

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-1819

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, Chief District Judge. (5:17-cv-00536-BO)

Submitted: November 15, 2018

Decided: November 21, 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Affirmed by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.

Pet. App. A, CA4 Opinion pages 1-2, Judgment page 3

PER CURIAM:

Alice Annette Howell and Burl Anderson Howell appeal the district court's order denying their post-judgment motion. We previously affirmed the district court's order dismissing their appeal from two of the bankruptcy court's orders. *See Howell v. NuCar Connection, Inc.*, 736 F. App'x 416 (4th Cir. 2018). We also denied their motion asking us to vacate a subsequent order of the bankruptcy court. Appellants filed a copy of their motion in the district court, and the district court also denied it. We find no reversible error in the district court's denial. Accordingly, we affirm the district court's order. *See Doe v. Pub. Citizen*, 749 F.3d 246, 258-59 (4th Cir. 2014); *Howell v. NuCar Connection, Inc.*, No. 5:17-cv-00536-BO (E.D.N.C. July 12, 2018). We grant Appellants leave to proceed in forma pauperis and deny the pending motion to dismiss as moot. 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

FILED: November 21, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1819
(5:17-cv-00536-BO)
(17-01613-5-DMW)

ALICE ANNETTE HOWELL; BURL ANDERSON HOWELL

Debtors - Appellants

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

Creditors - Appellees

JUDGMENT

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

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

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

This cause comes before the Court on appellants' motion [DE 48]. For the reasons discussed below, that motion is denied.

Appellants originally appealed to this Court from the bankruptcy court on October 23, 2017. [DE 1]. The Court dismissed their appeal on April 9, 2018. [DE 42]. Appellants then noticed their appeal to the Fourth Circuit. [DE 45]. On June 15, 2018, appellants filed the instant motion in this case. The motion is titled "Motion for Relief from Attached Order." The attached order is the original bankruptcy court order, and the motion is addressed to the "Fourth Circuit U.S. Court of Appeals."

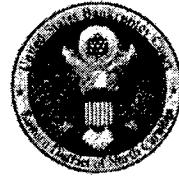
Filing a notice of appeal grants jurisdiction of a case to the court of appeals and takes it away from the district court. *Doe v. Public Citizen*, 749 F.3d 246, 258 (4th Cir. 2014). Rule 59 of the Federal Rules of Civil Procedure provides a limited exception to this. A district court may consider a party's motion to alter or amend judgment after an appeal is docketed if the motion is made within 28 days of the entry of judgment. Fed. R. Civ. P. 59; *see also Zinkand v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007).

Appellants' motion is a jumble of disconnected sentences addressed to the Fourth Circuit. This court no longer has jurisdiction over the case, as appellants have noticed their appeal. To the extent appellants' motion can be construed as a motion under Rule 59, it is dismissed as untimely, as judgment was entered in this case on April 9, 2018.

The motion [DE 48] is DENIED.

SO ORDERED, this the 12 day of July, 2018.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE



SO ORDERED.

SIGNED this 6 day of June, 2018.

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 MOTION TO REOPEN CASE

This matter comes on to be heard upon the Motion to Reopen Case Per Rule 4007(b) Invalidating Lien Per 11 U.S.C. § 350 with Notice of Stay Motion Filed on Appeal in District Court and Fourth Circuit Court of Appeals in Response to Court's Order and Notice for Status Conference of 4 May Scheduled 17 May 2018 ("Motion to Reopen") filed by Burl Anderson Howell and Alice Annette Howell ("Debtors") on May 16, 2018. The court considered the Motion to Reopen at a Status Conference¹ conducted on May 17, 2018 in New Bern, North Carolina. The *pro se* Debtors were present. Based upon the case record and statements of the Debtors, the court makes the following findings of fact and conclusions of law:

¹ On May 1, 2018, the Debtors filed a document titled "Notice of Clerk of Clerks [sic] Failure to Mail Discharge in Conformity with Modification of NuCar Connection, Inc.'s Address Modification on 4/12/17 (Dkt. 25) and to Re-mail for Proper Notice," which the court docketed as a Request for Status Conference. As the court has recited in earlier Orders, the Debtors' pleadings are rambling and confusing, causing the court to "guess" about the relief being requested; therefore, the court scheduled the Status Conference to allow the Debtors an ample opportunity to provide clarity. The Motion to Reopen was filed the day prior to the scheduled Status Conference, and the court allowed the Debtors to also address this motion.

1. The Debtors filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Court 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.

2. The general deadline for filing a complaint objecting to the Debtors’ discharge was July 21, 2017; however, on July 20, 2017, the court entered an Order Granting Trustee’s Motion to Extend Time to File a Complaint Objecting to Discharge which extended the deadline for the Trustee to file such a complaint until September 19, 2017. The Trustee elected ultimately not to file a complaint objecting to the Debtors’ discharge. No other party in interest initiated timely an adversary proceeding to make such an objection.

3. Although the Debtors were eligible for a discharge and the case ripe for closing after September 17, 2017, the case remained open due to the pendency of a Motion for Sanctions against Creditors (“Sanctions Motion”) filed by the Debtors on August 17, 2017. In the Sanctions Motion, the Debtors sought sanctions against Ally Financial, Inc. (“Ally”), NuCar Connection, Inc., and the State of Delaware for alleged violations of the automatic stay imposed by 11 U.S.C. § 362 and alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

4. The court conducted a hearing on the Sanctions Motion on October 19, 2017 and orally denied the Sanctions Motion with prejudice and *sua sponte* granted Ally relief from the automatic stay with respect to its collateral vehicle (“Vehicle”). These rulings were set forth respectively in an Order Granting Relief from the Automatic Stay (“Stay Order”) entered on October 20, 2017 and an Order Denying Motions for Sanctions entered on October 27, 2017. Pursuant to a Notice of Appeal filed on October 23, 2017, the Debtors appealed the Stay Order to the United States District Court for the Eastern District of North Carolina.

5. The Debtors did not seek a stay of the Stay Order pending its appeal, and on February 27, 2018, the court entered an Order Granting Amended Motion for Order in Aid of Enforcement which directed the Debtors to surrender the Vehicle to Ally, and the court assisted Ally in securing possession of the Vehicle at a hearing that was held in the matter.

6. Throughout the pendency of the Debtors' appeal of the Stay Order, the Debtors filed numerous documents in both this court and the district court. Although the Debtors' "pleadings" are difficult to decipher, the Debtors seem to object to the bankruptcy court retaining any subject matter jurisdiction over the Vehicle due to the appeal of the Stay Order.

7. On April 9, 2018, the district court entered an Order ("Dismissal Order") that, *inter alia*, dismissed the Debtors' appeal of the Stay Order, upon motion of Ally. Within the Dismissal Order, the district court addresses the Debtors' claim that the appeal has an adverse effect upon the bankruptcy courts' jurisdiction, especially with respect to the Vehicle. The Honorable Terrence W. Boyle held that the bankruptcy court, not the district court, had jurisdiction over disposition of the Vehicle. *Howell v. NuCar Connection, Inc.*, No.: 17-CV-536-BO (E.D.N.C. Apr. 9, 2018).² On April 16, 2018, the Debtors appealed the Dismissal Order to the United States Court of Appeals for the Fourth Circuit, and that appeal, case number 18-1420, is currently pending.

8. After receipt of the district court's Dismissal Order, this court granted the Debtors a discharge pursuant to 11 U.S.C. § 727 on April 19, 2018. On April 20, 2018, the court entered a Final Decree, and the case was closed.

9. In the Motion to Reopen, the Debtors seem to be asserting that Ally should not be able to enforce its lien on the Vehicle, because the Debtors claimed an exemption in the Vehicle to which neither the Trustee nor any creditor objected; therefore, the case should be reopened to

² The bankruptcy court has that jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered August 3, 1984 by the United States District Court for the Eastern District of North Carolina

allow the Debtors to invalidate Ally's lien. At the Status Conference, the Debtors continued to raise issues about the court's jurisdiction.

10. In the Stay Order, which is the original basis of the Debtors' appeal to the Fourth Circuit, the court held that it had jurisdiction over the matter, and the district court's Dismissal Order acknowledged this jurisdiction. Unless and until this jurisdictional determination is reversed or remanded, the court need not further address that issue. Inconsistently, the Debtors continuously question this court's jurisdiction over the Vehicle, yet wish to reopen the case to seek relief from the court. The Debtors have not met their burden under 11 U.S.C. § 350(b)³ to establish that their bankruptcy case should be reopened to consider the validity of Ally's lien on the Vehicle or for any other purpose; now therefore,

It is ORDERED, ADJUDGED, and DECREED that the Motion to Reopen be, and hereby is, denied.

END OF DOCUMENT

³ "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b).