IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1537

Summary Calendar

In The Matter of: WILLIAM M. ELLIOT, JR.

Debtor,

STEVEN M. FRANKLIN,

Appellant,

versus

WILLIAM M. ELLIOTT, JR., ET AL.,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(92-CV-25-W)

(January 11, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

The bankruptcy court sanctioned an attorney, Steven M. Franklin (Franklin). The district court affirmed the decision of the bankruptcy court. Franklin appeals. We affirm in part,

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

vacate a portion of the district court's order, and remand the case to the district court with instructions to remand the case to the bankruptcy court for further consideration.

I.

On March 29, 1991, William M. Elliott, Jr. filed for bankruptcy under Chapter 11 of the Bankruptcy Code. Ronald M. Mapel was William Elliott's attorney in the bankruptcy proceeding. At the time of the bankruptcy filing, Franklin represented a group of limited partner investors, including William Elliott, in a series of lawsuits arising out of the actions of a number of partnerships which were set up to finance the operations of Time Energy Systems, Inc. (Time Energy).

Franklin states that he prepared an application for employment as special attorney in order to represent William Elliott in the bankruptcy proceeding in matters dealing with Time Energy. According to Franklin, William Elliott was to sign the application and forward it to the bankruptcy court for filing. However, for some unknown reason, the application was never filed with the bankruptcy court. Within a week of the filing of Elliott's bankruptcy petition, Franklin began filing papers in other courts asserting that he was the attorney or "special attorney" for William Elliott in the bankruptcy proceeding. Franklin also appeared before the bankruptcy court numerous times asserting that he was "special attorney" for William Elliott.

After discovering that Franklin had not been authorized to represent the debtor, the bankruptcy court, on December 30, 1991,

issued a show cause notice to Franklin. In the show cause notice, the bankruptcy court ordered Franklin to appear before the court for a hearing to resolve a series of issues relating to Franklin's representation of the debtor. The bankruptcy court stated that Franklin had not observed the requirements of Dondi Properties Corp. v. Commerce Savings & Loan Ass'n, 121 F.R.D. 284 (N.D. Tex. 1988) (en banc), in a number of ways. Specifically, the bankruptcy court stated (1) that Franklin had no authority to represent the debtor in the bankruptcy proceeding, and (2) that many of Franklin's actions in the bankruptcy proceeding were unnecessary and done for the purpose of harassing opposing parties, and violated the Dondi principles.

On January 29, 1992, the bankruptcy court held a full evidentiary hearing to permit Franklin to make an appropriate response to the show cause notice. The bankruptcy court then entered the following sanctions: (1) issuing a public reprimand against Franklin for his unprofessional conduct, (2) ordering Franklin to prepare "a complete statement of all payments to and receipts from the Debtor by Mr. Franklin, his law firm, and the Time Energy Limited Partners Action Group," (3) granting Walker Drexler & Williamson a $3,000 judgment against Franklin, individually, (4) granting K.M.G. Main Hurdman a $10,000 judgment against Franklin, individually, (5) stating that Walker Drexler & Williamson and K.M.G. Main Hurdman shall have execution and all other writs and processes necessary for the enforcement of the judgments and shall be entitled to reasonable attorneys' fees

incurred in connection with their judgments, and (6) enjoining Franklin from appearing as an attorney or practicing as an attorney in the United States Bankruptcy Court for the Northern District of Texas for three years.

Franklin appealed the award of sanctions to the district court. The district court determined that the bankruptcy court had not abused its discretion in imposing sanctions against Franklin. Franklin then appealed to this court.

II.

We review a court's imposition of sanctions under its inherent power for abuse of discretion. Chambers v. Nasco, Inc., 111 S. Ct. 2123, 2138 (1991). Initially, Franklin argues that the bankruptcy court does not possess the inherent power to sanction him. According to Franklin, bankruptcy courts are not Article III courts, and, therefore, do not have the inherent power to impose sanctions for bad-faith conduct in litigation. In Chambers, the Supreme Court held that district courts have the inherent power to award attorney's fees when a party has acted in bad faith. 111 S. Ct. at 2136-38. The Supreme Court further noted that a court's inherent power includes the power to control admission to its bar and to discipline attorneys who appear before it. Id. at 2132. Thereafter, in Citizens Bank & Trust Co. v. Case (In re Case), 937 F.2d 1014, 1016 (5th Cir. 1991), this court determined that the principles enunciated in Chambers were equally applicable to a bankruptcy court. Therefore, Franklin's argument that bankruptcy courts do not have the

inherent power to impose sanctions for bad-faith conduct in litigation is totally without merit.

Next, Franklin argues that the bankruptcy court abused its discretion in imposing sanctions against him. First, Franklin asserts that the bankruptcy court erred because it did not enter any findings as to the sanctions that it imposed against him. A court need not provide specific factual findings in every sanction order. Topalian v. Ehrman, 3 F.3d 931, 936 (5th Cir. 1993); Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 883 (5th Cir. 1988) (en banc). However, as we stated in Thomas:

> [T]he rule we adopt does emphasize the importance of an adequate record for appellate review. . . . Like a sliding scale, the degree and extent to which a specific explanation must be contained in the record will vary accordingly with the particular circumstances of the case, including the severity of the violation, the significance of the sanctions, and the effect of the award.

836 F.2d at 883.[1]

While we agree with Franklin that the judgment that the bankruptcy court entered against him does not have any findings concerning the sanctions that the bankruptcy court entered, we do not agree that there are no factual findings by the bankruptcy court to support its order of sanctions. The morning after the show cause hearing the bankruptcy court announced its findings and conclusions. The bankruptcy court's findings represent about eighteen of the seventy-five pages in the hearing transcript.

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[1] While Thomas dealt only with Rule 11 sanctions, we held in Topalian v. Ehrman, that the underlying principles in Thomas "apply across-the-board to all of the district court's sanction powers." 3 F.3d 931, 936 (1993).

Therefore, Franklin's argument that there are no findings by the bankruptcy court to support its order of sanctions is totally without merit.

We now summarize the bankruptcy court's findings.

The unfiled application

The bankruptcy court initially noted that it had never received an application for Franklin to represent William Elliott in the bankruptcy proceedings. Franklin argued that he had filled out an application and that he does not know why it was never received by the bankruptcy court. A copy of the application that Franklin thought had been filed with the bankruptcy court was entered into evidence in the show cause hearing. The bankruptcy court noted that the application was dated April 25, 1991; the bankruptcy court also noted that the United States trustee had received a copy of the application on April 29, 1991. However, the application was dated almost a month after the bankruptcy petition was filed and after Mr. Franklin had represented to other courts that he had been appointed to represent the debtor, William Elliott. Specifically, Franklin purported to represent William Elliott, as the debtor, when he filed, on April 1, 1991, an application to remove a suit to the United States District Court for the Southern District of Texas, pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027.

The bankruptcy court also noted that in his employment application Franklin stated that:

> Movant asserts that it is necessary to retain and employ an attorney for the following specified purposes:
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> A. Representation of Debtor, a co-plaintiff (third party plaintiff) in the adversary proceeding Time Energy, Inc. v. Quade Sutton, et al, Adv. Proc. 91-0198, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division; and
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> B. Representation of Debtor as a co-plaintiff in the civil action of William M. Elliott, Jr. et al v. Michael L. Mead, et al, Civil Action 89-473-H, in the United States District Court of Texas, Houston Division.

The bankruptcy court noted that the application made no mention of representation of William Elliott in the United States Bankruptcy Court for the Northern District of Texas. The bankruptcy court further noted that Franklin is not admitted to practice in the United States District Court for the Northern District of Texas, a fact which was omitted from the application. Additionally, the bankruptcy court stated that it would not have been able to approve the application because the attached Rule 2014 statement acknowledges that some of the plaintiffs represented by Franklin may have claims against William Elliott, thereby creating a conflict of interest. Furthermore, the schedules filled out by William Elliott reflect that Franklin represents one of William Elliott's creditors.

Violation of Dondi precepts

The bankruptcy court then addressed Franklin's violation of the Dondi precepts. In Dondi Properties Corp. v. Commerce Savings and Loan Assoc., 121 F.R.D. 284, 287-288 (N.D. Tex. 1988) (en banc), the judges for the United States District Court for the Northern District of Texas sat en banc to adopt standards of

conduct for attorneys practicing in the district. The following passages are representative of the standards for attorney conduct adopted by the Dondi court:

> In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
>
> A lawyer owes, to the judiciary, candor, diligence and utmost respect.
>
> A lawyer owes to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
>
> A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

Dondi, 121 F.R.D. at 287-88. The Dondi court further noted that it had the power to promulgate such rules:

> We are authorized to protect attorneys and litigants from practices that may increase their expenses and burdens (Rules 26(b)(1) and 26(c)) or may cause them annoyance, embarrassment, or oppression (Rule 26(c)), and to impose sanctions upon parties or attorneys who violate the rules and orders of the court (Rules 16(f) and 37). . . . We are also granted the authority to punish, as contempt of court, the misbehavior of court officers. 18 U.S.C. § 401. In addition to the authority granted us by statute or by rule, we possess the inherent power to regulate the administration of justice.

Id. at 287.

The bankruptcy court noted that KMG Main Hurdman and David Smith filed Motions to be Relieved from the Automatic Stay and Prosecute Counterclaims in one of the suits in which Franklin represented William Elliott. Franklin served twenty interrogatories and fifteen requests for admission on David Smith, which had nothing to do with the motion for relief from

the automatic stay. The bankruptcy court listed the following question as typical: "You admit that your claim against the estate of William Elliott, Jr. is groundless." The bankruptcy court determined that that question was "clearly an improper use of discovery procedures and a violation of the Dondi precepts." The bankruptcy court also stated that the validity of the claim is not an issue in "automatic stay litigation, and thus, the discovery instituted by [Franklin] was not only unnecessary, it was improper and constituted harassment." Furthermore, in relation to the counterclaims that Smith and Main Hurdman sought to assert, the bankruptcy court noted that Franklin had admitted in a hearing before it that those counterclaims were compulsory counterclaims. Therefore, it was "beyond this court's comprehension that he would seek to deny relief from the automatic stay for these people to file compulsory counterclaims, and indeed, he offered no explanation for this clear violation of the Dondi precepts."

The bankruptcy court also stated that Franklin refused to cooperate when opposing counsel became confused over differences in time to respond to interrogatories between the Federal Rules of Civil Procedure and the Local Bankruptcy Rules relating to relief from the automatic stay. The bankruptcy court determined that Franklin attempted to use opposing counsels' confusion to gain an unfair advantage over them.

Additionally, the bankruptcy court noted that Franklin attempted to have the bankruptcy court control the dockets of a

Houston federal district court and a state district court by requesting that the bankruptcy court order cases pending in those courts to be consolidated. The bankruptcy court further noted the absurdity of Franklin's request by noting that Franklin had filed both of the cases, and that to now complain that they should be consolidated was "simply ridiculous."

The court further noted that Smith, Main Hurdman, and Walker, Drexler and Williamson filed proofs of claim which Franklin had objected to. In his objections to the proofs of claim, Franklin asserted that the claims were subject to offsetting liabilities in the two suits in which Franklin represented William Elliott. In spite of his acknowledgement that the matters were presently being litigated in other courts, Franklin requested that "a hearing on the Proof of Claim be set at the earliest possible date." The bankruptcy court stated that only after the objections had twice been set for hearing did William Elliott agree that the objections should not be heard until after the conclusion of the other litigation. Further, Franklin had acknowledged that the only hope of a successful Chapter 11 plan was for William Elliott to recover a large sum of money in the suits in which Franklin represented William Elliott. Because there was no deadline for filing objections to claims and because there was no possibility that William Elliott would be able to file a plan until after the two lawsuits were completed, the bankruptcy court concluded that Franklin's purpose in

objecting to those claims and requesting an early hearing was to harass the other parties.

Finally, the bankruptcy court noted that Franklin had allowed William Elliott to enter into a settlement agreement. The settlement agreement was entered into well after the bankruptcy petition was filed. However, no notice was given to William Elliott's creditors, and Franklin did not attempt to secure the bankruptcy court's approval of the settlement agreement.

The bankruptcy court then discussed what sanctions were appropriate in this case. The court noted initially that it should use the least possible sanction to deter improper conduct. The bankruptcy court carefully analyzed the request of Walker, Drexler, and Williamson for attorney's fees in the amount of $6,110.78. An attorney for Walker, Drexler, and Williamson testified and submitted detailed statements concerning the amount of attorney's fees expended in the bankruptcy proceeding. The bankruptcy court, however, determined that not all of the requested attorney's fees were due to Franklin's improper actions. The bankruptcy court found that Franklin caused unnecessary expenses to Walker, Drexler and Williamson through Franklin's objection to their proof of claim and expenses associated with the show cause hearing. After reviewing the statements of Walker, Drexler and Williamson, the bankruptcy court awarded a $3,000 judgment against Franklin, individually. Likewise, the court considered the request of Main Hurdman for

$44,551.94. After reviewing Main Hurdman's request, the bankruptcy court awarded sanctions of $10,000 for Franklin's improper actions before the bankruptcy court. Our review of the record discloses ample support for the bankruptcy court's conclusions. Therefore, we conclude that the bankruptcy court did not abuse its discretion in assessing attorneys' fees against Franklin. See Willy v. Coastal Corp., 915 F.2d 965, 968 (5th Cir. 1990) (upholding the district court's imposition of attorney's fees as a sanction under Rule 11 when the district court "examined both the causal relationship between [the sanctioned] conduct and the fees incurred by [the opposing party], as well as the amount of sanctions imposed"), aff'd, 112 S. Ct. 1076 (1992).

While we believe that there were sufficient factual findings to support the bankruptcy court's imposition of attorneys' fees against Franklin, we do not believe that there are sufficient findings for this court to determine whether the bankruptcy court abused its discretion in publicly reprimanding and suspending Franklin from practicing in front of the bankruptcy court for three years. In Thomas, we stated that the sanction should be tailored to fit the particular wrong; we reasoned that a court "should carefully choose sanctions that foster the appropriate purpose of the rule, depending upon the parties, the violation, and the nature of the case." 836 F.2d at 877. We further note that the bankruptcy court should impose the least severe sanction adequate to remedy the wrong that the party has committed. Id.

at 878. Because the sliding scale of Thomas requires a court to provide specific factual findings to support large sanctions, we must vacate the order of the district court which upholds the bankruptcy court's imposition of a public reprimand and a three-year suspension. See Lelsz v. Kavanagh, 137 F.R.D. 646, 656 n.9 (N.D. Tex. 1991) (holding, in a case when an attorney had violated the Dondi precepts numerous times and been warned by the court concerning her conduct, that suspending the attorney would be too severe a sanction). The bankruptcy court made no findings as to why a public reprimand and a three-year suspension were the least severe sanction adequate to remedy the wrong that Franklin had committed. Furthermore, the bankruptcy court did not state what other sanctions it had considered and why those sanctions were inadequate. See Akin v. Q-L Inv., Inc., 959 F.2d 521, 534-35 (5th Cir. 1992) (reversing and remanding a district court's imposition of a large sanction when the district court did not make specific factual findings, did not list the factors it took into consideration in reaching its conclusion, did not state which alternative sanctions, if any, were considered, and did not explain why the sanction was the least severe sanction adequate to remedy the wrong). Therefore, because the bankruptcy court did not make specific findings as to why a public reprimand and a three-year suspension were the least severe sanction adequate to remedy Franklin's wrongs, we must vacate that portion of the district court's order that affirmed the bankruptcy court's imposition of a public reprimand and a three-year suspension and

remand the case to the bankruptcy court for reconsideration. In so doing, we intimate no opinion on whether the same sanctions, properly supported, would be appropriate.

III.

For the foregoing reasons, we AFFIRM the district court's approval of the bankruptcy court's imposition of attorneys' fees as an appropriate sanction against Franklin. However, we VACATE that portion of the district court's order affirming the bankruptcy court's order which called for a public reprimand of Franklin and enjoined Franklin from practicing in the United States Bankruptcy Court for the Northern District of Texas for three years. We REMAND the case to the district court with instructions to VACATE that portion of the bankruptcy court's order calling for a public reprimand and three-year suspension and to REMAND the case to the bankruptcy court for further consideration in accordance with this opinion. Franklin shall bear the costs of this appeal.