No. 24-1854

In the United States Court of Appeals
For the Eighth Circuit

(*In re: LaDONNA HUMPHREY, Debtor*)

LaDONNA HUMPHREY — APPELLEE

v.

ANTHONY CHRISTOPHERL and
ABSOLUTE PEDIATRIC THERAPY — APPELLANTS

Appeal from the United States District Court
For the Western District of Arkansas
Fort Smith Division, Case No. 5:20-cv-5048-PKH
The Honorable P.K. Holmes, Judge Presiding

BRIEF OF APPELLEE

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SUMMARY OF THE CASE AND WAIVER OF ORAL ARGUMENT

The central issue in this case is whether the bankruptcy court erred in approving the sale of LaDonna Humphrey's right to appeal rulings by the Benton County Circuit Court striking her Answer in a case brought by Appellants in which she was the defendant and denying her a jury trial on the issue of damages. The District Court reversed the bankruptcy court's decision approving the sale, finding it erroneous because the appeal rights at issue are not "personal property" under Arkansas law, and therefore are not property of the estate, and because the sale was not in the best interests of the estate. The District Court also determined that Humphrey's appeal of the bankruptcy court's decision is not precluded by the "finality rule" of 11 U.S.C. § 363(m).

Humphrey agrees with Appellants that given the clarity of the record and the issues, oral argument would likely not materially assist the Court in resolution of this appeal.

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SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the bankruptcy court approving the sale of Appellee Humphrey's defensive appeal rights, *i.e*. her right to appeal the decisions of the Circuit Court to strike her Answer in the related state court litigation and deny her the right to a jury trial on the issue of damages. The bankruptcy court's decision is erroneous in two key respects. First, the bankruptcy court erred as a matter of law in determining that Humphrey's defensive appeal rights were property of the bankruptcy estate. Those rights are not "personal property" under Arkansas law and therefore should not have been considered estate property. Second, the bankruptcy court abused its discretion when it determined that the sale of Humphrey's defensive appeal rights was fair and equitable and in the best interests of the estate. The settlement approved by the bankruptcy court fell below the lowest point in the range of reasonableness and it was based on a clearly erroneous assessment of the evidence.

In addition, Humphrey's appeal of this sale is not precluded by the "finality rule" set forth in 11 U.S.C. § 363(m). That rule in inapplicable in this case, and the sale can be unwound with no prejudice to any party.

ARGUMENT

Standard of Review

As the second court of review in a bankruptcy appeal, this Court applies the same standards of review as a district court. *In re Sawyers*, 2 F.4th 1133 (8th Cir. 2021), citing *In re O'Sullivan*, 914 F.3d 1162 (8th Cir. 2019). The Court reviews "the bankruptcy court's findings of fact for clear error and its conclusions of law de novo." *Id*., quoting *In re Bowles Sub Parcel A, LLC*, 792 F.3d 897, 901 (8th Cir. 2015) (cleaned up).

With regard to settlement or compromise of a debtor's cause of action, "[a] bankruptcy court's approval of a settlement will not be set aside unless there is plain error or abuse of discretion." *Tri-State Financial, LLC, v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008), *quoting In re Martin*, 212 B.R. 316, 319 (8th Cir. BAP 1997) (cleaned up). "An abuse of discretion occurs if the court bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Lovald*, 525 F.3d at 654, *quoting In re Racing Servs*., 332 B.R. 581, 584 (8th Cir. BAP 2005) (cleaned up). The standard for evaluation of a settlement "is whether the settlement is fair and equitable and in the best interests of the estate." *Martin*, 212 B.R. at 319 (cleaned up). A settlement is not required to constitute "the best result obtainable." *Id*.

I. The bankruptcy court erred in determining that Humphrey's right to appeal the decisions striking her Answer in the state court case and denying her a jury trial on damages was property of the estate.

On August 14, 2019, the Circuit Court entered an Order finding that Humphrey engaged in "active and aggressive spoliation of evidence." (App. 176; Trustee's Hearing Exhibit 11)[1] Pursuant to this finding, the Court struck Humphrey's Answer and dismissed her Counterclaim. This Order is one of the decisions by the Circuit Court included in Humphrey's pending state court appeal. (App. 187, 189, 191; Absolute's Hearing Exhibits 1-3)[2]

On December 4, 2019, the Trustee filed a motion asking the bankruptcy court to approve the sale of certain claims and causes of action to Absolute for the sum of $12,500.00. (App. 033; BK R. Doc. 46, at 1) These claims and causes of action include, but are not limited to:

> 1. Any and all claims including appeals, and specifically Ms. Humphrey's counterclaim of fraud, whistleblower, and violations of the False Claims Act of 31 USC 3730, arising out of or related to the facts and claims in the state court lawsuit, *Absolute Pediatric Services, Inc. d/b/a Absolute Pediatric Therapy and Anthony Christopher v. LaDonna*

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

[2] These state court filings were admitted into evidence in the bankruptcy court but were not scanned or electronically included in the record. Appellants obtained the documents from the bankruptcy court clerk and included them in the Appendix in accordance with Local Rule 10A.

> *Humphrey, Individually*, in the Circuit Court of Benton County, Arkansas, Case No: 04CV-18-2961; and
>
> 2. Any and all claims including claims asserted or unasserted for slander, false light, defamation, tortious interference with business expectancies, and/or any other intentional tort or related claims against Kenneth Medlin, Anthony Christopher, Absolute, Joe Rocko, Wanda Easch, Felicia Ramos, Linnea Heintz, Heather Johnson, and others as the situation evolves.

(App. 033; BK R. Doc. 46, at 1) Humphrey filed an objection to this proposed sale stating that she expressly and specifically "objects to the state selling the cause of action for striking the Debtor's answer and for the denial of a jury trial on damages."[3] (App. 048; BK R. Doc. 59, at 2)

The bankruptcy court conducted a hearing on the Trustee's motion on June 3, 2024. At that hearing Humphrey's counsel made it clear that her objection "goes only to those two personal rights of LaDonna Humphrey on the appeal of the striking of her answer in the state court that rendered her in default in the state court, and, chiefly, the conveyance of her rights of appeal, to the point of appeal, on the denial of her U.S. Constitutional and Arkansas Constitutional right to a jury trial on the issue of damages." Counsel reiterated the position set forth in her response to the Trustee's motion that "[w]e do not oppose the sale of the counterclaim." (App. 199; R. Doc 29, at 7)

[3] For convenience, Humphrey will at times refer to these claims as her "defensive" appeal rights.

Christopher testified that his offer was to purchase the entire state court appeal. His position was made clear in this exchange with his counsel:

> Q: Mr. Christopher, when you gave me the authority to make this offer to [the Trustee] did you mean to make an offer to purchase the state court appeal in its entirety?
>
> A: Yes.
>
> Q: That would include all issues that may be within that appeal?
>
> A: Yes.
>
> Q: And was part of the reasons you wanted to do that to avoid further legal costs associated with fighting an appeal on that issue?
>
> A: That's correct.
>
> Q: So it has value to you in that regard, such as avoiding legal costs?
>
> A: Yes.

(App. 220-21; R. Doc. 29, at 29-30)

In his argument to the Court, Humphrey's counsel addressed the critical distinction between issues pertaining to her state court counterclaim and issues pertaining to the striking of her answer and the denial of her right to a jury trial on damages:

> The issue of the dismissed counterclaim in the state court is different, as we have stated her on the record today. It is an actual asset of this estate that, if pursued by the Trustee, could enure [*sic*] to the benefit of creditors if a favorable verdict of settlement – or settlement is itself the outcome. It makes sense, frankly, that Absolute would want to buy that asset to protect itself.

> But, the issues of striking of the answer and, in particular, the appeal of the denial of a jury trial and damages are different. Those are personal rights of LaDonna Humphrey, personal, constitutional, that do not enure [*sic*] to the benefit of the state or its creditors, but do fundamentally and personally affect Humphrey and her relationship with Absolute, a relationship that Absolute seeks to control utterly, and thereby deprive Humphrey of her fundamental protections.

(App. 232-33; R. Doc. 29, at 40-41)

After hearing arguments by counsel for all parties, the bankruptcy judge stated from the bench that "the Court is going to find that the motion to sell should be granted without qualification." (App. 239; R. Doc. 29, at 47) In making this ruling the Court acknowledged Humphrey's argument that some of her appeal rights were personal in nature, but did not find it persuasive: "So, what I'm seeing here is her fundamental rights, as you refer to them, these are fundamental core constitutional rights that she has. Well, she gave them up when she filed bankruptcy. She just waived it." (App. 242; R. Doc. 29, at 50) The Court summarized its ruling by saying "So, the Trustee gets the whole enchilada. I mean, all of this is personal, characterize it semantically however you wish, she's entitled to this, it's property of the estate and she can sell it." (App. 243; R. Doc. 29, at 51)

It is well established that under bankruptcy law "[s]tate law controls questions concerning the nature and extent of the debtor's interest in property." *In re Rine & Rine Auctioneers, Inc*., 74 F.3d 854, 857 (8th Cir. 1996), *citing N.S. Garrott & Sons v. Union Planters Nat'l Bank* (*In re N.S. Garrott & Sons*), 772 F.2d 462, 466 (8th Cir.

1985). “Once that state law determination is made, however, we must still look to federal bankruptcy law to resolve the statutory issue.” *Id*., *citing Garrott*, 772 F.2d at 466 (once a determination is made regarding the nature and extent of the debtor's interest in property, federal bankruptcy law dictates the extent to which that interest is property of the estate). As the District Court explained in its appellate review of this case, “[t]he federal law component here is straightforward: to whatever extent state law recognizes a cause of action to be an interest in property then that interest is included in the bankruptcy estate.” *Humphrey v. Christopher*, 659 B.R. 885, 892 (W.D. Ark. 2024) (hereafter “*Humphrey* at ___.”), *citing In re Senior Cottages of Am., LLC*, 482 F.3d 997, 1001 (8th Cir. 2007).

The question of whether a party’s right to defend against claims brought by another party in a lawsuit, *i.e.* purely defensive rights, are property of the estate has not been expressly determined by Arkansas courts. However, well-established Arkansas law entails the conclusion that the rights at issue herein, Humphrey’s defensive appeal rights in the state court litigation, are personal rights that should not be considered property of the estate.

As the District Court observed, “[i]n Arkansas. ‘personal property’ has long been understood by court to include ‘things in action.’” *Humphrey* at 892, *citing Allen v. Barnett*, 186 Ark. 494, 54 S.W.2d 399 (1932). Further, “[a] ‘thing in action’ has consistently been defined by the Arkansas Supreme Court to mean ‘the right of

bringing an action, or a right to recover a debt or money, or a right of proceeding in a court of law to procure the payment of a sum of money or a right to recover a personal chattel or sum of money." *Id*., *quoting Bridges v. Shields*, 2011 Ark. 448, *5, 385 S.W.3d 176 (additional citation omitted). Arkansas law recognizes "all causes of action the debtor could have brought at the time of the bankruptcy petition" as "bankruptcy estate property." *Hobson v. Holloway*, 2010 Ark. App. 264, *8, 377 S.W. 376, 380. But, as the District Court acknowledges, "none of these formulations appears to contemplate proceeding in a purely *defensive* posture." *Id*.

Humphrey finds the District Court's analysis of this issue compelling. In *Allen v. Barnett*, 186 Ark. 494, 54 S.W.2d 399, 400 (1932), the Arkansas Supreme Court, citing section 9736 of Crawford & Moses' Digest, defines "personal property" as "money, goods, chattels, things in action and evidences of debt." Undersigned counsel has found no conflicting or more comprehensive definition of "personal property" under Arkansas law. The term "things in action" has consistently been defined as "the right of bringing an action, or a right to recover a debt or money, or a right of proceeding in a court of law to procure the payment of a sum of money, or a right to recover a personal chattel or a sum of money by action." *Bridges v. Shields*, 2011 Ark. 448, *5, 385 S.W.3d 176, 179-80, *quoting Gregory v. Colvin*, 235 Ark. 1007, 1008, 363 S.W.2d 539 (1963). Arkansas recognizes the doctrine of *expressio unius est exclusio alterius*, a fundamental principle of legal construction "that the

express designation of one thing may be properly construed to mean the exclusion of another." *Larry Hobbs Farm Equipment, Inc. v. CNH America, LLC*, 375 Ark. 379, 385, 291 S.W.3d 190 (2009), *citing MacSteel v. Ark. Okla. Gas Corp*., 363 Ark. 22, 210 S.W.3d 878 (2005). Because Arkansas law defines "personal property" in terms of expressly designated categories, and because neither the category "things in action" nor any other recognized category of personal property can reasonably be interpreted to include defensive appeal rights, Humphrey's right to appeal the striking of her Answer in the Circuit Court and her denial of a jury trial on the matter of damages must be excluded from the bankruptcy estate.

The District Court noted that case law on this issue is "scant," and that decisions from other states addressing it are not helpful because those states define "personal property" in ways that encompass defensive appeal rights. For example, in *In re Mozer*, 302 B.R. 892 (C.D. Cal. 2003), the debtors argued that their right to appeal a judgment against them was a defensive appeal right and therefore not property of the estate. In the Court's words:

> The Debtors argue that the Defensive Appellate Rights are not property of the estate because of the nature of the underlying judgment from which they appealed. Specifically, because the Debtors' appeal is from a judgment against the Debtors, rather than for the Debtors, the Debtors contend that the right to defend against the liability created by the adverse judgment on the cross-complaint in favor of the Buyers is a liability and not property. The Debtors assert that the distinction between rights to appeal a judgment on a debtor's claim as opposed to a judgment on a claim against a debtor is equivalent to the distinction between assets and liabilities. Because Section 363 of the Bankruptcy

> Code permits a trustee, after notice and a hearing, to sell property of the estate, Debtors conclude that the Defensive Appellate Rights are not saleable.

302 B.R. at 895. The Court rejected this argument based on what it termed "California's broad concept of property rights." *Id*. at 896. As the Court explained, California Civil Code § 655 defines property, in pertinent part, as "ownership of all inanimate things ...; of all obligations; of such products of labor or skill as the composition of an author; the good-will of a business, trademarks and signs, and of rights created or granted by statute." *Id*. at 895. It noted that the right to appeal has value, and that it is a right created by statute. Given the breadth and scope of this statutory definition, the Court concluded that defensive appeal rights are property under California law and therefore part of the bankruptcy estate.

In Arkansas, however, personal property rights are defined more narrowly. As explained above, Arkansas law defines personal property in terms of expressly designated categories, none of which can sensibly be construed as including a party's defensive appeal rights. Because bankruptcy courts look to state law to determine what comprises a debtor's estate, in California the estate includes defensive appeal rights while in Arkansas it does not.

Appellants devote considerable attention to *In re Matter of Croft*, 737 F.3d 372 (5th Cir. 2013). This case was decided under Texas law, and like California, Texas has an expansive definition of property. As the Fifth Circuit observed, "[t]he

Supreme Court of Texas has recognized that Texas law defines property broadly, extending to every species of valuable right and interest." *Id*. at 375, *citing Womack v. Womack*, 141 Tex. 299, 301, 172 S.W.2d 307 (1943). This is also inconsistent with Arkansas law, which defines property in a way that does not include defensive appeal rights. The *Croft* decision is not instructive here.

The District Court characterized Humphrey's state court appeal as "blended" because it includes both the default judgment resulting from the Circuit Court's striking of her Answer and the dismissal of her Counterclaims. Appellants aver that Humphrey's appeal encompasses three rulings by the Circuit Court: (1) the decision to strike her Answer; (2) the decision to dismiss her Counterclaim; and (3) the judgment awarding Appellants approximately $3.5 million in damages. Appellant's Brief at 15. They assert Humphrey's argument that some appeal rights can properly be sold while others cannot "is as impractical as it is illogical." *Id*. This assertion is premised on the notion that appeals are "unitary" proceedings that cannot be divided into "distinct mini-appeals."

Appellants cite no authority for their assertion – no case law, no court rules, no statutes, nothing. They simply assert that it can't be done. This conclusion is counterintuitive and not supported by Arkansas law. Arkansas Rule of Appellate Procedure – Civil 3(c) authorizes the joinder or consolidation of separate appeals. Arkansas case law authorizes courts to bifurcate proceedings and to sever claims and

parties under appropriate circumstances. Humphrey is unable to find any Arkansas case law on this particular issue with similar facts in the context of a civil appeal, but given the inherent authority courts have to manage their dockets by combining and separating cases and realigning parties and claims, in the absence of an express prohibition on separating claims and parties on appeal Humphrey submits there is no reason for Arkansas courts to prohibit the division of one appeal into two when it is in the interests of justice to do so. The division of one appeal into two could also be accomplished by asking the Arkansas Court of Appeals to remand it to the Circuit Court where the authority of a court to sever parties and claims and the procedures for doing so are well-established. Regardless of the specific procedural mechanism(s) employed, separating out the claims belonging to Humphrey from the claims the Trustee had the right to sell is neither impossible nor impractical.

But regardless of how Arkansas courts would, as a practical matter, effect the division of issues and parties to an appeal, Appellants' argument ignores the fact that they sought to acquire Humphrey's appeal rights for the purpose of dismissing the appeal, not prosecuting it. They wanted to acquire the appeal rights to secure their judgment and avoid further litigation expenses. Any scenario where the Arkansas Court of Appeals would have to consider setting two briefing schedules and scheduling two oral arguments in this case is a complete fiction because Appellants admittedly never intended to pursue an appeal of any aspect of the Circuit Court's

decision in the first place. The procedural conundrum posited by Appellants is at best hypothetical and at worst disingenuous.

The fact that Humphrey appealed broadly from the Circuit Court's rulings does not mean she is obliged to pursue every possible issue and argument throughout the appeal process. Pursuant to Arkansas Rule of Appellate Procedure – Civil 2(a) "An appeal may be taken from a circuit court to the Arkansas Supreme Court from: (1) A final judgment or decree entered by the circuit court." Rule 2(b) states that "An appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment." In the Amended Notice of Appeal filed on October 23, 2019, Humphrey "gives notice of appeal of the final judgment entered by the Circuit Court of Benton County, Arkansas . . . on September 23, 2019 and all previous orders filed by the Court in this case." (App. 191; Absolute's Hearing Exhibit 3) The nature of the appellate process requires an appellant to specify the final judgment, decree, or order appealed from, which Humphrey did. Further, she stated that her appeal included all orders preceding entry of the final judgment. The Arkansas Rules of Appellate Procedure – Civil do not require a party to delineate the specific issues the appellant intends to argue on appeal. That is a determination an appellant may make at a later time. The fact that a ruling falls within the scope of the notice of appeal does not bind the appellant to pursue that issue throughout the appeal process. It is perfectly permissible, and not

unusual in undersigned counsel's experience, for parties to appeal certain issues and abandon others.

In this case, if the Court agrees that the bankruptcy court erred in approving the sale of Humphrey's defensive appeal rights, Humphrey would request relief allowing her to pursue those rights on appeal while she abandons any appeal related to her Counterclaim. This approach poses no legal, procedural, or practical problems. The relief Humphrey is seeking is not only consistent with applicable law, it can be easily effectuated. The bankruptcy court's order approving the sale of Humphrey's appeal rights as a whole should be reversed and this action should be remanded for further proceedings that would facilitate the relief Humphrey requests.

II. The bankruptcy court abused its discretion in determining that the sale of Humphrey's state court defensive appeal rights was in the best interests of the estate.

While the District Court's analysis leads to the conclusion that Humphrey's defensive appeal rights are not part of the bankruptcy estate, it concluded that issue need not be decided because "the bankruptcy court clearly abused its discretion in approving their sale to Absolute." *Humphrey* at 893.

As the District Court observed, Absolute's "obvious motive and intention" in purchasing Humphrey's appeal rights was to substitute itself for Humphrey then dismiss the appeal. This was in effect a compromise and settlement of Humphrey's appeal with the opposing parties whereby Absolute would pay

$12,500.00 to ensure that it would continue to hold a non-dischargeable judgment of approximately $3.5 million against her. To approve this settlement the bankruptcy court would have to determine that this proposal was fair and equitable and in the best interests of the estate. *In re Martin*, 212 B.R. 316 (B.A.P. 8th Cir. 1997). The District Court concluded that the sale did not meet this standard, and Humphrey agrees.

The Trustee hired the same attorney to represent Humphrey in the pending state court appeal that had represented her in the Circuit Court.[4] That attorney agreed not to charge any fee for his services in connection with the appeal and to seek to recover costs only to the extent that assets were recovered. *Humphrey* at 893 (citations to bankruptcy court docket omitted). At this point the Trustee had the choice of pursuing an appeal of the $3.5 million judgment against Humphrey at no cost to the estate, or ensuring that that the estate would include that $3.5 million non-dischargeable debt. The Trustee went with the latter option and the bankruptcy court approved. The District Court concluded that "[t]his cannot possibly be in the best interest of the estate." Humphrey agrees.

[4] The District Court makes reference to court filings indicating that this attorney was hired to pursue Humphrey's "counterclaim." *Humphrey* at 893. However, in the Amended Application to Approve Employment of Special Counsel the Trustee requested approval to hire counsel to assist with the "pending appeal" in state court. *See In re Humphrey*, Case No. 5:19-bk-72555, Doc. 34 at 1.

The standard of review applicable to the bankruptcy court's decision is well-established:

> A bankruptcy court's approval of a settlement will not be set aside unless there is plain error or abuse of discretion." *Tri–State Fin., LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir.2008) (internal quotation marks omitted). "The bankruptcy court abuses its discretion when its decision relies upon a clearly erroneous finding of fact or fails to apply the proper legal standard." *Ritchie Special Credit Invs., Ltd.*, 620 F.3d at 853. A settlement, however, is not required to constitute "the best result obtainable"; instead, the standard for evaluation "is whether the settlement is fair and equitable and in the best interests of the estate." *Tri–State Fin., LLC*, 525 F.3d at 654 (internal quotation marks omitted). The court need only ensure "the settlement does not fall below the lowest point in the range of reasonableness." *Id*.

Ritchie Capital Management v. Kelley, 785 F.3d 273 (8th Cir. 2015). In this case, the settlement approved by the bankruptcy court falls below the lowest point in the range of reasonableness. As the District Court put it, "[n]o middle-income rational actor would ever accept a settlement offer of a $3,558,477.88 non-dischargeable debt where the alternative is to appeal a $3,570,977.88 judgment at no personal expense." *Humphrey* at 894. As such it is apparent that the bankruptcy court's decision was based on a "clearly erroneous assessment of the evidence." *Id*. Humphrey agrees with the District Court's analysis and conclusion.

Humphrey agrees with Appellants that an abuse of discretion occurs in this context when a court "fails to consider a relevant factor that should have

been given significant weight, considers and 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." Appellants' Brief at 23, *citing American Civil Liberties Union of Minnesota v. Tarek ibn Ziyad Academy*, 643 F.3d 2088, 1093 (8th Cir. 2011). Appellants assert that "[n]othing 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 in judgment." Humphrey disagrees on all counts.

At the hearing on the Trustee's motion the judge expressed concerns about the cost of pursuing an appeal: "[D]id she even have money to [appeal]? I don't know how much money she had to pay lawyers to pursue it." (App. 241; BK R. Doc. 29, at 49) Continuing, the judge stated "what Ms. Rucker is doing, she's not so worried about the stress, as she is the cost, from a practical standpoint, to have enough money to fund an expensive appeal for which she sees to be problematic, at best." (App. 241; BK R. Doc. 29, at 49). But as explained above, cost should not have been a concern given that Humphrey's counsel had agreed to handle the appeal *for free*, seeking recovery of costs only to the extent the appeal was successful and assets were recovered. The bankruptcy court abused its discretion by failing to consider and give significant weight to a relevant factor, *i.e.* the fact that the estate could pursue the appeal at no expense,

considering and giving significant weight to an irrelevant factor, *i.e*. expenses the estate would not incur, and committing a clear error in judgment.

III. Humphrey's appeal of the bankruptcy court's decision approving the sale of her state court defensive appeal rights is not barred by the "finality rule" set forth in 11 U.S.C. §363(m)

Appellants argue that the "finality rule" prevents the overturning of a completed sale to a good faith purchaser in the absence of a stay pending appeal. Appellant's Brief at 24. The finality rule is a bit more nuanced than Appellants' Brief suggests. This Court explained the rule and the rationale for it in *In re Rodriguez*, 258 F.3d 757, 759 (8th Cir. 2001):

> Generally, federal courts are not empowered to give opinions on moot questions or declare rules of law which cannot affect the matter in issue in the case before it. *Church of Scientology v. United States*, 506 U.S. 9, 12, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992). If, while an appeal is pending, an event occurs that eliminates the court's ability to provide any effectual relief whatever, the appeal must be dismissed as moot. *In re Security Life Ins. Co*., 228 F.3d 865, 870 (8th Cir.2000). In bankruptcy appeals, the "finality rule" within 11 U.S.C. § 363 (1994) prevents the overturning of a completed sale to a good-faith purchaser in the absence of a stay. *In re Wintz Cos*., 219 F.3d at 811. This rule protects the finality of bankruptcy sales and the reasonable expectations of good-faith third-party purchasers. *Veltman v. Whetzal*, 93 F.3d 517, 521 n. 4 (8th Cir.1996). It also reflects the inability of courts to supply a remedy once property has left the bankruptcy estate. *Id*.; see also *In re Van Iperen*, 819 F.2d 189, 191 (8th Cir.1987) (per curiam).

The finality rule does not bar the Court from affording Humphrey the relief she seeks for a couple of reasons. First, and foremost, the rule is inapplicable here because Humphrey did obtain a stay. On March 24, 2020, the

Arkansas Court of Appeals entered a Formal Order stating that "Appellant's Motion to Stay Briefing Schedule is Granted." *See Absolute v. Humphrey*, Benton County Case No. 04CV-18-2961.[5] The Court has required periodic status reports in this case, which have been noted on the docket. The latest entry on July 26, 2024, shows that the most recent status report was received and that the next status report is due on November 21, 2024. The appeal has been stayed since the Formal Order was entered more than four-and-a-half years ago. No briefs have been filed. As the District Court stated:

> This rule has no applicability here, because Ms. Humphrey in fact did obtain a stay satisfying all these concerns: she obtained a stay of the very state-court appellate proceedings that are the subject of this sale.

Humphrey at 894.

The second reason the finality rule does not preclude Humphrey's relief is that the bankruptcy court has the ability to supply the remedy she seeks. As the District Court stated:

> Nothing has occurred in that case which would prevent this Court from supplying the remedy that Ms. Humphrey requests. Indeed, not a single brief on the merits has been filed in that matter. Thus the sale can easily be undone without prejudice to any party.

Id.

[5] The Arkansas Court of Appeals online docket does not include unique identifiers for specific documents; however, the Formal Order referenced may be viewed at https://caseinfo.arcourts.gov/opad/case/04CV-18-2961

Appellants argue that the finality rule applies because Humphrey did not seek and obtain a stay from the bankruptcy court. This is a distinction without a difference. Humphrey is unaware of any binding authority holding that a stay from a court other than the bankruptcy court is invalid for purposes of the finality rule. The stay entered by the Arkansas Court of Appeals has had the effect of keeping the parties in the same positions as they occupied on March 24, 2020. The interests Appellants ostensibly acquired when the bankruptcy court granted the Trustee's motion and approved the sale are unchanged. Nothing has happened regarding those interests that would preclude this Court from reversing or modifying the bankruptcy court's order.

Appellants also argue, citing *In re Trism*, 328 F.3d 1003 (8th Cir. 2003), that Section 363(m) precludes this Court from modifying or reversing the order authorizing sale of Humphrey's appeal rights in a way that affects the validity of the sale. Appellants' Brief at 26. This is a selective and somewhat misleading reading of *Trism*. Section 363(m) clearly does not bar a court from modifying or reversing a sale order under any and all circumstances. *Trism* states that "Section 363(m) protects the reasonable expectations of good faith third-party purchasers by preventing the overturning of a completed sale, *absent a stay*, and it safeguards the finality of the bankruptcy sale." *Id*. at 1006 (emphasis added). As noted, the stay entered by the Arkansas Court of Appeals has effectively

maintained the respective positions of the parties which renders the finality rule inapposite. Further, *Trism* cites *Rodriguez* in support of the notion that the finality rule "reflects the inability of courts to supply a remedy once property has left the bankruptcy estate." *Id*., *quoting In re Rodriquez*, 258 F.3d 757, 759 (8th Cir.2001). Here, this Court has the ability to supply a remedy because the interests of the parties have been preserved.

CONCLUSION AND REQUEST FOR RELIEF

Appellants represent that the applicable standard of review in this case "is a deferential one." That is not true when it comes to the first issue on appeal – whether Humphrey's defensive appeal rights were properly considered part of the bankruptcy estate. The standard of review for that issue is de novo, and for reasons stated above it is clear that the bankruptcy court got the law wrong. As such, the order approving the Trustee's sale of Humphrey's right to appeal the Circuit Court rulings striking her answer and denying her a jury trial on the issue of damages must be set aside.

In addition, the bankruptcy court's decision to grant the Trustee's motion was clearly not in the estate's best interests, which is a second, independent reason for reversal. The bankruptcy court expressed concern about Humphrey's ability to pay for an appeal, but this concern was unfounded as her counsel had agreed not to charge a fee. It was an abuse of discretion for the bankruptcy court

to approve the sale of Humphrey's appeal rights when the estate had the opportunity to pursue the appeal of a $3.5 million non-dischargeable judgment at no cost.

Finally, the finality rule is inapplicable under the facts of this case and therefore does not preclude Humphrey from seeking relief in this Court. The proceedings in the Arkansas Court of Appeals have been stayed and nothing would prevent the Court from unwinding the sale at issue.

For the reasons stated, Appellee LaDonna Humphrey asks the Court to reverse the order of the bankruptcy court approving the sale of her state court appeal rights, either modify the bankruptcy court's order to preserve Humphrey's offensive appeal rights or remand this matter for further proceedings consistent with that ruling, and afford Humphrey any and all additional relief to which she may prove herself entitled.

Respectfully submitted,

LaDonna Humphrey, Appellee

By: /s/ William B. Putman

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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) in that the portion subject to this Rule contains 5235 words. In preparing this certificate, Appellee has relied on the word court calculated using Microsoft Word 2019.

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I hereby certify that on October 18, 2024, I submitted this document for filing via the Court's CM/ECF system, which will effect service on all counsel of record.

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