UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-2003

(Summary Calendar)

PETER D. VAN DER JAGT,

Plaintiff-Appellant,

versus

JUDGE KAREN K. BROWN and,
JUDGE WILLIAM R. GREENDYKE,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas
CA H 92 2074

June 2, 1993

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

PER CURIAM:[*]

Peter Van Der Jagt, proceeding *pro se,* appeals the district court's denial of his motion for entry of default against bankruptcy judges Karen K. Brown and William R. Greendyke (the "judges"). We dismiss the appeal as frivolous, and impose a sanction upon Van Der Jagt.

On July 13, 1992, Van Der Jagt filed the underlying complaint against the judges, pursuant to 28 U.S.C. § 1346(b) (1988) and the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Federal Torts Claims Act ("FTCA"), alleging, *inter alia,* that the judges had wrongfully taken his "pre-bankruptcy community property," wrongfully converted his "community property business homestead," and had generally deprived him of his property without due process of law. On August 19, 1992, Van Der Jagt filed a Fed. R. Civ. P. 55(a) motion for entry of default, alleging that because the judges failed to respond within 35 days after issuance of summons, as provided by Fed. R. Bankr. P. 7012(a), entry of default was proper. On September 9, 1992, less than 60 days after service of summons, the appellees responded with a Motion to Dismiss Complaint and Opposition to Motion for Entry of Default Judgment. The district court thereafter denied Van Der Jagt's Rule 55(a) motion, and granted the judges' motion to dismiss Van Der Jagt's complaint. The court held that in light of the judges' response within 60 days of the service of summons,[1] entry of default would have been inappropriate. The court also held that dismissal was proper because Van Der Jagt's complaint was barred on grounds of sovereign and judicial immunity. Van Der Jagt filed a timely notice of appeal.

Van Der Jagt does not challenge the district court's final judgment dismissing his complaint on the merits. He has also abandoned his argument in district court that the judges had 35

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[1] Because the complaint did not allege any jurisdiction under Title 11 of the United States Code, the court concluded that the time for filing an answer was controlled by Fed. R. Civ. P. 12(a), rather than the Federal Rules of Bankruptcy Procedure. *See* Record on Appeal at 58-59 (citing Fed. R. Bankr. P. 1001, which provides that the Bankruptcy Rules govern procedure in cases under Title 11 of the United States Code).

days to respond under Fed. R. Bankr. P. 7012(a). Van Der Jagt does contend that because he served his complaint upon the judges in their individual capacities under Fed. R. Civ. P. 4(d)(1), and the judges failed to respond within 20 days, he was entitled to an entry of default. This argument has no arguable basis in law or fact. Van Der Jagt's complaint amounted to an attack on the judges' application of the Bankruptcy Code, actions Van Der Jagt himself characterized in his complaint as within the scope of their judicial office. *See* Record on Appeal at 26. Moreover, even assuming that the judges were sued individually, they were still entitled to the sixty-day period to file their answer under Fed. R. Civ. P. 12(a), because they were "acting under color of law." *Dickens v. Lewis,* 750 F.2d 1251, 1255 (5th Cir. 1984). Accordingly, we dismiss the appeal as frivolous.[2] *See* Loc. R. 42.2.

We have previously cautioned Van Der Jagt against the filing of frivolous appeals. *See Van Der Jagt v. Greendyke,* No. 92-2609, slip op. at 2 (5th Cir. Dec. 28, 1992) ("Appellant is cautioned that the continued filing of frivolous pleadings will lead to the

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[2] Van Der Jagt's underlying complaint appears to have been an attempt to collaterally attack the final order of a bankruptcy court, under the guise of a claim under the FTCA. Final orders of the bankruptcy court cannot be attacked by bringing a separate law suit. Van Der Jagt's only avenue for challenging a bankruptcy court's final order is by way of direct appeal, or a Fed. R. Civ. P. 60(b) motion. *See Hendrick v. Avent,* 891 F.2d 583, 589 (5th Cir.) ("[T]he finality of the bankruptcy order mandates that . . . any future challenges to that order will be either in the form of appeal or amendment of the judgment."), *cert. denied,* 498 U.S. 819, 111 S. Ct. 64, 112 L. Ed. 2d 39 (1990).

imposition of sanctions."). The notice of appeal in this case was filed before that warning, but since then Van Der Jagt has filed a brief and a reply brief pursuing this frivolous appeal. Because there is no indication that Van Der Jagt has heeded our warning, we impose the following sanction. Effective immediately, and until further order by this Court, all clerks within our supervisory jurisdiction shall decline to accept any filing submitted *pro se* from Peter Van Der Jagt unless a judge of this Court, or a district court judge subject to our jurisdiction, has specifically authorized the filing. *See, e.g., Smith v. McCleod,* 946 F.2d 417, 418 (5th Cir. 1991); *Vinson v. Heckmann,* 940 F.2d 114, 116-17 (5th Cir. 1991); *Mayfield v. Collins,* 918 F.2d 560, 562 (5th Cir. 1990).

APPEAL DISMISSED; SANCTION IMPOSED.