FILED: September 6, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1420
(5:17-cv-00536-BO)
(17-01613-5-DMW)

ALICE ANNETTE HOWELL; BURL ANDERSON HOWELL

Debtors - Appellants

v.

NUCAR CONNECTION, INC.; ALLY FINANCIAL, INC.; STATE OF DELAWARE

Creditors - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1420

ALICE ANNETTE HOWELL; BURL ANDERSON HOWELL,

Debtors - Appellants,

v.

NUCAR CONNECTION, INC.; ALLY FINANCIAL, INC.; STATE OF DELAWARE,

Creditors - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:17-cv-00536-BO)

Submitted: August 27, 2018 Decided: September 6, 2018

Before WILKINSON, DUNCAN, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Alice A. Howell, Burl Anderson Howell, Appellants Pro Se. Pamela P. Keenan, KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, PA, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alice Annette Howell and Burl Anderson Howell appeal the district court's order denying their motions and dismissing their appeal of the bankruptcy court's October 20, 2017 and October 27, 2017 orders.* "Where, as here, a district court acts as a bankruptcy appellate court, our review of [its] decision is plenary." *SG Homes Assoc. v. Marinucci*, 718 F.3d 327, 334 (4th Cir. 2013) (internal quotation marks and citation omitted). We review the bankruptcy court's decision independently, reviewing its factual findings for clear error and its legal conclusions de novo. *Id.* (citations omitted). We also limit our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b).

With these principles in mind, we have reviewed the bankruptcy court's orders that were appealed by Appellants, and we find no reversible error. Accordingly, we affirm the district court's order. We grant Appellants leave to proceed in forma pauperis and deny their other pending motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* On appeal, Appellants contend they also provided sufficient notice of their intent to appeal the bankruptcy court's November 22, 2017 order. We have reviewed the record and find this contention without merit. Moreover, the district court affirmed the rulings in the November 22, 2017 order, and Appellants do not show any error in the rulings.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISON
No. 5:17-CV-536-BO

ALICE ANNETTE HOWELL and BURL ANDERSON HOWELL, Appellants, v. NUCAR CONNECTION, INC., ALLY FINANCIAL, INC., and the STATE of DELAWARE, Appellees.	)	ORDER

This cause comes before the Court on appellee Ally Financial's motion to dismiss [DE 31], as well as a series of motions by appellants. [DE 14, 19, 23, 26, 31, 35, 38]. The other appellants named in this case have not appeared and the matters are ripe for ruling. For the following reasons, all of appellants' motions are denied and appellee's motion to dismiss is GRANTED.

BACKGROUND

This case arises out of a bankruptcy proceeding begun on April 3, 2017 in the Eastern District of North Carolina. When they filed for Chapter 7 bankruptcy, appellants identified three creditors, who are the named appellees in this matter: Ally Financial, which has a claim pursuant to a financing agreement for a 2015 Jeep Compass; NuCar Connection, which was granted a levy against appellants in Pennsylvania in 2005; and the State of Delaware, which has a claim in the form of a restitution order against appellant Burl Howell as part of a state criminal sentence.

The docket in this case at the bankruptcy court is long and appellants' filings, as that Court noted, are "rambling and almost incomprehensible." [Bkr. DE 121].

Pet. App. B, DE-42/43 pages 1-6

Appellants first noticed their appeal in this Court on October 23, 2017 [DE 1]. The rest of their filings here are: the standalone filing of a case from the Eastern District of California [DE 4];" Opening Brief: Jurisdiction" [DE 5]; "Opening Brief: Right to Counsel" [DE 6]; "Request for Certification of the Question 'Whether a Bankruptcy Court has Jur[isdic]tion to Grant or Deny Appeal in Forma Pauperis'" [DE 14]; Letter [DE 17]; Appellant's Opening Brief [DE 18]; "Motion for Othe[r] Relief to Avoid Judicial Lien of Nucar Connection, Inc. on Jeep Compass and Dismissing Restitution" [DE 19]; "Copy of Bankruptcy Filing" [DE 20]; two filings titled "Notice" [DE 21; 22]; "Motion against remand and to have District Court adjudicate the appellants motion for other relief to avoid judicial lien of Nucar Connection, Inc., lien on 2015 Jeep Compass and dismissing restitution" [DE 23]; "Affidavit for Entry of Default" [DE 24]; "Appellants' 2d Response to Motion for Order in Aid of Enforcement" [DE 25]; "Motion for Order of Stay" [DE 26]; "Appellants' 3d Response to Motion for Order in Aid of Enforcement" [DE 27]; "Amended 3d Response to Motion for Order in Aid of Enforcement" [DE 29]; "Petition Seeking Extraordinary Writ in Aid of Appeal in Lieu of Notice of Appeal" [DE 33]; Motion for Judgment on the Pleadings [DE 35]; Memorandum in Support [DE 36]; "Application to Have Extraordinary Writ Filing Fee Waived" [DE 38]; and "Errata to Appellants' Opening Brief of Appeal" [DE 41]. On the Court's instruction, appellee Ally Financial filed a response to appellants' motions, in order to provide additional information. [DE 30; 34].

DISCUSSION

Appellants are appearing *pro se*. The pleadings of *pro se* parties are held to less stringent standards than those drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the lenience afforded them has limits. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978).

Such parties must still follow the rules, and they are not absolved of the responsibility, which adheres to all parties, to proceed in good faith. Fed. R. Civ. P. 11.

Next, district courts have jurisdiction to hear appeals from bankruptcy courts. 28 U.S.C. § 158(a). That jurisdiction is limited, and exists over final judgments, orders and decrees, and specific interlocutory orders relating to time periods. *Id.*; 11 U.S.C. § 1121. Fully resolved discrete issues may be appealed from the bankruptcy court, even while the case is continuing. *Mort Ranta v. Gorman*, 721 F.3d 241, 246 (4th Cir. 2013). Here, the bankruptcy court issued two orders that are appealable to this Court under 28 U.S.C. § 158(a): an order denying appellants' motions for sanctions, judgment on the pleadings, and entry of default [Bkr. DE 121]; and an order denying their request to waive the Appeal Fee and otherwise proceed without paying fees [Bkr. DE 135].

No other issue regarding the bankruptcy proceeding is available for this Court's resolution, as this Court lacks jurisdiction. Appellants appear to claim that noticing this appeal has an effect on the bankruptcy court's jurisdiction over the other issues in this case. It does not. *See* 28 U.S.C. § 157(b)(1)-(2); 28 U.S.C. § 1334; 28 U.S.C. § 157(a); Referral of Bankruptcy Matters to Bankruptcy Judges (E.D.N.C. Aug. 3, 1984).

Specifically, this Court does not have jurisdiction over the disposition of the 2015 Jeep Compass. Following a hearing before the bankruptcy court at which appellant Burl Howell stated that he would willingly relinquish possession of the Compass to Ally Financial, the Court entered an order lifting the automatic stay. Appellants later moved in this Court to stay the lifting of the stay. [DE 26]. Such a motion must first be made in the bankruptcy court, or cause must be shown why that would be impracticable. Fed. R. Bankr. P. 8007(a)(1)(A). Appellants did neither here. The motion to stay is therefore denied. Without action by this Court on that motion, the

bankruptcy court retained jurisdiction, and proceedings related to the vehicle continued. Ally Financial moved for the bankruptcy court to issue an Order in Aid of Enforcement, to assist Ally Financial in its possession of the vehicle. That order was granted by the bankruptcy court on February 27, 2018 [Bkr. DE 157]. For these reasons, there is nothing for this Court to resolve on the question of the vehicle and any motion related to it is denied for lack of jurisdiction.

To challenge the bankruptcy court's order refusing to waive appellants' fees, appellants would have needed to timely file a notice of appeal of that order. It does not appear they did so. Appellants did file what they titled a "Request for Certification of the Question" of the bankruptcy court's jurisdiction to deny their motion, [DE 14]. This filing is, like the others, unintelligible, and this Court does not consider it a substantive appeal. But for the sake of finality, this Court adopts the bankruptcy court's own reasoned explanation as to its jurisdiction over the question [Bkr. DE 135 at 8-9]. Also, denying a request to proceed on such an appeal without paying fees is proper when appellants have the ability to pay or are proceeding in bad faith. 28 U.S.C. § 1930(f)(2); 28 U.S.C. § 1915(a)(3). The bankruptcy court found that appellants had the financial ability to pay, and, in any event, their appeal was taken in bad faith. [Bkr. DE 135 at 6; 11]. This Court reviews the bankruptcy court's findings of fact for clear error. *Kielisch v. Educ. Credit Mgmt. Corp.*, 258 F.3d 315, 319 (4th Cir. 2001). The determination that appellants are financially solvent and are acting in bad faith was not clearly erroneous. The bankruptcy court's judgment is affirmed.

Appellants have not appealed the order denying their motion for sanctions, judgment on the pleadings, and entry of default. Therefore, that order is now final. As this Court has no jurisdiction over any other question, all other motions are denied.

For the reasons discussed below, appellee's motion to dismiss is GRANTED. All motions by appellants are DENIED for lack of jurisdiction and the Clerk is DIRECTED to close the case.

SO ORDERED, this the 8 day of April, 2018.

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

I certify the foregoing to be a true and correct copy of the original.
Peter A. Moore, Jr., Clerk
United States District Court
Eastern District of North Carolina
By: _____ Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

ALICE ANNETTE HOWELL and BURL ANDERSON HOWELL,	)	
	)	**JUDGMENT**
Appellants,	)	
	)	5:17-CV-536-BO
v.	)	
	)	
NUCAR CONNECTION, INC., ALLY FINANCIAL, INC. and STATE OF DELAWARE,	)	
	)	
Appellees.	)	

Decision by Court.
This cause comes before the Court on appellee Ally Financial's motion to dismiss [DE 31], as well as a series of motions by appellants. [DE 14, 19, 23, 26, 31, 35, 38].

IT IS ORDERED, ADJUDGED AND DECREED, appellee Ally Financial's motion to dismiss is GRANTED. All motions by appellants Alice Annette Howell and Burl Anderson Howell are DENIED for lack of jurisdiction.

This case is closed.

This judgment filed and entered on April 9, 2018, and served on:
Alice Annette Howell (Via US Mail to 207 Dobbs Dr., La Grange NC 28551)
Burl Anderson Howell (Via US Mail to 207 Dobbs Dr., La Grange NC 28551)
Pamela P. Keenan (via CM/ECF Notice of Electronic Filing)

April 9, 2018

PETER A. MOORE, JR., CLERK

/s/Lindsay Stouch
By: Deputy Clerk

SO ORDERED.

SIGNED this 22 day of November, 2017.

David M. Warren
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION

IN RE:	CASE NO. 17-01613-5-DMW
BURL ANDERSON HOWELL ALICE ANNETTE HOWELL	CHAPTER 7
DEBTORS	

ORDER DENYING WAIVER OF APPEAL FEE AND LEAVE TO APPEAL *IN FORMA PAUPERIS*

These matters come before the court upon the Application to Waive Filing Fee ("Waiver Application") and Motion for Leave to Appeal IFP and Appointment of Counsel ("IFP Motion") filed respectively by Burl Anderson Howell and Alice Annette Howell ("Debtors") on October 23, 2017 and October 31, 2017. The court conducted a hearing on November 9, 2017 in Raleigh, North Carolina. The Debtors appeared *pro se*, and Pamela P. Keenan, Esq. appeared on behalf of Ally Financial, Inc. ("Ally").[1] Based upon the pleadings, case record, and arguments of the Debtors, the court makes the following findings of fact and conclusions of law:

[1] Ally is not involved directly with the issues before the court; however, Ms. Keenan was in the courtroom for another matter on the calendar and noted her appearance.

BACKGROUND

The Debtors filed *pro se* a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code on April 3, 2017, and the court appointed John C. Bircher III, Esq. ("Trustee") to administer the estate pursuant to 11 U.S.C. § 704. On July 31, 2017, the Trustee filed a Report of No Distribution. The deadline for filing objections to the Debtors' discharge or to the dischargeability of certain debts was September 19, 2017, and this date passed without any party in interest initiating an adversary proceeding to make such an objection.

Among the Debtors' assets is real property ("Property") located in Wayne County, North Carolina with an address of 207 Dobbs Drive, La Grange, North Carolina. The Property is the Debtors' residence and owned by them as tenants by the entirety. In their amended "Schedule A/B: Property" filed on May 5, 2017, the Debtors valued the Property at $168,000.00.

No consensual liens encumber the Property; however, the Debtors previously contended that the Property is subject to a judicial lien in favor of NuCar Connection, Inc. ("NuCar"), and the Debtors' amended "Schedule D: Creditors Who Have Claims Secured by Property" filed on May 5, 2017 lists the claim of NuCar and several other judgment creditors of either one or both of the Debtors, including the State of Delaware ("Delaware"). It is unclear whether any of these judgments attached to the Property pre-petition, thereby creating a judicial lien, and the Debtors dispute the validity of the claims of NuCar and Delaware. NuCar's judgment is against the female Debtor only, and Delaware's judgment is against the male Debtor only.

In their amended "Scheduled C: The Property You Claim as Exempt" filed on May 5, 2017, the Debtors claimed an exemption for the full value of the Property, citing N.C. Gen. Stat. § 1C-1601(a)(1) and 11 U.S.C. §§ 522; 523. Neither the Trustee nor any party in interest objected timely to this exemption.

In their amended "Schedule I: Your Income" filed on May 5, 2017, the Debtors reported monthly income totaling $2,215.00, consisting of the male Debtor's social security income of $1,610.00, the female Debtor's social security income of $585.00, and the male Debtor's VA Aid and Attendance assistance income of $410.00 ("VA Income"). In their "Schedule J: Your Expenses" filed on April 3, 2017, the Debtors itemized monthly expenses totaling $2,095.13, which is slightly less than their monthly income. The Debtors are a two-person household and have no dependents.

On August 17, 2017, the Debtors filed a Motion for Sanctions Against Creditors ("Sanctions Motion"), pursuant to which the Debtors sought sanctions against Ally,[2] Delaware, and NuCar for alleged violations of the automatic stay imposed by 11 U.S.C. § 362, as well as damages against these creditors for alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* The court conducted a hearing on the Sanctions Motion on October 19, 2017 and orally denied the Sanctions Motion with prejudice and granted Ally relief from the automatic stay with respect to its collateral vehicle.[3] The court advised the parties that written orders setting forth these rulings would be forthcoming.

On October 20, 2017, the court entered an Order Granting Relief from the Automatic Stay ("Stay Order"). On October 23, 2017, the Debtors filed a Notice of Appeal with respect to the Stay Order. The Debtors did not pay the required appeal fees totaling $298.00 ("Appeal Fee") but attached a form Application to Have the Chapter 7 Filing Fee Waived as well as a copy of their Schedule A/B. Although the form application pertains to the filing fees for commencing a Chapter 7 case, the court accepted the application as a request to waive the Appeal Fee and docketed it as

[2] Ally holds a claim against the Debtors pursuant to a Retail Installment Sales Contract under which the male Debtor financed the purchase of a 2015 Jeep Compass.

[3] Although Ally had not filed a motion requesting modification of the automatic stay, the court determined *sua sponte* that Ally was entitled to this relief based upon the Debtors' representation that they wished to surrender the vehicle and had made few, if any, post-petition payments.

the Waiver Application. The Waiver Application reports the Debtors' monthly income as being $1,805.00 and excludes the VA Income reported in Schedule I.

On October 27, 2017, the court entered an Order Denying Motion for Sanctions ("Sanctions Order"). The Sanctions Order contains the following conclusion regarding the Debtors' motive in bringing the Sanctions Motion:

> The court finds no merit in any of the Debtors' respective requests for sanctions against Ally, Delaware, and NuCar, and the Sanctions Motion appears to be brought in bad faith and for the purpose of frustrating the orderly administration of this Chapter 7 case . . . .

On October 31, 2017, the Debtors filed an Amended Notice of Appeal which ostensibly amends their appeal of the Stay Order to also include an appeal of the Sanctions Order.[4] Also on October 31, 2017, the Debtor filed the IFP Motion, requesting the court to permit them to prosecute their appeal ("Appeal") of the Stay Order and the Sanctions Order *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) and to appoint counsel to represent them *pro bono*.

DISCUSSION

Waiver of Fees under 28 U.S.C. § 1930

Although the bankruptcy laws are intended to provide debt relief, obtaining that relief is not free, and 28 U.S.C. § 1930 sets forth specific fee amounts for commencing a case under the various chapters of the Bankruptcy Code and provides further that "[t]he Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under 1914(b)[5] of this title." 28 U.S.C. § 1930(b). The current fee

[4] The court questions whether the pleadings are procedurally proper. The Debtors should have filed a separate appeal of the Sanctions Order, requiring payment of new appeal fees or application to waive those fees.

[5] (a) The clerk of each district court shall require the parties instituting any civil action, suite or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5.

(b) The clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States.

(c) Each district court by rule or standing order may require advance payment of fees..

28 U.S.C. § 1914.

schedule issued in accordance with this provision establishes a fee of $293.00 "[f]or filing an appeal or cross appeal from a judgment, order, or decree. This fee is collected in addition to the statutory fee of $5 that is collected under 28 U.S.C. § 1930(c)[6] when a notice of appeal is filed." Bankruptcy Court Miscellaneous Fee Schedule (Dec. 1, 2016). Following, the total amount of fees for filing an appeal of a judgment, order, or decree of this court is the Appeal Fee of $298.00.

Section 1930(f) allows in certain circumstances for waiver of fees required under 28 U.S.C. § 1930:

> (1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court *may* waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.
>
> (2) The district court or the bankruptcy court *may* waive for such debtors other fees prescribed under subsections (b) and (c).
>
> (3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.

28 U.S.C. § 1930(f) (emphases added). Under this statute, if an individual Chapter 7 debtor has income less than 150 percent of the federal poverty line, then the court *may* waive that debtor's Chapter 7 filing fees and *may* waive other fees prescribed under § 1930(b) and (c), which include the Appeal Fee. Congress's use of the word "may" means that when an individual debtor's income is less than the stated guideline, waiver of fees is permissive, and "the statute establishes no absolute entitlement to a waiver of filing fees. Instead, it merely allows such a waiver in instances

[6] "Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari $5 shall be paid to the clerk of the court, by the appellant or petitioner." 28 U.S.C. § 1930(c).

of income eligibility where the totality of circumstances compels this treatment." *In re Burr*, 344 B.R. 234, 236 (Bankr. W.D.N.Y. 2006). This court previously adopted a totality of the circumstances test for considering waiver of the Appeal Fee. *In re Cary*, Case No. 09-10026-8-DMW (Bankr. E.D.N.C. Feb. 16, 2017), *aff'd* Case No. 5:17-CV-84-BR (E.D.N.C. Apr. 26, 2017) (citing *In re Fortman*, 456 B.R. 370, 375 (Bankr. N.D. Ind. 2011)).

The "income official poverty line" referenced in 28 U.S.C. § 1930(f) means "the poverty guidelines periodically updated by the United States Department of Health and Human Services [("HHS")]" *In re Cary*, Case No. 5:17-CV-84-BR (E.D.N.C. Apr. 26, 2017) (quoting *In re Ray*, Case No. 16-40111, 2016 WL 3211449, at *2 (Bankr. S.D. Ga. June 1, 2016) (citing Guide to Judicial Policy, Judicial Determination of Filing Fee Waiver Applications § 820.20(a)(1)(A))). HHS set $16,240.00 as the 2017 poverty guideline for a two-person household in North Carolina. U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs (2017). https://aspe.hhs.gov/poverty-guidelines. One hundred fifty percent of this amount is $24,360.00, which equates to $2,030.00 per month. The Debtors' most recently filed Schedule I reports monthly income of $2,215.00 which is greater than 150 percent of the applicable poverty guideline, making the Debtors ineligible for consideration of a fee waiver under 28 U.S.C. § 1930. The Waiver Application, however, reports a monthly income of only $1,805.00 which is the $2,215.00 reported on Schedule I minus the $410.00 VA Income. The court is aware that it should exclude from consideration any non-cash government assistance, such as food stamps. *See In re Lineberry*, 344 B.R. 487, 491 (Bankr. W.D. Va. 2006). Although the Debtors have not explained fully the nature of the VA Income being received by the male Debtor, the court will give them the benefit of the doubt and finds that they have met the first prong of the two-part test for waiver of the Appeal Fee.

Considering the totality of the Debtors' circumstances, the court finds that despite their low level of income, the Debtors are not without the means or ability to pay the Appeal Fee. Although the court questions the validity of the Debtors' claimed exemption in the Property, no objections were filed timely, making the entire value of the Property exempt. *See In re Gregory*, 487 B.R. 444, 448 (Bankr. E.D.N.C. 2013) (citing *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642-43, 112 S. Ct. 1644, 1648, 118 L. Ed.2d 280 (1992)) (noting that unless a party in interest objects, property claimed as exempt is exempt, even if the debtor has no colorable statutory basis for claiming the exemption). The court has made no adjudication regarding attachment of judicial liens on the Property, but it appears likely that this tenancy by the entirety asset is unencumbered, giving the Debtors a potential to borrow against their interest.[7] The court cannot justify waiving the Appeal Fee when the Debtors possess such significant equity in the fully exempt Property.

More importantly, the court believes that the Debtors, particularly the male Debtor, are capable of securing employment which would allow them to earn income beyond government benefits and assistance. Since filing their Chapter 7 petition seven months ago, the *pro se* Debtors have spent substantial time preparing and filing motions and memoranda and appearing before this court. The Trustee filed a Report of No Distribution, and but for the Debtors' continued pursuit of what strikes the court as frivolous or irrelevant claims, the Debtors would by now have been granted a Chapter 7 discharge, and the case would be closed. Although the male Debtor's legal skills are underwhelming, he has proved himself to be physically and mentally competent and able to seek at least part-time employment. Even without employment, the Debtors' monthly income, including the VA Income, exceeds their monthly expenses, leaving some discretionary funds for

[7] The Debtors' schedules and court record indicate that most, if not all, judgments are against only one of the Debtors and would not have attached to the tenants by the entireties Property. *See In re Grimes*, Case No. 15-06465-5-DMW, 2016 WL 3356288 (Bankr. E.D.N.C. June 9, 2016).

application toward the Appeal Fee. The totality of these circumstances do not support waiver of the Appeal Fee under 28 U.S.C. § 1930(f)(2).

In Forma Pauperis Status under 28 U.S.C. § 1915(a)

In the IFP Motion, the Debtors are requesting to proceed in the Appeal *in forma pauperis*, pursuant to 28 U.S.C. § 1915(a), which provides that—

> Subject to subsection (b), any *court of the United States* may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

28 U.S.C. § 1915(a)(1) (emphasis added). The Debtors assert in the IFP Motion that they are "unable to pay such fees or give security therefor," and the court believes that the Debtors intend that "such fees" includes the Appeal Fee which this court has already declined to waive under 28 U.S.C. § 1930.

At the hearing, the Debtors argued that they are entitled to have the IFP Motion adjudicated by an Article III tribunal instead of by an Article I bankruptcy judge, citing the case of *Tevis v. Burkart*, Case No. 2:13-mc-0082 MCE AC PS (E.D. Ca. Aug. 8, 2013). In *Tevis*, a Bankruptcy Appellate Panel for the United States Court of Appeals for the Ninth Circuit declined to make an *in forma pauperis* determination under 28 U.S.C. § 1915(a), reasoning that it was not a "court of the United States" as that term is defined by 28 U.S.C. § 451:

> The term "court of the United States" includes the Supreme Court of the United States, court of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

28 U.S.C. § 451. The court recognizes that there is a split of authority[8] as to whether a bankruptcy court is a "court of the United States" within the meaning of 28 U.S.C. § 1915(a) and adopts the position that a bankruptcy judge can make an *in forma pauperis* determination under this statute.

Section 451 includes the federal district courts within its definition of "court of the United States." Recently, this court analyzed extensively the evolution of bankruptcy courts and found that while bankruptcy courts were created as distinct courts of record by the Bankruptcy Reform Act of 1978, this autonomy was abolished by the Bankruptcy Amendments and Federal Judgeship Act of 1984:

> Bankruptcy courts are no longer independent courts of record; rather, the term "bankruptcy court" is a pseudonym for the bankruptcy judges serving as judicial officers of the district court. To reflect this distinction, Chapter 6 of Title 28 was renamed from "Bankruptcy Courts" to "Bankruptcy Judges." Section 151 of this chapter was renamed from "Creation and composition of bankruptcy courts" to "Designation of bankruptcy courts" and currently provides that—
>
> > [i]n each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be *known as* the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, *may exercise the authority conferred under this chapter* with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

[8] The United States Bankruptcy Court for the Eastern District of Michigan summarized succinctly that—
[t]here is a split of authority on whether 28 U.S.C. § 1915(a) applies to bankruptcy courts. *Compare United States v. Kras*, 409 U.S. 434, 440, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973) (Bankruptcy Act) (stating that " § 1915(a) is not now available in bankruptcy"); and *Perroton v. Gray (In re Perroton*), 958 F.2d 889, 893–896 (9th Cir.1992) (holding that bankruptcy courts do not have authority to act under 28 U.S.C. § 1915(a), because a bankruptcy court is not a "court of the United States" within the meaning of this statute). *with In re Meuli*, 162 B.R. 327, 328 (Bankr.D.Kan.1993) ("The United States District Court for the District of Kansas in *In re Laurence Lee Keiswetter*, Case No. 86–4385–R (D.Kan. Oct. 30, 1987), has held that 28 U.S.C. § 1915 on *in forma pauperis* proceedings applies to the filing of a bankruptcy appeal."); *Nieves v. Melendez (In re Melendez*), 153 B.R. 386, 388 (Bankr.D.Conn.1993) (refusing to interpret 28 U.S.C. § 1915(a) "as prohibiting bankruptcy judges from deciding *in forma pauperis* motions"); and *Shumate v. Signet Bank, NCNB (In re Shumate*), 91 B.R. 23, 26 (Bankr.W.D.Va.1988) (holding that bankruptcy courts have authority to act under 28 U.S.C. § 1915(a), because a bankruptcy court is a "court of the United States" within the meaning of this statute).
Michigan First Credit Union v. Smith (In re Smith), 499 B.R. 555, 556 n. 5 (Bankr. E.D. Mich. 2013).

Kozee v. Murphy (In re Murphy), 569 B.R. 402, 409 (Bankr. E.D.N.C. 2017) (quoting 28 U.S.C. § 151 (emphases in original)). Although bankruptcy judges do not have Article III tenure of holding office during good behavior,[9] they are not part of a distinct court "created by" Congress; rather, they are judicial officers of the district court which is specifically defined as a "court of the United States," and the bankruptcy judges collectively constitute a unit of the district court. Ironically, in *Tevis*, the *in forma pauperis* decision was rendered ultimately by a United States magistrate judge who, like a bankruptcy judge, lacks Article III status but serves as part of the district court. If a magistrate judge may adjudicate an *in forma pauperis* request, then it is axiomatic that a bankruptcy judge may as well.

Even though the court declined to waive the Appeal Fee under 28 U.S.C. § 1930(f), it may also consider under 28 U.S.C. § 1915(a) whether the Debtors may proceed with the Appeal without prepayment of the Appeal Fee or any other fee that may come due in the course of the Appeal, such as a fee for transcription of the record. Section 1915(a) requires a movant to submit an affidavit, which includes a statement of assets, of why they cannot pay required fees. The Debtors did not comply specifically with this requirement, constituting cause for denial of the IFP Motion. *See In re Fitzgerald*, 192 B.R. 861, 863 (Bankr. E.D. Va. 1996) (denying motion to proceed in an appeal *in forma pauperis* for failure to file an affidavit in accordance with 28 U.S.C. § 1915(a)). Nevertheless, the court will consider the Debtors' Waiver Application and attached Schedule A/B as a sufficient substitute for an affidavit, and for the same reasons as set forth *supra* with respect to the Waiver Application, declines to allow the Debtors to proceed *in forma pauperis*.

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[9] Article III of the United States Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." U.S. CONST. art. III, § 1.

Finally, the court notes that 28 U.S.C. § 1915(a)(3) provides it with an alternate ground for denial of *in forma pauperis* status, because "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). As stated within the Sanctions Order, the court believes that the Debtors' pursuit of sanctions against Ally, Delaware, and NuCar is in bad faith and hereby certifies that the Appeal is not taken in good faith.

Appointment of Counsel under 28 U.S.C. § 1915(e)(1)

The IFP Motion contains a request that the Debtors be appointed counsel to represent them in their Appeal, presumably under the subsection of 28 U.S.C. § 1915 which provides that "[t]he court *may* request an attorney to represent any person unable to afford legal counsel" 28 U.S.C. § 1915(e)(1) (emphasis added). The court's ability to appoint counsel under this subsection is discretionary, as there is no constitutional right to the appointment of counsel for civil litigation.[10] *Whisenant v. Yuam*, 739 F.2d 160, 163 (4th Cir. 1984). Exceptional circumstances that would support the discretionary appointment of counsel in a civil proceeding are that the *pro se* litigant has colorable claim but lacks the capacity to present it. *Id.* The court has already opined that the issues raised in the Appeal are without merit, and the court declines to appoint counsel to assist the Debtors in a futile effort that will result in a continued delay of closing their bankruptcy case; now therefore,

IT IS ORDERED, ADJUDGED, AND DECREED that the Waiver Application and the IFP Motion be, and hereby are, denied.

END OF DOCUMENT

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[10] Contrarily, the Sixth Amendment to the United States Constitution guarantees criminal defendants the right to a lawyer:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. CONST. amend. VI.