

FILED
United States Court of Appeals
Tenth Circuit

JUN 20 1990

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

ROBERT L. HOECKER
Clerk

In Re: DONALD R. McINTOSH)
and JUNE V. McINTOSH,)
)
Debtors,)
)
)
GARY J. GOKEY and DEBORAH)
GOKEY,)
)
Creditors-Appellants,)
)
vs.)
)
DON McINTOSH, SR. and JUNE)
McINTOSH,)
)
Debtor-Appellees.)

No. 89-1049
(D.C. No. 88-B-1317)
(D. Colo.)

ORDER AND JUDGMENT*

Before ANDERSON, BALDOCK and EBEL, Circuit Judges.**

Bradley P. Pollock, an attorney at law, appeals from an order of the district court awarding attorney's fees in the amount of \$2,475 to opposing counsel. Pollock previously had been assessed attorney's fees of \$2,029 for conduct arising out of his

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause therefore is ordered submitted without oral argument.

representation of the creditors in this bankruptcy matter. In re McIntosh, 89 B.R. 144, 149 (Bkrtcy D. Colo. 1988). On appeal, the district court held that Pollock's slovenly performance before the bankruptcy court fully warranted the imposition of attorney's fees. Moreover, the court found that Pollock displayed "the same deficient conduct" before the district court as he displayed in the bankruptcy proceeding and consequently assessed additional attorney's fees of \$2,475 pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. § 1927. Pollock appealed both the original fee assessment in the bankruptcy court and the additional fee assessment by the district court. However, in an order filed October 6, 1989, this court dismissed Pollock's appeal as to all issues except for the district court's assessment of additional fees.

Section 1927 provides that "[a]n attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses and attorney's fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. Section 1927 applies to "multiplicative litigation tactics that are harassing, dilatory, or otherwise 'unreasonable and vexatious.'" Jones v. Continental Corp., 789 F.2d 1225, 1230 (6th Cir. 1986); see, e.g., Warner Bros. v. Dae Rim Trading, 877 F.2d 1120, (2d Cir. 1989) (repeated citations to unreported cases in brief justifies sanctions under § 1927). A court may assess fees under § 1927 "when an attorney knows or reasonably should know that a claim pursued is frivolous, or that his or her litigation tactics will

needlessly obstruct the litigation of nonfrivolous claims"
Jones, 798 F.2d at 1230. Such assessments are reviewed for abuse
of discretion. Id. at 1229.

Here, Pollock displayed the same vexatious conduct in the
district court as he did before the bankruptcy court. Pollock
untimely sought to amend his statement of issues and designation
of record without leave of court. His brief was filed late and
only after the debtors filed a motion to dismiss. Finally, the
brief not only failed to address the issues raised previously in
the statement of issues but also raised issues that had not been
preserved for appeal. We cannot say that the district court
abused its discretion in concluding that this unprofessional
conduct was sufficiently unreasonable and vexatious to justify an
award of attorney's fees under § 1927.

AFFIRMED.

Entered for the Court

Bobby R. Baldock