FILED
United States Court of Appeals
Tenth Circuit

July 19, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: DRALA MOUNTAIN CENTER,

Debtor.

PHILIP A. BRALICH,

Appellant,

v.

DRALA MOUNTAIN CENTER,

Appellee.

No. 22-1433
(BAP No. 22-15-CO)
(Bankruptcy Appellate Panel)

ORDER AND JUDGMENT*

Before **MATHESON**, **BACHARACH**, and **ROSSMAN**, Circuit Judges.

Philip A. Bralich, proceeding pro se, appeals from a decision by the Bankruptcy Appellate Panel (BAP) dismissing his appeal as constitutionally and equitably moot. Exercising jurisdiction under 28 U.S.C. § 158(d)(1), we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. Background

On February 25, 2002, Drala Mountain Center (the Debtor) filed a voluntary petition for relief pursuant to Subchapter V of Chapter 11 of the Bankruptcy Code.

On July 28, 2022, the Debtor filed its Plan of Reorganization, which was supported by all the Debtor's creditors. Dr. Bralich did not file a proof of claim in the Subchapter V case, he was not a creditor in the Subchapter V case, and he was not entitled to receive any distributions under the Plan.

On August 24, 2022, Dr. Bralich filed a Motion in Opposition to Debtor in Possession for Cause (Motion). In the Motion, Dr. Bralich requested that the bankruptcy court remove the Debtor as the Debtor in Possession and order the appointment of a different trustee. Dr. Bralich subsequently filed additional letters related to his Motion. The Bankruptcy Court did not designate the Motion or letters as objections to the plan.

On September 9, 2022, the Debtor filed an objection to the Motion, arguing Dr. Bralich had earlier taken the position in bankruptcy court that he was not a creditor or party in interest in the Subchapter V case, which was inconsistent with the position in his Motion that he had standing to seek appointment of a different trustee. The Debtor contended that, under these circumstances, Dr. Bralich should be judicially estopped from asserting he had standing to pursue his Motion.

The bankruptcy court subsequently entered an order (Standing Order) striking the Motion and the related letters after determining Dr. Bralich lacked standing to

object to matters in the bankruptcy case. Dr. Bralich appealed the Standing Order to the BAP.

The bankruptcy court next held a hearing to confirm the Debtor's Plan of Reorganization and then entered a Confirmation Order. Dr. Bralich was present at the hearing, but did not enter an appearance, object to the Plan, or make any statements on the record because, as he later said, "he is not per se[] a Creditor." Aplee. Suppl. App., Vol. III at 439. Dr. Bralich did not request a stay of the Confirmation Order or file an appeal from the Confirmation Order.

At the end of September 2022, the Debtor consummated the Plan and the Plan became effective. As required for substantial consummation of the Plan, the Debtor executed and delivered restructuring agreements and restructured promissory notes to its creditors and made a payment to its secured creditor. As set out in the Confirmation Order, the services of the Trustee were terminated on the effective date of the Plan.

In November 2022, the BAP dismissed Dr. Bralich's appeal of the Standing Order for lack of jurisdiction, finding the appeal to be constitutionally and equitably moot. Regarding constitutional mootness, the BAP explained that the Plan had been confirmed and substantially consummated. The BAP further explained that Dr. Bralich is not a creditor in the Subchapter V case, is not entitled to any distributions under the Plan, did not object to the Plan or the Confirmation Order, and did not seek a stay of the Confirmation Order. Because the creditors had already received distributions under the confirmed Plan and all bankruptcy estate assets had

vested in the Debtor pursuant to the Confirmation Order, the BAP concluded there was "no form of meaningful relief this Court could order if [Dr. Bralich] was to prevail on appeal." R. at 11.

Regarding equitable mootness, the BAP identified the six factors to consider when making an equitable mootness inquiry and determined that "all of the factors weigh against [Dr. Bralich]." *Id.* at 12. The court therefore concluded it was also appropriate to dismiss based on equitable mootness.

Dr. Bralich now appeals from the BAP's dismissal order.

II. Discussion

We normally review de novo the BAP's determination that an appeal is constitutionally moot. *See Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 584 F.3d 1327, 1334 (10th Cir. 2009). And we normally review for abuse of discretion the BAP's determination that an appeal is equitably moot. *See id.* at 1335. But here, Dr. Bralich fails to comply with Rule 28 of the Federal Rules of Appellate Procedure and fails to challenge the BAP's reasons for concluding his appeal of the Standing Order was constitutionally and equitably moot. Because his briefs are "wholly inadequate to preserve issues for review," we affirm the BAP's decision. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005); *see also Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366, 1369 (10th Cir. 2015) (stating that an appellant must "explain what was wrong with the reasoning that the district court relied on in reaching its decision" and affirming the dismissal of a claim where appellant did not challenge the district court's reasoning).

We recognize Dr. Bralich's pro se pleadings are to be liberally construed, but we also recognize "the court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." *Garrett*, 425 F.3d 840. And pro se parties, like Dr. Bralich, must still comply with court rules. *See id.*

In its response, the Debtor points out the deficiencies in Dr. Bralich's opening brief, explaining he has disregarded the requirements of Rule 28 because he "does not identify any issue presented for review concerning the . . . [BAP's] conclusion that the appeal . . . was constitutionally moot" and does not "make[] any argument under the applicable legal standards for constitutional mootness." Aplee. Br. at 10. The Debtor contends Dr. Bralich's brief "entirely ignor[es] the actual holding of the [BAP] and the fact that substantial consummation of the Debtor's plan precludes him any effective relief in the bankruptcy case." *Id.* We agree with the Debtor's characterization of Dr. Bralich's opening brief.

"Under Rule 28, which applies equally to pro se litigants, a brief must contain more than a generalized assertion of error, with citations to supporting authority." *Garrett*, 425 F.3d at 841 (ellipsis and internal quotation marks omitted). "When a pro se litigant fails to comply with that rule, we cannot fill the void by crafting arguments and performing the necessary legal research." *Id.* (brackets and internal quotation marks omitted).

In his opening brief, Dr. Bralich identifies four issues, but none of them address how the BAP erred or abused its discretion in concluding his appeal was

constitutionally and equitably moot. *See* Aplt. Opening Br. at 13-15. At the end of his opening brief, he does include a section on "Mootness," *see id.* at 29, but that section consists of conclusory and irrelevant assertions and does not contain any citations to legal authority as Rule 28 requires.[1] *See id.* at 29-34. Likewise, although "[t]he first task of an appellant is to explain to us why the [BAP's] decision was wrong," Dr. Bralich "utterly fails . . . to explain what was wrong with the reasoning that the [BAP] relied on in reaching its decision." *Nixon*, 784 F.3d at 1366.

In his reply brief, Dr. Bralich does mention constitutional and equitable mootness. But he fails to address the BAP's reasoning or to explain how the BAP erred or abused its discretion in determining his case was constitutionally and equitably moot. Under these circumstances, we are compelled to affirm the BAP's decision. *See id.* at 1369.

III. Conclusion

We affirm the BAP's judgment.

Entered for the Court

Per Curiam

[1] Rule 28 states that an appellant's argument "must contain . . . appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Fed. R. App. P. 28(a)(8)(A).