NO. 24-1854

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

(In re: LaDONNA HUMPHREY, Debtor)

LADONNA HUMPHREY	APPELLEE
v.	
ANTHONY CHRISTOPHER and	
ABSOLUTE PEDIATRIC THERAPY	APPELLANTS

On Appeal From
United States District Court for the Western District of Arkansas

Hon. P.K. Holmes, III, Presiding Judge

BRIEF OF APPELLANTS

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SUMMARY OF THE CASE AND WAIVER OF ORAL ARGUMENT

This appeal presents the issue of whether a debtor's right to seek review of a pending state court judgment against her is property of the bankruptcy estate within the meaning of 11 U.S.C. § 541, as informed by Arkansas law. The issue arises in the context of the trustee's motion pursuant to 11 U.S.C.§ 363 for approval of the sale of all the debtor's appellate rights relating to dismissal of her counterclaim and entry of a judgment against her for $3,570,977.88 in the Circuit Court of Benton County, Arkansas. After conducting a hearing, the bankruptcy court approved the sale. On appeal, the district court reversed the order, finding that the bankruptcy court had abused its discretion by approving the sale. In this appeal from the district court's order, this Court will sit as a second appellate court, reviewing the bankruptcy court's decision. Since the evidence supporting the bankruptcy court's decision was largely undisputed, and the issues presented on appeal are well framed, oral argument would not materially assist this Court in resolution of the appeal.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1A of the Local Rules of the United States Court of Appeals for the Eighth Circuit, appellant Absolute Pediatric Therapy states that it has no parent corporations and that no publicly-traded corporation owns more than 10 percent of its stock, in that the rights of the entity formerly known as Absolute Pediatric Services, Inc. d/b/a Absolute Pediatric Therapy, other than the claims in this case, have been sold to a person or entity not involved in this appeal.

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JURISDICTIONAL STATEMENT

The United States Bankruptcy Court for the Eastern and Western Districts of Arkansas, sitting within the Western District at Fayetteville, Arkansas, had subject matter jurisdiction over debtor LaDonna Humphrey's case pursuant to designation under 28 U.S.C. § 151. This appeal arises from the final judgment of the District Court for the Western District of Arkansas, sitting as an appellate court pursuant to 28 U.S.C. § 158(a)(1), that reversed the bankruptcy court's order approving the sale of estate property. The district court's opinion and order was entered on March 26, 2024. **App. 070-081; R. Doc. 21, at 1-12**. A judgment on a separate document was entered on the same date. **App. 082; R. Doc. 22, at 1**. Appellants Anthony Christopher and Absolute Pediatric Therapy ("Absolute") filed their notice of appeal on April 23, 2024. **App. 083-084; R. Doc. 24, at 1-2.** The district court order disposed of all the claims of the parties relating to the sale of estate property by the trustee in a Chapter 7 proceeding. This Court has jurisdiction over the appeal pursuant to 28 U.S.C. § 158(d)(1).

STATEMENT OF THE ISSUES

Because this Court sits as a second appellate court—reviewing the Bankruptcy Court decision under the same standards applied by the District Court—the issues on appeal are as follows:

I. As a matter of law, the bankruptcy court did not err in concluding that all of Humphrey's state court appellate rights were property of the estate under 11 U.S.C. § 541, as informed by Arkansas law.

Bibbs v. Cmty. Bank of Benton, 375 Ark. 150, 289 S.W.3d 393 (2008)

In re Matter of Croft, 737 F.3d 372 (5th Cir. 2013)

Mozer v. Goldman (In re Mozer), 302 B.R. 892 (C.D.Cal.2003)

II. The bankruptcy court did not abuse its discretion in concluding that the sale of state law appellate rights was in the best interests of the estate.

Simantob v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R. 282 (9th Cir. BAP 2005)

American Civil Liberties Union of Minnesota v, Tarek ibn Ziyad Academy, 643 F.3d 1088 (8th Cir. 2011)

III. The finality rule of 11 U.S.C. § 363(m) barred any appellate challenge to the sale of estate property where the debtor failed to obtain a stay of the Bankruptcy Court order and the sale was consummated before any appeal could be decided.

In re Rodriquez, 258 F.3d 757 (8th Cir. 2001)

Int'l Union, United Auto., Aerospace and Ag. Implement Workers of Am. v. Morse Tool, Inc., 85 B.R. 666 (D. Mass. 1988)

STATEMENT OF THE CASE

Context for the issues in this appeal can be drawn from the evidence of a dispute between the parties that was the subject of contentious litigation in the Circuit Court of Benton County, Arkansas, in *Absolute Pediatric Services, Inc., et al. v. Humphrey*, No. 04CV-18-2961. In response to that lawsuit against her, Humphrey filed an answer and counterclaim. **App. 153-167. (Trustee's Hearing Exhibit 9.**[1] During the course of the state court litigation, the court granted a motion for contempt and sanctions filed by plaintiffs Anthony Christopher and Absolute Pediatric Therapy. **App. 175-180. (Trustee's Hearing Exhibit 11.)**[2]

In granting the motion, the state court found that Humphrey was "responsible for active and aggressive spoliation of evidence," and that she was in willful contempt of the court's prior orders. By order of

[1]This state court filing was admitted into evidence by the bankruptcy court but not scanned or electronically included in the record. Appellants obtained the document from the bankruptcy court clerk and have included it in the Appendix in accordance with Local Rule 10A.

[2] This state court filing was admitted into evidence by the bankruptcy court but not scanned or electronically included in the record. Appellants obtained the document from the bankruptcy court clerk and have included it in the Appendix in accordance with Local Rule 10A.

August 14, 2019, the court struck Humphrey's answer to the complaint and dismissed her counterclaim. The court further stated that it would hold a hearing on the plaintiffs' damages at a later date. **App. 175-177. (Trustee's Hearing Exhibit 11)**[3]. As permitted by Rule 2(a)(4) of the Arkansas Rules of Appellate Procedure – Civil, Humphrey filed an immediate appeal to the Arkansas Court of Appeals on September 12, 2019. **App. 187-188. (Absolute's Hearing Exhibit 1)**[4]**.**

Following a damages hearing held on September 17, 2019, **App. 168-174, (Trustee's Hearing Exhibit 10)**[5], the circuit court on September 23, 2019, entered its judgment finding Humphrey liable for

[3] This state court filing was admitted into evidence by the bankruptcy court but not scanned or electronically included in the record. Appellants obtained the document from the bankruptcy court clerk and have included it in the Appendix in accordance with Local Rule 10A.

[4] This state court filing was admitted into evidence by the bankruptcy court, but not scanned or electronically included in its record, or retained by the court. In accordance with Local Rule 10A, appellants have included a copy in the Appendix.

[5] This transcript of state court proceedings was admitted into evidence without objection by the bankruptcy court, but not scanned or electronically included in the record. Appellants obtained the document from the bankruptcy court clerk and have included it in the Appendix in accordance with Local Rule 10A.

$3,570,977.88, plus pre- and post-judgment interest. **App. 181-186. (Trustee's Hearing Exhibit 14)[6].** The amount of damages was determined by the court, without a jury, based on evidence produced at the hearing. On October 22, 2019, Humphrey filed a second notice of appeal, this one referencing the order entering a damages judgment. **App. 189-190. (Absolute's Hearing Exhibit 2).[7]** The following day Humphrey filed an amended notice of appeal, referencing the September 23, 2019 damages order "and all previous ordered filed by the Court." **App. 191-192. (Absolute's Hearing Exhibit 3).[8]**

Between the entry of the state court order striking her answer and the ensuing damages order, Humphrey filed a petition in bankruptcy

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[7] This state court filing was admitted into evidence by the bankruptcy court, but not scanned or electronically included in its record, or retained by the court. In accordance with Local Rule 10A, appellants have included a copy in the Appendix.

[8] This state court filing was admitted into evidence by the bankruptcy court, but not scanned or electronically included in its record, or retained by the court. In accordance with Local Rule 10A, appellants have included a copy in the Appendix.

court under Chapter 7 of the Bankruptcy Code on September 19, 2019. **App. 024-032; BK R. Doc 1, at 1-9.** The bankruptcy case was docketed as Case No. 5:19-bk-72555 in the United States Bankruptcy Court for the Western District of Arkansas. On October 14, 2019, Humphrey filed schedules of her assets, listing the "dismissed appeal in state court lawsuit" as a claim against third parties. **App. 109-116; BK R. Doc. 15, at 3-10. (Reproduced and Admitted as Trustee's Exhibit 4).**[9]

On December 4, 2019, Trustee Bianca Rucker filed a motion to sell estate property pursuant to 11 U.S.C. § 363, with a notice of opportunity to object and overbid. **App. 033-036; BK R. Doc. 46, at 1-4.** The motion stated that Absolute Pediatric Services, Inc. (which at the time did business as Absolute Pediatric Therapy) had offered to purchase all of Humphrey's claims or potential claims in state court, including the debtor's appeals, for $12,500.00. The motion further stated that this offer was the highest and best offer received for these assets of the estate.

[9] While this filing was part of the bankruptcy court's electronic record and is so identified here, it is referenced in the context of admission of a copy into evidence by the bankruptcy court.

On December 25, 2019, Humphrey filed an amended schedule of assets, for the first time categorizing her state court appellate rights by separate issues: an appeal based on failure to hold a jury trial on damages; an appeal of the dismissal of her counterclaim; and an appeal of the dismissal of her answer. **App. 045-046; BK R. Doc. 58, at 9-10.** Also on December 25, 2019, Humphrey filed a response to the trustee's motion for approval of sale, asserting that the state court appeal involved "three causes of action," and objecting to the sale of the "cause of action for striking the Debtor's answer and for denial of a jury trial on damages." **App. 047-048; BK R. Doc. 59, at 1-2.**

Bankruptcy Judge Ben Barry held a hearing on the trustee's motion for approval of the sale on February 12, 2020. During the hearing, Humphrey's counsel admitted that no one was questioning Trustee Bianca Rucker's judgment or authority to sell. **App. 198-199. R. Doc. 29, at 6-7.**[10] Humphrey's counsel did not object to the sale

[10] The hearing was electronically recorded, but no court reporter was present. The district court ruled after listening to the audio recording. In accordance with procedures set forth at the bankruptcy court website, appellants in this Court arranged for the audio recording to be transcribed by an approved transcription service, which filed it with the district court. It has been included in the Appendix with references to the docket number.

price for the property. **App. 198; R. Doc. 29, at 6.** Humphrey's counsel admitted that the appeal was property of the estate. **App. 199; R. Doc. at 7. T**he sole argument by Humphrey's counsel at the hearing was that the bankruptcy court should not approve the sale because it would take away a core, fundamental right of the debtor and leave her defenseless. **App. 199, 229; R. Doc, 29, at 7, 37.** Humphrey was not present and did not testify at the hearing.

The bankruptcy court heard testimony from Trustee Rucker and from Anthony Christopher regarding the trustee's sale of the assets and the value of the assets. The trustee stated that the state court orders were "terrible" and that on appeal to the Arkansas Court of Appeals the standard would be an abuse of discretion in applying Rule 37 of the Arkansas Rules of Civil Procedure. **App. 234; R. Doc. 29, at 42.** The trustee considered that a very high standard of review would be applied to the state court orders, especially in light of the state trial court's findings that Humphrey destroyed evidence, was guilty of "aggressive" spoliation of evidence, sent email spoof messages, lied about her Facebook account, and lied about her email accounts being hacked. **App. 234; R. Doc. 29, at 42.**

The trustee entered 14 exhibits into evidence, including the schedule and amended schedules filed by the debtor, the transcript from the September 17, 2018 hearing in the state court case, the state court's order filed August 14, 2019, the state court's order filed October 3, 2019, directing that Humphrey be incarcerated for contempt of court, and the state court's judgment filed on September 23, 2019. Absolute later entered the state court notices of appeal into evidence.

The court found there were no other bidders and that Humphrey—despite arguing the sale resulted in a deprivation of her core, fundamental rights—made no effort to bid on the sale. **App. 239; R. Doc. 29, at 47.** The court further found that there was an arms-length negotiation of the sale between the trustee and Absolute. The bankruptcy court noted that Humphrey did not dispute the amount of the sale price and that Humphrey acknowledged the state court appeal rights were property of the estate under Section 541 of the Code. **App. 239; R. Doc. 29, at 47.** At the conclusion of the hearing, Judge Barry opined that the trustee had gotten a "good deal" for the appellate rights, and noted that parties who prevail in trial court generally are successful in defending judgments on appeal about 80 percent of the

time, so Humphrey's state court appeal faced an "uphill battle." **App, 240-245; R. Doc. 29, at 48-49.** Referring to a "Business Judgment" analysis, Judge Barry observed that the trustee was competent and experienced, so that her decision to sell the estate property would not be disturbed. **App. 245; R. Doc. 29, at 49.**

In responding to the main argument put forth by Humphrey's counsel at the hearing, Judge Barry observed that Humphrey gave up her legal interests, no matter how personal or fundamental they may be, when she filed for bankruptcy in her effort to wipe out her debt—including the substantial state court judgment in favor of Christopher and Absolute. **App. 240-242; R. Doc. 29, at 48-50.**

On February 14, 2020, the bankruptcy court entered an order approving the sale, "for the reasons stated at the conclusion of the February 12 hearing." **App. 049-050; BK R. Doc. 72, at 1-2**. Humphrey appealed this order to the district court by notice filed February 28, 2020, but did not seek a stay of the order approving the sale. Consequently, the trustee completed the sale and filed a report of sale, including a copy of an executed bill of sale, on March 18, 2020**. App, 055-056; R. BK R. Doc. 79, at 1-2.**

The appeal to the district court was held in abeyance for a lengthy period due to criminal charges associated with some of the allegations in the state court litigation, but it was reopened in November 2023. After reviewing supplemental briefing by the parties, District Judge P.K. Holmes, III, entered an order on March 26, 2024, reversing the bankruptcy court order that had approved the sale. **App. 070-081; R. Doc. 21, at 1-12.** By notice filed in the district court on April 23, 2024, Christopher and Absolute appealed to this court.

SUMMARY OF THE ARGUMENT

This Court should affirm Bankruptcy Judge Ben Barry's order granting Trustee's Motion to approve the sale of Humphrey's appellate rights in a state court case, and reverse the district court decision overturning the bankruptcy order. The Court of Appeals reviews the bankruptcy court's legal conclusions *de novo*, and its findings of fact under the clearly erroneous standard. The bankruptcy court's decision that the sale was in the best interest of the estate is reviewed for abuse of discretion. The bankruptcy court held an hour and a half long hearing, heard testimony from the trustee, received numerous exhibits (including orders from the state court case), and considered arguments from all parties involved. Judge Barry did not err in his order—his legal conclusions were correct and he was not clearly erroneous in his findings of fact. The sale of Humphrey's appellate rights was proper under 11 U.S.C. §363(b)(1). There was no abuse of discretion in approving the sale after applying a business judgment analysis of the transaction. Finally, since Absolute was a good faith purchaser of the appellate rights, the completion of the sale bars Humphrey's challenge

to the bankruptcy order under the principles underlying the finality rule of 11 U.S.C. §363(m).

ARGUMENT

Standards of Review

In appeals from a district court's review of a bankruptcy order, this Court sits "as a second reviewing court, [applying] the same standards as the district court in [the court of appeals'] review of the bankruptcy court's order." *First State Bank of Roscoe v. Stabler*, 914 F.3d 1129, 1136 (8th Cir. 2019). Accordingly, this Court analyzes the bankruptcy court decision—not that of the district court—and "review[s] the bankruptcy court's legal conclusions *de novo*, and its factual findings for clear error." *Apex Oil Co. v. Sparks (In re Apex Oil Co.)*, 406 F.3d 538, 541 (8th Cir. 2005).

Ultimately, "[d]ecisions whether to approve the sale of estate property are inherently equitable in nature, and [a reviewing court] will reverse such decisions only if the Bankruptcy Court 'achieves an unjust result amounting to a clear abuse of discretion.'" *In re Stemwedel*, No. 18-cv-02590 MSK, 2019 WL 4509246 at *3. (D. Col. September 19, 2019). This Court will not find an abuse of discretion unless it has a "definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached upon a weighing of

the relevant factors." *In re Apex Oil Co.*, 406 F.3d at 541 (quoted case omitted).

I. As a matter of law, the bankruptcy court did not err in concluding that all of Humphrey's state court appellate rights were property of the estate under 11 U.S.C. § 541, as informed by Arkansas law.

Judge Barry's conclusion that *all* of Humphrey's rights with respect to her state court appeal were property of the estate is a legal conclusion, to which this Court applies *de novo* review. Based on her response to the motion for sale, her final amended schedules, and her counsel's argument at the February 12, 2020, hearing, Humphrey's opposition to the Section 363 sale rests on the contention that her state court appeal is not just one challenge to various circuit court orders, but three "causes of action" on appeal to the Arkansas Court of Appeals. She characterizes the issues she intended to raise in state court as challenges to (1) the state court decision to strike her answer; (2) the state court decision to dismiss her counterclaim; and (3) the state court judgment awarding approximately $3.5 million in damages.

Humphrey's argument is as impractical as it is illogical. Arkansas appellate courts take up each appeal as one proceeding. Humphrey's attempt to piecemeal a single, unitary appeal into two distinct mini-

appeals cannot be squared with the nature of appellate procedure in Arkansas. Humphrey's appeal was docketed with the Arkansas Court of Appeals on January 16, 2020, as one case—*LaDonna Humphrey v. Absolute Pediatric Services, Inc. d/b/a Absolute Pediatric Therapy, and Anthony Christopher*, No. CV-20-33. There is no procedure under state law by which this single appeal can be transformed into two appeals—with two distinct appellants—based on the issues to be raised. It would have been clear error for the bankruptcy court to approve the sale of Humphrey's counterclaim issue while forbidding the sale of her challenge to the striking of her answer and her claim that she was wrongly denied a jury trial on damages. The appeals court was never going to set two briefing schedules, or schedule two oral arguments, or allow the dismissal of one such separated appeal while the other continued.

At the bankruptcy court hearing Humphrey's counsel did not take issue with the sale of the state court appellate issue concerning the dismissal of her counterclaim, but sought to exclude from the sale the issues about striking Humphrey's answer and awarding the state court plaintiffs a money judgment without having a jury determine the

amount of those damages. While Humphrey did not expressly characterize her appellate issues as "offensive" and "defensive," the distinction between issues she conceded were property of the estate and those she sought to retain suggests that line of demarcation. Nevertheless, whether appellate rights are property of the estate or not depends on Arkansas law, and nothing in state law suggests these rights are treated differently depending on whether they relate to an opportunity for the appellant to recover a judgment, or to a challenge to a judgment against the appellant.

Arkansas has treated the right to pursue legal relief at any stage of a proceeding as a property interest, which becomes property of the estate by operation of Section 541. The Arkansas Supreme Court has explained the legal principle as follows:

> A debtor's commencement of a Chapter 7 bankruptcy creates an estate consisting of all of the debtor's legal and equitable interests in property. 11 U.S.C. § 541(a)(1) (2008). Once a bankruptcy trustee is appointed to administer the debtor's estate, *the trustee has the exclusive right to prosecute causes of action that are the property of that estate.* 11 U.S.C. §§ 323, 704(1). Causes of action that accrue prior to the filing of a petition for relief under the Bankruptcy Code are property of the estate. *See Bratton v. Mitchell, Williams, Selig, Jackson & Tucker*, 302 Ark. 308, 788 S.W.2d 955 (1990) (*citing Vreugdenhil v. Hoekstra*, 773 F.2d 213 (8th Cir. 1985)). A debtor *lacks standing* to maintain, on his or her own behalf, a

> suit belonging to the estate unless that cause of action has been abandoned by the trustee. *Id.*

Bibbs v. Cmty. Bank of Benton, 375 Ark. 150, 156, 289 S.W.3d 393 (2008) (emphasis supplied).

While Arkansas courts have not analyzed whether there is a difference between the property nature of offensive appellate rights and those of defensive appellate rights, the reasoning behind the Fifth Circuit's *per curia*m decision in *In re Matter of Croft,* 737 F.3d 372 (5th Cir. 2013) is compelling.

First, as the Fifth Circuit recognized, "the right to appeal is valuable in nature, irrespective of whether the underlying judgment has any value to the debtor." *Id.* at 376 (cited case omitted). Even if a judgment against the debtor has no value to the estate, "the right to appeal that judgment certainly has a *quantifiable* value to the debtor." *Id.* at 376-377 (emphasis in original). Second, since Section 541 transforms all legal or equitable interests of the debtor in property into property of the estate, it certainly applies to the debtor's legal interest in minimizing the impact of an adverse judgment. *Id.* Finally, when the debtor objecting to the sale of appellate rights cannot demonstrate "why losing defensive appellate rights would create a greater injustice

than losing cause-of-action appellate rights, there is no reason to treat them differently." *Id.* at 378.

In addition to *Matter of Croft*, the commonly accepted definition of property—"[c]ollectively, the rights in a valued resource such as land, chattel, or an intangible" BLACK'S LAW DICTIONARY (Bryan Garner, ed. 11th ed. 2019)—supports the conclusion that all appellate rights are property of the estate. See, e,g,, ") *In re Fridman*, No. BAP CC-15-1151-FKIKU, 2016 WL 3961303 (B.A.P. 9th Cir. July 15, 2016) ("[o]nce the claim belongs to the estate, the trustee has exclusive standing to assert the claim (right to appeal state court judgment is property that is part of debtor's estate and properly sold to party against whom the appeal is directed); *McCarthy v. Goldman (In re McCarthy),* BAP No. CC–07–1083–MoPaD, 2008 WL 8448338 (9th Cir. BAP Feb. 19, 2008) (implicitly agreeing with the bankruptcy court that the debtor's "Appeal Rights are property of the estate"); *In re Marciano,* No. 1:11–BK–10426–VK, 2012 WL 4369743 (C.D.Cal. Sept. 25, 2012) (under California law, the right to appeal an adverse judgment is a property right); *Mozer v. Goldman (In re Mozer),* 302 B.R. 892, 896 (C.D.Cal.2003) ("all of the Debtors' appellate rights, including the

Defensive Appellate Rights, are saleable by the Trustee"); *Matthews v. Potter,* 316 Fed. Appx. 518, 521 (7th Cir.2009) (stating that, under § 541 of the Bankruptcy Code, "all of a debtor's property, including legal claims, become part of the bankruptcy estate at the time the petition is filed").

Moreover, the sale of appellate rights, whether "offensive" or "defensive," involves a calculation by the trustee as to whether collecting the proceeds of a sale on the one hand, or pursuing the appeal on the other, is in the best interest of the estate. *See Matter of Croft*, 737 F.3d at 377 (noting trustee's duty under 11 U.S.C. §704(a)(1) to maximize the value of the estate by ensuring that the sale price exceeds the expected value of litigating the appeal). Here, the trustee concluded that an appeal on Humphrey's behalf would likely be unsuccessful, and the bankruptcy court agreed with her.

Notably, there was a proper motion for approval of sale submitted by the trustee, which included a notice of opportunity to object and a notice of opportunity to overbid. The trustee sought competitive bids for the state court appeal rights, in particular from the debtor Humphrey, as she kept her counsel informed and communicated with her counsel

during this process. But there were no other bids on Humphrey's appellate rights. Absolute was the only bidder. Absolute increased its bid from $7,500 to $12,500 as part of the negotiation process with the Trustee. **App. 206; R. Doc. 29, at 14.**

It is undisputed that, as the bankruptcy court found, the negotiations between the trustee and Absolute were at arm's length. The sufficiency of the amount of the sale was not in dispute by Humphrey. The trustee and the court weighed the merits of the appeal and the "terrible" final judgment that Humphrey would have to overcome, to which an abuse of discretion standard of review applied on appeal. The trustee and the court also considered the value of the appeal and the costs of litigating the appeal. They concluded the sale was a "good deal." The evidence of record proves this.

II. The Bankruptcy Court did not abuse its discretion in concluding that the sale of state law appellate rights was in the best interests of the estate

Section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" and the position of the trustee ordinarily is afforded deference—especially where business judgment is

involved in the analysis. "Nevertheless, particularly in the face of opposition by creditors, the requirement of court approval means that the responsibility ultimately is the court's." *Simantob v. Claims Prosecutor, LLC (In re Lahijani),* 325 B.R. 282, 288–89 (9th Cir. BAP2005)); *In re Fridman*, 2016 WL 3961303, at *7–10.

When the bankruptcy court examines a trustee's proposed sale, "[t]he 'business judgment' test applies to determine whether a sale under §363(b) should be approved." *Allen v. Abshur*, 607 Fed. Appx. 840, 843 (10th Cir. 2015). All that is required under this deferential standard is that the trustee show "sound business reasons" for the sale. *Id.* "Great judicial deference is given to [the] trustee's exercise of business judgment in selling estate property outside [the] ordinary course of business." 2C BANKR. SERVICE L. ED § 20:101 (2024) (collecting cases).

In making its assessment under the business judgment test, the bankruptcy court may consider whether there is any improper or bad motive, whether the price is fair, and whether the negotiations or bidding occurred at arm's length. *Allen v. Abshur*, 607 Fed. Appx. at 643. A court may also consider whether the trustee has employed

adequate procedures, including "accurate and reasonable notice to all parties in interest." *Id.*

The question before this Court is whether Judge Barry abused his discretion in applying the business judgment test to Trustee Rucker's decision to sell the estate's appellate rights. This Court has explained that a lower court abuses its discretion when it fails to consider a relevant factor that should have been given significant weight, considers an irrelevant or improper factor and gives it significant weight, or considers all the proper factors but commits a clear error of judgment in weighing those factors. *American Civil Liberties Union of Minnesota v, Tarek ibn Ziyad Academy*, 643 F.3d 1088, 1093 (8th Cir. 2011). Nothing in the record of this case suggests that Judge Barry failed to consider any factor, gave significant weight to an improper factor, or committed a clear error of judgment.

III. The finality rule of 11 U.S.C. § 363(m) barred any appellate challenge to the sale of estate property where the debtor failed to obtain a stay of the bankruptcy court order and the sale was consummated before any appeal could be decided.

Wholly apart from the absence of error in the bankruptcy court's order, Humphrey's appeal should have been barred under 11 U.S.C.

§ 363(m), which states "[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal." In bankruptcy appeals, this "finality rule" prevents the overturning of a completed sale to a good-faith purchaser, in the absence of a stay.[11]

Even assuming Humphrey still has "some concrete interest, however small" in the outcome of the state court litigation so that her appeal is not equitably or statutorily "moot," *see MOAC Mall Holdings, LLC v. Transform Holdco LLC*, 598 U.S. 288, 295 (2023), the principles underlying Section 363(m) still prevent this Court from granting her

[11] Nothing in the record suggests that Absolute was anything other than a good-faith purchaser. "[L]ack of good faith is shown by misconduct surrounding the sale." *In re Burgess*, 246 B.R. 352, 355–56 (B.A.P. 8th Cir. 2000). "Typically, the requisite misconduct necessary to establish a lack of good faith involves 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" *Id.*

any relief. This is so because Section 363(m) also "protects the finality of bankruptcy sales and the reasonable expectations of good-faith third-party purchasers." *In re Rodriquez*, 258 F.3d 757, 759 (8th Cir. 2001).

If a purchaser under Section 363(b) had to consider the possibility of round after round of appellate litigation before the true owner of the property was settled, the value of the asset would be substantially diminished. "The legislative history of §363(m) confirms that the purpose of §363(m) is to protect good faith purchasers of property from reversal of sale authorization on appeal unless authorization and the sale itself were stayed pending appeal." *International Union, United Auto, Aerospace & Ag. Implement Workers v. Morse Tool Inc.,* 85 B.R. 666, 667 (D. Mass. 1988) (references to Congressional publications omitted).

Accordingly, Section 363(m) means just what it says—whether it remains feasible to undo the approval or not.[12]. *See In re Polaroid Corp.*, 611 F.3d 438, 440–41 (8th Cir. 2010) (noting that buyers would

[12] While the district court's analysis in this case is not the subject of this Court's review, this principle explains why District Court Judge Holmes was wrong in deciding that Section 363(m) had no application to the case merely because the state court appeal at issue had been stayed. **App. 77-80; R. Doc 21, at 8-11.**

be reluctant to enter agreements if the purchased property were not free and clear of claims); *Official Comm. of Unsecured Creditors v. Trism, Inc. (In re Trism, Inc.),* 328 F.3d 1003, 1006 (8th Cir.2003) ("Section 363(m) prevents a modification or reversal of a bankruptcy court's order authorizing the sale of the debtor's assets from affecting the validity of the sale."); *Wintz v. American Freightways, Inc. (In re Wintz Cos.),* 219 F.3d 807, 811 (8th Cir.2000) ("Claims against the property once sold may be maintained only against the proceeds of the sale").

In the present case, Humphrey did not seek or obtain a stay of the sale pending her appeal. Moreover, Humphrey made no argument below that Absolute committed misconduct in connection with the sale. There was no collusion between Absolute and any other bidder. In fact, there were no other bidders. Humphrey proffered no evidence pertaining to the negotiations between Trustee Rucker and Absolute. There was no fraud surrounding the sale of the appeal rights. There was no evidence that Absolute or Christopher made any misrepresentations to the trustee during the negotiation process. The bankruptcy court was not clearly erroneous in finding that the

transaction was at arm's length and it was in the best interest of the estate to sell the appeal rights for the price stated—in part to avoid future litigation costs involved with appealing a "terrible" order that would be reviewed under an abuse of discretion standard.

CONCLUSION

This Court's standard of review regarding the bankruptcy court's approval of the sale of estate assets is a deferential one. On de novo review, the record reflects no error of law. The bankruptcy court's findings concerning the sale are not clearly erroneous. There is no indication that the bankruptcy court abused its discretion by considering improper factors or failing to consider important considerations. The district court erred in reversing the bankruptcy court judgment. Beyond all of this, Humphrey's attempt to undo the sale is barred by the express language of the Bankruptcy Code. Therefore, applying the same standards as applied by the district court, this Court should reverse the district court and reinstate the bankruptcy court's judgment.

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit requirements of Fed. R. App. P. 32(a)(7)(B) because, exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5,226 words. This certificate was prepared in reliance on the word count of the word processing system (Microsoft Word 2019) used to prepare this brief.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally-spaced typeface using Microsoft Word 2019 in 14-point Century Schoolbook.

3. The undersigned further certifies that the electronic version of this brief has been scanned for viruses and is virus-free.

/s/ Troy A. Price
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CERTIFICATE OF SERVICE

On July 8, 2024, this document was filed with the Court for review, and once it is approved a copy of the brief, addendum, and appendix will be served by U.S. Mail on:

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