UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-4855
Summary Calendar

IN THE MATTER OF: CLEATUS M. PHELAN, debtor.

CLEATUS M. PHELAN,

Appellant,
Cross-Appellee,

VERSUS

STATE BAR OF TEXAS, ET. AL.,

Appellee,

JOHN M. ROACH, in his individual capacity

Appellee/Cross-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas

(92-CV-275)

(January 5, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges

PER CURIAM*:

Appellant Cleatus M. Phelan challenges the bankruptcy court's

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

order mandating abstention on all of his claims and imposing Rule 11 sanctions against him in favor of Appellee/Cross-Appellant John R. Roach. Finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

The instant appeal arises out of Phelan's misguided attempt to embroil the bankruptcy court in ongoing bar disciplinary proceedings--proceedings he initiated in 1990 to seek reinstatement to the State Bar of Texas. The facts underlying Phelan's present predicament extend back much further, to 1974 when Phelan first started--or at least first admitted to--mishandling his client's funds. By 1978 this misconduct apparently caused Phelan to borrow $3,000 from his employer, James R. Caton, so that a real estate transaction could be closed. Caton eventually acquired a judgment against Phelan for this loan, but this judgment has never been satisfied.

In 1983 Phelan was disbarred. In the disbarment proceeding, Phelan admitted by sworn pleading and testimony that he had, inter alia, commingled and misappropriated funds, and had made false statements under oath and in sworn representations. The presiding judge--who was Judge Roach--entered judgment disbarring Phelan and permanently enjoining him from holding himself out to others as an attorney. Phelan was further ordered to return all files, papers, monies, and other property belonging to all current and former clients, and to advise them of his disbarment.

Between 1983 and 1988 Phelan operated a bail bond company and

eventually accumulated $163,050.71 in adverse judgments for bail bond forfeitures. Phelan filed for bankruptcy under Chapter 7 and received a discharge in April 1989. Caton's judgment against Phelan was included in this discharge.

In October 1990, Phelan applied for reinstatement to the State Bar in the 199th Judicial District Court. Judge Roach was again the presiding judge, and he rendered a decision in April 1992 finding, inter alia, that Phelan had:

1) failed to pay full restitution to Caton, who had suffered pecuniary loss by reason of the misconduct for which Phelan was disbarred;

2) failed to pay this restitution despite having the ability to pay during the period of his disbarment;

3) falsely represented himself in his bankruptcy petition as a "retired lawyer";

4) failed to lead a life of exemplary conduct during the five years preceding his application for reinstatement; and

5) failed to demonstrate the attributes of honesty expected of a Texas attorney.

Judge Roach concluded that neither the ends of justice nor the public interest would be served by the reinstatement of Phelan. Accordingly, he entered judgment denying Phelan's reinstatement. Phelan has appealed this judgment to the state court of appeals.

During the pendency of the state appeal, Phelan filed the instant complaint in bankruptcy court. He sued the State Bar of Texas; David O. Wise, individually and in his capacity as

Assistant General Counsel for the State Bar of Texas; the 199th Judicial District Court; and Judge John Roach, individually and in his capacity as judge of the 199th District Court. Phelan alleged that the defendants willfully and knowingly violated the injunction contained in 11 U.S.C. §524(2) and the anti-discrimination provisions contained in 11 U.S.C. §525 by using evidence of debts discharged in bankruptcy as the basis for the denial of restatement. Phelan requested declaratory, injunctive, and monetary relief against all defendants.

The defendants filed various motions in opposition, including motions to abstain, and a motion by Judge Roach requesting Rule 11 sanctions. The bankruptcy court entered an order abstaining from exercising jurisdiction other than over the Rule 11 Motion, which it granted in favor of Judge Roach for $7,635.58. Phelan appealed this order to the district court, which affirmed. Phelan than timely appealed to this court.

II

DISCUSSION

A. Abstention From Ongoing Bar Disciplinary Proceedings

Bankruptcy courts are provided with the discretion to abstain from hearing a proceeding that arises under Title 11 or is related to a Title 11 case when such abstention would be ". . . in the interest of justice, or in the interest of comity with State courts or respect for State law."[1] We have observed that the bankruptcy laws contain broad grants of jurisdiction; accordingly, this

[1]28 U.S.C. §1334(c)(1).

statutory grant of the discretion to abstain is necessary to ensure comity and judicial convenience.[2]

In the instant case, Phelan insists that the state district court refused his reinstatement because he had discharged the debt arising out of his mishandling of funds. Section 525--the antidiscrimination provision to Title 11--provides in pertinent part that:

> [A] governmental unit may not . . . refuse to renew a license, permit, charter, franchise, or other similar grant to. . .a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, . . . solely because such bankrupt or debtor is or has been a debtor under the Bankruptcy Act, . . . or has not paid a debt . . . that was discharged under the Bankruptcy Act.[3]

Phelan urges that the bankruptcy court is the proper forum to hear his claim under §525. We observe, though, that Phelan's bar disciplinary proceeding is presently on appeal in state court. Consequently, it still remains unsettled whether, for example, Phelan will be reinstated; and, if he is not reinstated, whether

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[2] In re Wood, 825 F.2d 90, 93 (5th Cir. 1987).

[3] 11 U.S.C. §525(a) (emphasis added). The legislative history indicates that Congress expected §525 to be broadly construed. After observing that this section is not exhaustive, the House and Senate Reports go on to state:

> The enumeration of various forms of discrimination against former bankrupts is not intended to permit other forms of discrimination. . . . This section permits further development to prohibit actions by governmental or quasi-governmental organizations that perform licensing functions, such as a State bar association or a medical society . . . .

H.R. REP. NO. 595, 95th Cong., 1st Sess. 366-67 (1977); S. REP. NO. 989, 95th Cong., 2d Sess. 81 (1978). The parties cite no cases that attempt to resolve the possible tension between §525 and a state's imposition or continuation of bar discipline on account of an attorney's failure to pay restitution.

reinstatement will be denied "solely because" his debt to Caton was discharged. The "solely because" issue is particularly unripe for review at this stage. Moreover, the state district court included at least two other grounds for denying reinstatement that appear to be unrelated to the prohibitions contained in §525, namely, Phelan's apparent lack of candor in representing to the bankruptcy court that he was a "retired lawyer," and his apparent failure to demonstrate "the attributes of honesty expected of a Texas attorney." We thus conclude that abstention is warranted here, as the pertinent legal and factual issues are not yet ripe for review.[4] In addition, sound principles of comity--to allow a state to complete its bar disciplinary proceedings free of federal intrusion--likewise warrant abstention here.

Phelan's challenges to the form of the bankruptcy court's order fare no better. He first argues that the bankruptcy court order is defective because it does not contain reasons for the abstention order. Here, though, the reasons for abstention are sufficiently compelling to make clear the basis for the bankruptcy court's decision to abstain. Remand for clarification would be a pointless exercise. Phelan's other argument on form is that the order does not state whether Phelan's complaint instituted a core or a non-core proceeding. But this argument has been mooted by the Judicial Improvements Act of 1990, which makes all motions for

[4]As the only issue before us is whether abstention was appropriate, we of course express no opinion on the ultimate merits of Phelan's contentions under §525. As noted earlier, these contentions appear to address an uncharted area of the law.

abstention contested matters governed by Bankruptcy Rule 9014.[5] Consequently, the bankruptcy court has the power to enter a final order of abstention regardless of the nature of the underlying proceeding.[6]

B. Rule 11 Sanctions for Suing a Judge

For several hundred years it has been settled law that judges are absolutely immune from suits grounded in the exercise of their judicial function.[7] This immunity extends to all judicial acts unless such acts are done in the "clear absence of all jurisdiction."[8]

Phelan's complaint in the instant case alleges nothing more than that Judge Roach violated the Bankruptcy Code while acting as the presiding judge on his reinstatement application. Compounding his impropriety, Phelan complains further that Judge Roach is jointly liable with the other defendants for at least $6,000,000 in punitive damages. Had Phelan conducted even a modicum of research, he would have quickly discovered that Judge Roach cannot be held liable for actions taken as a judge on Phelan's application for reinstatement. The failure to conduct this research before signing pleadings that are governed thereby clearly violates the

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[5]See, FED. R. BANKR. P. 5011(b); In Re Nationwide Roofing & Sheet Metal, Inc., 130 B.R. 768, 777-78 (Bkrtcy. S.D. Ohio 1991); In Re Millsaps, 133 B.R. 547, 556 (Bkrtcy. M.D. Fla. 1991).

[6]In Re Nationwide Roofing & Sheet Metal, Inc., 130 B.R. 768 at 777-78; In Re Millsaps, 133 B.R. at 556.

[7]E.g., Butz v. Economou, 438 U.S. 478, 508-09 (1978).

[8]E.g., Eitel v. Holland, 787 F.2d 995, 998 (5th Cir. 1986).

Rule 11 requirement that the signer of the pleading certifies that--after a reasonable inquiry--the pleading is warranted by existing law or a good faith argument for change in the existing law.[9]

III

CONCLUSION

Phelan attempted to embroil the bankruptcy court in the midst of his ongoing bar reinstatement proceeding. We conclude that the bankruptcy court wisely exercised its discretion here to abstain under sound principles of comity and ripeness. We further conclude that the bankruptcy did not abuse its discretion in sanctioning Phelan under Rule 11 for making a patently meritless claim in his complaint. Although we refrain from imposing sanctions for a frivolous appeal at this juncture, we caution Phelan that further efforts to extend or prolong this matter at the appellate level are virtually certain to produce sanctions here.

For the foregoing reasons, the order of the bankruptcy court is

AFFIRMED.

[9] See, FED. R. CIV. P. 11.