(b) motion without a hearing and without preparing a written statement of reasons for his denial.

Debtors complain that at the hearing on January 17, 1990, trustee Knostman and real estate broker Fisher gave false testimony concerning a previous offer to purchase the subject property for \$755,250.00. Debtors allege that this false testimony fraudulently induced the bankruptcy court to approve the sale. The record does not support this conclusion. While Knostman testified that he had not talked to anyone who had offered more than \$630,000.00 for the Lost Creek Ranch, Fisher testified that he had been advised of "an offer of \$750,000" in

July of 1988, but had been told that the offer had since been withdrawn and "could not have been resurrected."¹ Judge Schmidt therefore was aware of the higher offer when he finally approved the sale at a price of \$755,000.00.²

Generally, a district court has discretion not to hear oral testimony on motions. Gary W. v. State of Louisiana, 601 F.2d 240, 244 (5th Cir. 1979). In this case, there was no reason for an evidentiary hearing. Judge Schmidt had presided over this bankruptcy case since 1987. He conducted a lengthy hearing regarding the sale of the Lost Creek Ranch on January 17, 1990. After signing an order on February 5, 1990, authorizing the sale of the ranch, Judge Schmidt considered and denied a series of other motions challenging that ruling. The motion in question on this appeal was largely based on transcript excerpts from the hearing over which Judge Schmidt himself presided. Even assuming that he had not personally remembered all that testimony, the transcript would have been entirely adequate to refresh his

¹ On the facts of this case, there is some question as to whether this initial offer was ever considered a bona fide offer to begin with. The alleged 1988 offer involved an earnest money proposal conditioned upon the offeror's ability to obtain adequate financing, and was accompanied by an extremely modest check of \$5,000 paid not to the bankruptcy estate or the bankruptcy trustee, but to the offeror's attorney.

² In the context of Fed. R. Civ. P. 60(b), even assuming that Knostman's testimony was not completely candid, debtors fail to make any rational showing of how this lack of candor would have affected Judge Schmidt's order approving the sale of Lost Creek Ranch. Under the facts of this case, it is difficult to comprehend debtors' grievance that the price received was "grossly inadequate," and even more difficult to conclude that there has been any injustice such as would warrant Rule 60(b) relief.

memory. Furthermore, the earnest money contract proposal of July 1988 and the various pieces of correspondence pertaining to that proposal were attached to the motion submitted to Judge Schmidt. Those exhibits are self-explanatory and would not require any further taking of evidence. It is doubtful that anything new would come to light as a result of a hearing that Judge Schmidt had not already heard or seen. As a result, we can in no way conclude that Judge Schmidt's failure to hold a hearing regarding debtors' Rule 60(b) motion was "so unwarranted as to constitute an abuse of discretion." See Stipelcovich, 805 F.2d at 604.

Findings of fact and conclusions of law are not required on a motion under Rule 60, especially where the basis for a ruling is fairly ascertainable from the record. 11 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 2865 (1973); see also Fed. R. Civ. P. 52(a); Standard Newspapers, Inc. v. King, 375 F.2d 115, 116 (2d Cir. 1967); Delzona Corp. v. Sacks, 265 F.2d 157 (3d Cir. 1959). In this case, Judge Schmidt had more than one occasion to study all pertinent materials relating to the sale of Lost Creek Ranch. He had previously dealt with several motions by debtors objecting to the order authorizing the sale of the ranch. The basis for his ruling is fairly ascertainable from the record. We cannot find that Judge Schmidt's failure to make written findings and conclusions on debtors' Rule 60(b) motion was an abuse of discretion.

III.

We AFFIRM the order of the district court affirming the bankruptcy court's denial of debtors' First Amended Motion to Set Aside Order Authorizing Sale of Lost Creek Ranch.