

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10709  
Summary Calendar

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IN THE MATTER OF: ALDUS MARKETING ASSOCIATION,  
Debtor.  
COLE TURNER, ET AL.,  
Appellants,  
versus  
ALDUS MARKETING ASSOCIATION,  
Appellee.

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

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(2:93-CV-207)

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(January 20, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

This is an appeal from an order of the district court dismissing an appeal from a judgment of the bankruptcy court, in an

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

adversary proceeding in which Aldus Marketing Association ("Aldus"), the Appellee, was Plaintiff and Appellants were Defendants. We affirm the dismissal.

#### BACKGROUND

Aldus was an agricultural cooperative that filed a Chapter 11 bankruptcy petition in 1988. Appellants Cole Turner, George A. Mullino, Phillip Newton, Mike Newton, Erwin Hamilton and David Epley (referred to collectively as "Turner") were peanut farmers and members of Aldus. In June, 1989, an adversary proceeding was filed by Aldus, as Debtor in its Chapter 11 proceeding, against Turner for amounts allegedly owed Aldus for peanut seed. In April, 1991, the case was tried before the bankruptcy court. In August 1991 the bankruptcy court rendered its opinion in favor of Turner and dismissed the adversary proceeding. In response to a motion for new trial filed by Aldus, the bankruptcy court rendered its Amended Memorandum of Opinion on Seed Receivables and a second Judgment, dated March 4, 1992, this time holding that Turner was liable for all the amounts sued for. On March 13, 1992, Aldus filed a "Motion for Modification of Judgment to Include Attorney's Fees," asking the court for the attorney's fees which had been pled for in the original complaint and requested at trial. On November 10, 1992, Aldus filed an "Amended Motion for Modification of Judgment to Include Attorney's Fees and Prejudgment Interest." On June 23, 1993, a third decision titled "Final Judgment" was rendered by the bankruptcy court allowing Aldus \$10,000 in attorney's fees and no prejudgment interest, in addition to "adopting as if copied in full herein" the amounts previously

awarded in the March 4, 1992 second Judgment. From this Final Judgment, Turner filed a Notice of Appeal, on July 2, 1993. Aldus filed a cross-appeal regarding attorney's fees and the denial of prejudgment interest.

After Turner filed a brief in the district court, Aldus filed their Motion to Dismiss for Lack of Jurisdiction, raising the contention that Turner's Notice of Appeal to the district court was untimely and that Turner should have appealed from the bankruptcy court's second Judgment rather than its third Final Judgment. The district court agreed and dismissed the appeal for lack of jurisdiction.

#### DISCUSSION

District courts have jurisdiction to hear appeals from final judgments, orders and decrees rendered by bankruptcy judges. 28 U.S.C. § 158(a). Such appeals, however, must be perfected within the time allotted by Federal Bankruptcy Rule 8002, that is, ten days from the date it became final and appeared of record. F. BANKR. R. 8002(a)(West Supp. 1993); 28 U.S.C. § 158(d).

A judgment is final when it ends litigation on the merits and leaves the court with nothing else to do. *Zink v. United States*, 929 F.2d 1015, 1020 (5th Cir. 1991). The district court found that Turner's notice of appeal was untimely because it was filed after entry of the bankruptcy court's June 1993 Final Judgment rather than within ten days of the March 1992 Judgment. Turner contends that Aldus' Motion for Modification of Judgment to Include Attorney's Fees extended the time for appeal pursuant to Bankruptcy

Rule 8002(b). This rule essentially tracks former Federal Rule of Appellate Procedure 4, which provides that a motion to alter or amend judgment pursuant to Rule 59(e) will extend the time within which a notice appeal may be timely filed.

It is well settled that a decision on the merits is a "final decision" for purposes of appealability, whether or not there remains for adjudication a request for attorney's fees. *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 202-03, 108 S.Ct. 1717, 1722, 100 L.Ed.2d 178 (1988). Turner argues that this case falls within the purview of *Ramsey v. Colonial Life Ins. Co. of America*, 12 F.3d 472 (5th Cir. 1994), where we held that if attorney's fees are one part of an integrated judgment on the merits, a motion to reconsider the attorney's fees portion of the judgment would be considered a Rule 59(e) motion.

We disagree. The motion at issue in this case states:

Before the Plaintiff rested its case in the trial of this matter, Plaintiff announced to the Court that it was ready to put on evidence of attorney's fees. At that time the Court instructed the Plaintiff that it would not be necessary for the Plaintiff to put on attorney's fees evidence at that time, but that such evidence could be reserved to a later date if and when such fees became appropriate. Recently, the Court has entered the Judgment disposing of all matters in the case except for the inclusion of Plaintiff's attorney's fees. Plaintiff believes that the issue of attorney's fees was properly pled and that Plaintiff is entitled to have the Court consider this issue of attorney's fees in light of the ruling the Court has made in the Plaintiff's favor on all other issues in the case.

[ ]Plaintiff stands ready to present evidence of attorney's fees in whatever form the Court deems appropriate and satisfactory.

*Ramsey* carved out a narrow exception to the rule that a motion

for attorney's fees is not a 59(e) motion, whether the motion is original or supplemental." *Echols v. Parker*, 909 F.2d 795, 799 (5th Cir. 1990). Aldus's March 1992 motion did not fall within that exception. The bankruptcy court's judgment did not include a ruling on attorney's fees, and so there was nothing for that court to reconsider. Rather, the bankruptcy court set aside the attorney's fees issue in the classically collateral treatment envisioned in *Budinich*. We therefore AFFIRM the district court's order dismissing Turner's appeal for lack of jurisdiction.