Jan 22, 2019
Appendix A
original

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10339-HH

In re:

PAULA JO KUNSMAN,

Debtor.

PAULA JO KUNSMAN,

Plaintiff - Appellant,

versus

JOEL WALL,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

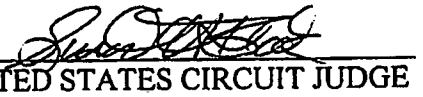
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS, ROSENBAUM and BLACK, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

Docket #18-10339HH

UNITED STATES COURT OF APPEALS

FOR ELEVENTH CIRCUIT

Elbert P. Tuttle Courthouse 56 Forsyth Street, N.W. Atlanta, GA 30303

11th Circuit Appeal 18-10339-D

District Case :16-cv-60163-MGC

Chapter 13 Bankruptcy Case: 15-18660 RBR

Paula Jo Kunsman, Pro Se DEBTOR Last 4 digits of SSN: 2120

CERTIFICATE OF INTERESTED PARTIES STATEMENT

Appeal on District court JUDGE COOKE DISMISSING APPEAL 16-60163 (Jan 22, 2018)(App 11 pg 49-50). Appealed Bankruptcy JUDGE RAY DENYING CONFIRMATION OF CHAPTER 13 PLAN AND DISMISSING CASE (Jan 15, 2016 App 8 pg 43-44) at confirmation hearing, not following Bankruptcy Code 1307 (c) (5).

Chase Bank Card Services (JPM)

Cooke, Marcia District Court Judge, Miami

Internal Revenue Service, priority creditor

J.H. Portfolio Debt Equities, LLC

Langley, David Attorney for Priority creditor Joel Wall

Ray, Raymond Bankruptcy Judge, Fort Lauderdale

Security Credit Services

Unique National Collections

Wall, Joel priority and unsecured creditor

Notarized Deed 2018

UNITED STATES CIRCUIT COURT

APPENDIX B Elbert P. Tuttle Courthouse, 11th Circuit Court
56 Forsyth Street, N.W. Atlanta, GA 30303

In Re: Paula Jo Kunsman
v.
Joel Wall, creditor
digits of SSN: 2120

11th Circuit Appeal 18-10339-HH
District Case 0:16-cv-60163-MGC
Chapter 13Bankruptcy #15-18660 RBR Last 4
Appeal 16-60354 &Appeal 16-60355

VERIFIED SWORN MOTION FOR REHEARING en banc to REVERSE 11th Circuit Reverse their Nov 26, 2018 Decision. SWORN MOITON TO REVERSE JUDGE RAY'S JAN 19, 2016 "ORDER DENYING CONFIRMATION AND DISMISSING CASE" at Confirmation Hearing on Jan 14, 2016 and Jan 19, 2016 Order Dismissing Adversary Proceeding 16-01041RBR as Judge Ray did not follow U.S. 11 Code 1307(c)(5). Appellant requests BANKRUPTCY CASE **15-18660**, filed May 8, 2015 be **REOPEN and REINSTATED** so Debtor can make necessary payments for designated repayment period.

A. APPELLATE REQUESTS 11th CIRCUIT COURT **use this SWORN MOTION, FOR REHEARING En Banc** and her previous MOTION TO ALLOW her to ORDER TRANSCRIPT **CONSTITUTE HER SWORN TESTIMONY to BE USED by 11th Circuity Court as relevant EVIDENCE** that Judge Ray dismissed Bankruptcy Case **without cause** stated in U. S. 11 Code 1307 (c) (5) and *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.* Judge Ray should not have dismissed Bankruptcy case 15-18660 and Adversary Proceeding 16-01041 RBR on Jan 19, 2016. **Evidence** would be presented at the Adversary Proceeding pretrial conference scheduled on Feb 6, 2016. **Judge Ray dismisses Debtor's bankruptcy case without EVIDENCE THAT THE PROPERTY SETTLEMENT DEBT IS DISCHARGEABLE IN A CHAPER 13 bankruptcy.** Judge Ray **did not follow** U.S. 11 Code 1302(c)(5) because BOTH REQUIREMENTS WERE NOT MET. Appellant **has no reason not to tell the truth** and for 11th Circuit Court to give **CREDIBILITY TO what she has stated** about Jan 14, 2016 Confirmation hearing. Appellant **swears facts are TRUE** about **UNFAIR** bankruptcy dismissal and Debtor requested to file 15th Amended plan (which may have been confirmable) was not

truth and for 11th Circuit Court to give **CREDIBILITY TO what she has stated** about Jan 14, 2016 Confirmation hearing. Appellant **swears facts are TRUE** about **UNFAIR** bankruptcy dismissal and Debtor requested to file 15th Amended plan (which may have been confirmable) was not acknowledged or denied by Judge Ray in the Jan 14, 2016 hearing transcript. If 11th Circuit deems these **SWORN TESTIMONY as EVIDENCE** then 11th Circuit should have **enough evidence** that Judge Ray UNFAIRLY dismissed case. Why would Debtor filed 3 District court Appeals and 11th Circuit court Appeal and go through years of appeals if what she is **fighting for were not true**? 11th Circuit court should consider the **strong intent** of the Debtor in trying to get her bankruptcy case reinstated from Jan 14, 2016. Appellant requests 11th Circuit **REVERSE** their Nov 26, 2018 on Reversing Judge Ray's UNFAIR Jan 19, 2016 "Order to Deny Confirmation and Dismiss Case", as Debtor has ordered transcript of Jan 14, 2016 hearing and it will be mailed by , because Judge Ray **did not meet BOTH REQUIREMENTS OF U.S. 11 Code 1307 (c)(5)** and *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.*

B. On Nov 4, 2015, Judge Ray issued Order Denying **denied Motion to Dismiss Bankruptcy case** (DE 81) **in Debtor's favor**. At 1 hour **evidentiary hearing** on Nov 3, 2015, Debtor was sworn in **under oath, cross examined, exhibits presented.** Judge Ray determined that property settlement debt is dischargeable in chapter 13 bankruptcy. (11 US Code 1328). At end of hearing David Langley stated he would withdraw Proof of Claim. Judge Ray stated that Joel Wall is a priority creditor can withdraw Proof of Claim, but Debtor will continue to make payments, & upon completion of the plan, will receive a discharge. There was no confirmation hearing in Nov 2015 & Dec 2015.

C. DEBTOR COULD NOT AFFORD A TRANSCRIPT AT TIME OF APPEAL. Appellant had **FINANCIAL DIFFICULTIES months before** Jan 14, 2016

Confirmation hearing and UNFAIR dismissal by Judge Ray, Debtor paid her Chapter 13 plan payments in October 2015, Nov 2015, Dec 2015 and Jan 2016. Debtor attended confirmation hearings every month. Debtor receives alimony from divorce. In October 2015 Debtor paid $750 to a bankruptcy attorney to represent her at an evidentiary hearing Nov 3, 2015 on other party's Motion to Dismiss case. **Judge Ray denied Party in Interest's Motion to Dismiss case** at Nov 3, 2015 evidentiary hearing. **EVIDENCE was presented by Party in Interest, yet Judge Ray DID NOT DISMISS DEBTOR'S CASE BASED ON THAT EVIDENCE.** That $750 debtor paid for attorney was 1/3 of her October alimony. Bankruptcy attorney withdrew after the evidentiary hearing because Debtor **could not afford** to pay her more Money. In Nov 2015 Debtor paid $2300 in **property taxes** which was 100% of her alimony. In Dec 2015 Debtor had travel and Christmas expenses. In Jan 2016 Debtor had **so many expenses** Oct – Dec 2015, Debtor could **NOT AFFORD to pay for Bankruptcy hearing TRANSCRIPT** for the Appeal 16-60163, as stated in previous Motion to Allow Appellant to order transcript, mailed to 11th Circuit on Nov 30, 2018. From pg 6 of 11th Circuit decision it states "Kunsman failed to order transcripts or otherwise provide a record of the proceedings that occurred in the Bankruptcy court, particularly the January 2016 confirmation hearing." In divorce Wife had **paid over $2050** for transcript and printing 4 copies of transcript of April 8, 2011 9-1and 2-4 Magistrate hearing that she appealed Sep 3, 2011. Wife was **never reimbursed** by Ex-husband for half the cost of the transcript even though Ex-Husband's attorney used it for 4DCA Appeal 11-3285. Wife won appeal and Ex-Husband should have paid Appellate costs and ½ of transcript. When Debtor filed Appeal 16-60163 Jan 27, 2016, Debtor filed **Motion to Proceed to Appeal in Forma Pauperis**, including an Affidavit, which listed all debtor's income and expenses. Judge Ray granted Motion for Debtor to Proceed to Appeal Debtor deemed "**indigent**" and that Appellate fee was waived by Judge Ray for Appeal

expenses. Judge Ray granted Motion for Debtor to Proceed to Appeal Debtor deemed "**indigent**" and that Appellate fee was waived by Judge Ray for Appeal 16-60163. As explained in previous Motion to Allow Appellant to Submit Written Transcript to 11th Circuit court, she thought that District Court Judge Cooke had access to Audio Recording of Jan 14, 2016 Confirmation hearing, dismissal being appealed.

D. On pg 5 of 11th Circuit decision it states "We have explained that Appellant has the burden "to ensure the record on appeal is complete, and where a failure to discharge that burden prevents us from reviewing the District court's decision we ordinarily will affirm the judgement." Appellant requests that because she was **FINANCIALLY STRAINED** from Oct 2015-Jan 2016, 11th Circuit allow Appellant to provide the necessary transcript filed by Ouellette and Mauldin Court Reporters, Inc. to be added to bankruptcy record in 3 days of receiving audio. On Dec 3, 2018, Appellant received copy, in the mail, of 11th Circuit court's decision filed Nov 26, 2018 in this appeal. Appellant mailed Motion to Allow Appellant to order Transcript on this appeal on Nov 30, 2018 before she had even received a copy of 11th Circuit's Decision. Appellant **ordered transcript** on Friday Nov 30, 2018 (even before she received copy of 11th Court decision in mail on Dec 3, 2018) which Ouellete and Mauldin Court Reporters, Inc. will file with **bankruptcy court within 3 days** of receiving audio recording. 11th Circuit will have written copy of last Confirmation hearing on Jan 14, 2016.

E. On Jan 3, 2016 Debtor's brother passed away in Apopka FL. Debtor attended funeral in Winter Garden FL. Debtor was **still grieving** at Jan 12, 2016 hearing in which **Judge Ray ordered that Proof of Claim for Joel Wall be stricken** even though **Debtor had filed Local Form 67, which states that Debtor agrees to pay Domestic Support Obligation in bankruptcy**. On Jan 13, 2016 Debtor filed another Proof of Claim for priority creditor Joel Wall, Ex-Husband, who she owed $4032 in Domestic Support Obligation. Debtor had filed Local Form 67

which states that she must pay all support obligations in the bankruptcy. **Proof of Claim should not have withdrawn for amount owed on Jan 12, 2016, BECAUSE Debtor owes Domestic Support Obligation of $4076.21 & unsecured debt to Priority Creditor Joel Wall, Debtor had filed Local Form 67 stating Debtor was paying all DSO in bankruptcy.** Debtor was paying priority creditors up to liquidation test & unsecured creditors. Debtor was paying Joel Wall 100% priority claim of $4076.21 in child expenses **in Nature of support** through 11th-13th &15th-17th Amended Chapter 13 plans pursuant to US Code 1328(b)(c)(2). Mediation Agreement states Mother is responsible to pay 45% of medical, extracurricular activities &uniforms, unpaid medical bills.

F. The **following quotes (from transcript emailed to Appellant Dec 5, 2018) are from Jan 14, 2016 Confirmation hearing**: Trustee Robin Weiner states on pg 4, lines 7-9 that Debtor's 14th amended plan is confirmable. On pg 5 lines 24-pg 7 line 15 Debtor states that deadline for Party in Interest to objection to confirmation has passed, according for Form B91. The deadline for any creditor or other party in interest to contest Court's findings shall file an objection no later than 21 days from entry of this order (Docket Entry 43-Form B91). Debtor states that deadline to object to dischargeability has passed Sept 15, 2015. Debtor states that no motions or objections were filed any time from my 102 page petition, which was filed on May 12, 2015 and asks Judge to enforce the deadlines. On pg 8 lines 4-12 Party in Interest states that he wants special order stating that confirming plan will not impact state court. He states Joel Wall (Ex-husband) is not creditor. THIS IS NOT TRUE BECAUSE JOEL WALL (Ex-Husband is a PRIORTY CREDITOR WHO DEBTOR OWES DSO of $4076. See Local Form 67. **Judge Ray should not ordered on Jan 14, 2016 to strike Proof of Claim for Joel Wall** at Jan 12, 2016 hearing because **Debtor owed Joel Wall (Ex-husband) Priority claim of $4076 child care expenses**. David Langley states Court had an evidentiary hearing and that Judge Ray asked him not to put any

findings of FACT on pg 8 lines 17-22. Party in Interest asks for custom order that confirmation will not impact divorce case pg 9 lines 2-16. On pg 9 line 25 –pg 10 lines 16 Debtor explains that debt from property settlement in divorce proceedings is dischargeable under Chapter 13. Her attorney at evidentiary hearing Nov 3, 2015. She stated she can't afford an attorney and asks court to appoint one for her. Judge Ray said no. On pg 11 lines 8-13 Debtor states that **Judge removed proof of claim, which happened on Tuesday (Jan 12, 2016) but Joel Wall is priority creditor, owed $4076.** On pg 11 lines 15-pg 12 line 9 **Trustee confirms that Joel Wall is priority creditor and states that 14th amended plan is confirmable** but for Schedule F. "Scheduled D is priority, Mr. Wall is not objecting to, but he is objecting to Schedule F being amended as unsecured general." Trustee states that if Debtor is willing to amend Schedule F, we have confirmable plan. On pg 13 lines 25-pg14 line 3 Debtor states "I have filed an **amended Schedule F showing that Joel Wall is only owed $18,765.63**. Mr. Langley must not have a copy of this. It was mailed November 7." Docket Entry 119. David Langley states that Joel Wall belongs on Schedule E, not on F. Debtor explains that some of **debt is for child care expenses and some of it is a property settlement debt**...dischargeable under Chapter 13 (pg 14 lines 9-18). Party in Interest did not **PROVIDE ANY EVIDENCE to Bankruptcy court**. On pg 15 lines 5- Trustee Robin Weiner states "I recommend confirmation of 14th plan, subject to Schedule D,E, and F having been amended. "since Mr. Wall did not file proof of claim, I don't see why I can't recommend confirmation of 14th amended plan." David Langley states he is asking Court to confirm 14th amended plan as filed on pg 15 lines 24&25. Debtor explains that she filed that this is property settlement debt and this **debt is dischargeable in Chapter 13** and that she would like to refile proof of claim on pg 16 lines 7-12. Judge Ray states that he will deny confirmation and dismiss the caseon pg 16 lines 13-15. Debtor states that Trustee should file a **proof of claim for priority debt.** Judge Ray states that

Debtor has 2 choices, **he can confirm the 14th amended plan or deny confirmation and dismiss** the case on pg 16 lines 19-21. On pg 4, lines 4& 5 Trustee Robin Weiner who had been stating all along that the 14th Amended plan was confirmable, now checks it and states "And now it is not confirmable, there is are calculation errors. Then on pg 18 lines 12&13 Judge Ray states "the 14th plan will be denied, confirmation, the case will be dismissed." On pg 18 lines 14-23 Debtor PLEADS will Judge Ray that she could file an already prepared 15th amended plan and **continue TO NEXT MONTH. She states that she needs to get time to get an attorney and does not want case dismissed**. "I have the 15th amended plan right here". Trustee asked if I filed it? Debtor states No, I was going to file it today. Trustee asks if she can review it and if it's added correctly confirm-**submit an order confirming**? Pg 19 line 2-16. Trustee Robin Weiner then states on pg 19 lines 18-21 "I will not submit an order denying, your Honor. That's going to be your decision. **So continue if it's not confirmable or if it hasn't been added correctly?"** Judge Ray states it has to be filed. Trustee asks "Can you (Judge Ray) file that (Debtor's 15th amended plan) right now?" on pg 19 lines 22-23. Judge Ray **does not answer whether the 15th amended plan can be filed in OPEN COURT**. Debtor explains on pg 20 lines 9-13 that property settlement debt is dischargeable in a Chapter 13 and that she has done everything properly and been very thorough. On pg 20 lines 14-16 Judge Ray states "I will deny confirmation of the 14th amended plan and DISMISS the CASE." Trustee Robin Weiner asks Judge Ray to draft its own dismissal order. On pg 21 lines 1-8 Debtor states "I want to file Proof of claim, at least for the child support. Domestic Support Obligation, I'm required to pay in this bankruptcy $4076.21. That is not getting paid in the bankruptcy if I don't file a proof of claim at least for the domestic.." Debtor explains that **she needed to pay the Domestic Support Obligation** of $4076 in the bankruptcy. Debtor had filed Local Form 67 which STATES THAT **DEBTOR AGREES TO PAY THE DOMESTIC**

SUPPORT OBLIGATION in Chapter 13 Bankruptcy. Local Form 67 was still in effect in Chapter 13 bankruptcy case. Judge Ray states that he has already ruled… on the proof of claim. On pg 21 lines 19-21 Debtor states "I was under the impression that **my case was not dismissable** because I've done everything that was required of me." Judge Ray states "**The plan is not confirmable.**" IN THIS LINE OF THE TRANSCRIPT JUDGE RAY ADMITS THAT **HE IS DISMISSING MY BANKRUPTCY CASE BECAUSE OF A NON CONFIRMABLE PLAN.** On pg 21 lines 23-4 Debtor asks "The 15th amended plan is not confirmable? Trustee states "It's not filed." BUT EARLIER IN THE HEARING **TRUSTEE ASKS JUDGE RAY TO FILE THE 15th AMENDED PLAN IN OPEN COURT AND JUDGE RAY DOES NOT ANSWER ABOUT FILING IT IN OPEN COURT**. When Judge Ray states "Confirmation is denied and case is dismissed", he is not following U.S. 11 Code 1307.

G. THE **TRANSCRIPT IS PROOF THAT JUDGE RAY DENIED CONFIRMATION and DISMISSED CASE without giving the Debtor the opportunity to file prepared 15th amended plan that she had brought to court**. Judge Ray could have continued confirmation to the next month and allowed the Trustee to review the 15th amended plan. **The CASE CANNOT BE DISMISSED FOR A NONCONFIRMABLE PLAN without also giving the Debtor a chance to file a new plan to be confirmed**. Judge Ray did not ever say during the hearing that he denied a request for additional time to file a new plan, which shows that Judge Ray did not follow U.S. 11 Code 1307(c)(5). During the rest of the hearing, Judge Ray may have forgotten that Debtor wanted to file 15th amended plan she had with her in OPEN COURT. The hearing was over and there was NO REQUEST FOR ADDITIONAL TIME TO FILE A NEW CHAPTER 13 PLAN. Judge Ray dismissed case before Debtor or Trustee Robin Weiner (at podium) could request additional time to file an amended Chapter 13 plan. Judge Ray did not dismiss case for cause because he did not ALSO deny a

request for an extension of time to file a NEW Chapter 13 plan. Debtor has **no reason to not tell the truth**. Debtor filed Appeal **because she knew that Judge Ray could not dismiss case at a confirmation hearing without giving DEBTOR an opportunity to file a new plan.** Debtor understands that 11th Circuit court needs **objective evidence** that Judge Ray did not deny a request for additional time to file a new plan. 11th Circuit's review of written transcript proves Party in Interest talked the whole hearing, and Debtor only answering question at the end of hearing. Debtor was not given equal time to plead her case and get confirmation of her Chapter 13 plan.

H. This case was dismissed by Judge Ray at Confirmation Hearing **without also denying request for additional time to file another plan pursuant to 11 US Code 1307 (c)(5)** which states that case can be dismissed if plan is not confirmed **AND** request for additional time to file another plan is denied. **Both have to be met before case can be dismissed 11 US Code 1307(c)(5) and *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.*** If Judge Ray **had denied a request for additional time to file an amended Chapter 13 plan,** then he would have **WRITTEN THAT HE DENIED REQUEST FOR ADDITIONAL TIME TO FILE A PLAN** in this long Jan 19, 2016 "Order denying Confirmation and Dismissing Case". The fact that Judge Ray **did not write that in his Jan 19, 2016 order, PROVES that Judge Ray did not FOLLOW U.S. Code 1307(c) (5) and *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.*** U.S. 11 Code 1307 which lists reasons that a Chapter 13 case may be dismissed, none of the reasons apply to Debtor's case. No **CAUSE/reason** was stated in Judge Ray's **Order Denying Confirmation and Dismissing Debtor's Bankruptcy case**. I had provided CASE LAW ON **MEETING BOTH THE REQUIREMENTS OF U.S. Code** ~~**1307(c)(5)** in case *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of*~~

1307(c)(5) in case *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.* This bankruptcy case states, "**Since (Bankruptcy) court did not comply with §1307(c)(5)** when it preempted the **debtor's chance to try again and dismissed the case** after the first denial of plan confirmation, it applied an incorrect legal standard, thereby abused its discretion. Bankruptcy Code contemplates in §1307(c)(5) and *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006*, that chapter 13 debtors **BE AFFORDED MORE THAN ONE OPPORTUNITY TO CONFIRM A CHAPTER 13 PLAN BEFORE THE CASE IS DISMISSED** or converted following denial of plan confirmation. As one of the elements of §1307(c)(5) "cause" was missing, mere denial of confirmation did not constitute the requisite cause. **We REVERSE the order dismissing case and REMAND for further proceedings consistent with this decision.**" *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.*

I. U.S. 11 Code 1307 states that "on request of party in interest of US Trustee and after notice of hearing, **court may dismiss case FOR CAUSE.**" Court could not dismiss care FOR CAUSE because there was no request by party in interest with Proper Notice of Hearing to dismiss case. The **Motion to Dismiss case was denied at Nov 3, 2015 evidentiary hearing.** This was a CONFIRMATION HEARING. 11 Code 1307 (c) (5) states that bankruptcy case can be dismissed for denial of chapter 13 plan AND denial of a request made for additional time for filing another plan or a modification of plan. **Both denial of plan AND denial of request must be met** before Bankruptcy case can be dismissed under 11 Code 1307 (c)(5) and *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.* Judge Ray did not follow 11 Code 1307 (c) (5) in dismissing Appellant's bankruptcy without giving Debtor a chance to file an amended plan after Confirmation hearing. Since no

request for additional time for filing another plan was asked for by Trustee or Debtor on Jan 14, 2016. **No denial of request for additional time for filing another plan was ordered.** None of the reasons listed in 11 code 1307 would be **grounds for dismissal** of Appellant's bankruptcy case 15-18660. "11 Code §1307. Conversion or dismissal states the reasons that a Chapter 13 bankruptcy can be dismissed. 11 Code §1307 states in (c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States Trustee and after notice and a hearing, **Court may convert a case under this chapter to a case under chapter 7 of this title**, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including- (5) **denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;** see *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.*

J. Trustee Robin Weiner asked to write and WROTE the Jan 19, 2016 ORDER Denying Confirmation and Dismissing case. It was not written by Judge Ray. On pg 6 of 11th decision it states "The bankruptcy court's order denying confirmation and dismissing the case does not set forth its reasoning; instead it references "reasons argued and stated on the record." Because Debtor had notified David Langley that she was filing Adversary Proceeding, at Jan 14, 2016 Confirmation hearing Party in Interest **tried to turn** Jan 14, 2016 Confirmation hearing **into an adversary proceeding to determine dischargability of the debt.** He didn't want Debtor to file adversary proceeding that Debtor had prepared as early as Nov 4, 2015 email states. Debtor delayed in filing it because she could not AFFORD the adversary filing fee, but it was waived on Jan 14, 2016 when she filed Adversary Proceeding 16-01041. Debtor has included her Adversary Proceeding filed Jan 14, 2016 after confirmation hearing as evidence that it was FILED after Judge Ray said he denied confirmation and dismissed case, but before Judge Ray signed

the order on Jan 19, 2016. Judge Ray did not consider that the EVIDENCE presented in the Adversary proceeding scheduled for Mar 6, 2016 would be contrary to his Order dismissing the case. Judge Ray also did not have any evidence in the Jan 14, 2016 hearing that the debt was not dischargeable in Chapter 13 bankruptcy. Judge Ray only listened to Party in Interest's argument, denied confirmation of 14th plan without allowing Debtor to file the prepared 15th plan and dismissing the adversary proceeding that was NECESSARY to DETERMINE DISCHARGEABILITY OF THE DEBT on Debtor's Schedule E and F.

from: **Paula Kunsman** <musiclover61@gmail.com>

to: David Langley <dave@flalawyer.com>

date: Nov 4, 2015, 10:36 AM

subject: I have prepared a spreadsheet showing the amounts in the magistrate's report, 4dca and amendments to final judgement

"I was adviced that I need to file an adverse proceeding to determine dischargeability of debt and 2 other issues of the 10 reasons you can file an adverse proceeding, but I wanted to try to settle before I file this.I am going to be paying Joel all of the child expenses $4076 even though around $2000 of tuition/cell phone I was not supposed to pay. Or we can go to court about it. In exchange for $2000 I should not be paying I want $2000 of other expenses discharged in bankruptcy. I hope that we can work this out because I don't think the judge wants to hear any more of your FRIVOLOUS MOTIONS. I don't think the Judge wants to have another hearing because (on) determining the family debt to be discharged. Paula"

K. On Jan 14, 2016 after Confirmation hearing, **Debtor filed an adversary hearing 16-01041 for the purpose of Recovery of Money/Property and Dischargeability** in the Chapter 13 discharge. Debtor filed Adversary Proceeding 16-01041 on Jan 14, 2016 Form B104 Adversary Proceeding Cover Sheet with the following items CHECKED: FRAP 7001(1) **Recovery of Money/Property** and FRAP 7001 (6) 61-Dischargeability Section 523 (a)(5) **Domestic Support and 64-Dischargeability Section 523(a)(15) Divorce or Separation obligation** (other than Domestic Support) and 65-Dischargeability other Creditor Joel Wall

struck Proof of Claim Property Settlement Debt. Pg 2 of Adversary Proceeding Cover sheet was signed Jan 14, 2016 by Debtor. Debtor also filed an EXHIBIT for Adversary Proceeding on Jan 14, 2016. It showed "Equitable Division" "Husband gets" "Wife gets" "page in Magistrate's Report (Final Judgement)" and in column which page of Amendments to Final Judgement. Debtor has included the Adversary Proceeding case #16-01041(that is in Docket) with this motion. Because Judge Ray dismissed bankruptcy case at Confirmation hearing on Jan 14, 2016 but order was not filed til Jan 19, 2016, Judge Ray did not review the adversary proceeding or have Mar 6, 2016 scheduled hearing to determine debt's **DISCHARGEABILITY WITH EVIDENCE.** Judge Ray was basing his dismissal of bankruptcy case Jan 14, 2016 solely on Party in Interest's view point, not any evidence, like that **presented at EVIDENTIARY HEARING Nov 3, 2015 in which Judge Ray denied MOTION TO DISMISS case or EVIDENCE that would have been presented at the Adversary Proceeding hearing on Mar 6, 2016.**

L. Doc 1-1 was **Adversary Proceeding and Request for hearing** filed Jan 14, 2016 **at 12:02pm**. It states the "Paula Kunsman hereby files this Adversary Proceeding to **determine dischargeability of $22,841.84 debt. Creditor Joel Wall is being paid $4076 as Priority creditor and being paid $3132 as unsecured creditor.**" Doc 2-1 filed 1/14/16 is **Summons and Notice of Pretrial/Trial in an Adversary Proceeding** pg 2 stated hearing would be on **Mar 8, 2016**. Doc 3-1 filed 1/14/16 is ORDER SETTING FILING AND DISCLOSURE REQUIREMENTS for Pretrial and Trial 5 page explaining the Adversary Proceeding. On page 5 is states "A copy of this order was furnished to Paula Jo Kunsman on behalf of the Plaintiff on Jan 14, 2016". Desiree Grooms Deputy Clerk. Debtor's alimony, ½ of Husband's Voya account (in her name) and ½ of Hartford annuity are exempt property. State Judge's Amendments to Final Judgement was signed Mar 31, 2015 after Voya account was already equitably

divided from Final Judgement Aug 2011, there could be NO OFFSET from exempt Voya account. Amendment to Final Judgment modified Final Judgement which is well settled and was appealed with 4DCA. Party in Interest (Ex-husband) **could not file another** Motion to Dismiss case as previous Motion was denied. Email showing Debtor filed Adversary Proceeding.

from:	**Paula Kunsman** <musiclover61@gmail.com>	Date:	Jan 14, 2016, 2:05 PM
to:	Joel Wall <jjwall54@bellsouth.net>, David Langley <dave@flalawyer.com>, Emily <Emily@flalawyer.com>	subject:	Fwd: In re: Paula Kunsn

I filed an adversary proceeding today along with the Debtor's Certificate of Compliance LF 97A as I was leaving the courthouse. I am in the process of preparing and filing Motion to Reinstate Case and Notice of Appeal. Paula

If Judge Ray dismissed Adversary Proceeding on Jan 19, 2016 along with bankruptcy case, then Why on Feb 2, 2016 did Judge Ray file Order Setting hearing on Plaintiff's Motion to Continue Pretrial Conference D.E. 7 is set for Feb 11, 2016 at 2:30pm, instead of Mar 8, 2016? Had Judge Ray forgot that he dismissed the adversary proceeding on Jan 19, 2016? **Judge Ray wanted to proceed with the Adversary Proceeding after he had dismissed Debtor's bankruptcy case.** Judge Ray's Jan 19, 2016 Dismissal of my Bankruptcy case 15-18660 and Adversary Proceeding 16-01041 **Recovery of Money/Property and Dischargeability** were not for "Cause" because both REQUIREMENTS were not met. IF 11th Circuit court allows Judge Ray **to dismiss my bankruptcy case because of a non- confirmable plan without giving Debtor a chance to MADE A REQUEST for ADDITIONAL TIME TO FILE A NEW CHAPTER 13 PLAN, then 11th Circuit Court is not following the U.S 11 Code 1307 (c)(5)** or *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006.* 11th Circuit should not allow Judge Ray to order dismissals without CAUSE and without MEETING BOTH REQUIREMENTS of U.S. 11 Code 1307(c)(5).

M. Appellant is arguing that bankruptcy **court erred in dismissing case** sua sponte and does not abandon any challenge in that regard. *Timson v. Sampson, 518 F.3d 870, 874 911th Circuit 2008).* At the bottom of pg 5 of 11th Circuit's decision not to reverse Judge Ray's Jan 19, 2016 order UNFAIR dismissal of Debtor's Chapter 13 Bankruptcy and Jan 19, 2016 Dismissal of Adversary Proceeding on Recovery of Money/Property and Dischargeability #16-01041 filed by Debtor (who had prepared in in advance) on Jan 14, 2016 immediately after Confirmation hearing. Since Trustee Robin Weiner prepared the Dismissal order, Judge Ray **did not make any sua sponte ruling about dismissing Debtor's Chapter 13 bankruptcy case. If Judge Ray had made a sua sponte ruling,** then the sua sponte ruling **would have included** it in his Jan 19, 2016 "Order Denying Confirmation and Dismissing Case." If Order Denying confirmation and Dismissing case was written by Trustee Robin Weiner, then Judge Ray has not made any sua sponte ruling.

N. Debtor filed Motion to Vacate Dismissal of Bankruptcy /Recuse Judge/Remove Trustee within 10 days Bankruptcy case 15-18660 **SHOULD NOT HAVE BEEN DISMISSED at Confirmation Hearing Jan 14, 2016**. Judge Ray did not hear that Motion until May 2016 and he denied all Debtor's motions without her stating her defense. Debtor was explaining that the Motion she filed, day before hearing, was not supposed to be heard at May 216 hearing because she **DID NOT RECEIVE PROPER NOTICE** that it would be heard on May 2016. Debtor filed Appeal of Order Denying Confirmation and Dismissing Case on Jan 27, 2016. Judge Ray states "This court is divested of its control over those aspects involved in Appeal, which included **Motion to Reinstate & Motion to Vacate Dismissal** that was subsequently filed by Debtor. Therefore, the Court MUST deny these Motions based on this Court's lack of jurisdiction." at Feb 11, 2016 hearing. Judge Ray **had jurisdiction to rule on those motions**. Appeal 16-60163

Dismissed by Judge Ray Feb 17, 2016. Debtor filed Motions to Stay/Motions to Leave to Appeal in Feb 2016, but Bankruptcy case 15-18660 was not stayed.

O. On pg 5 of 11th Circuit's decision it states "FRAP specify that if an appellant intends to urge on appeal that a finding or conclusion is unsupported by or contrary to the evidence, Appellant must include in the record a transcript of all evidence relevant to that finding or conclusion." APPELLANT'S **TESTIMONY** in her Appellate Briefs (District appeal 16-60163, District appeal 16-60354 and District appeal 16-60355) is **TRUE AND TRUSTWORTHY**. On pg 6 of 11th Circuit's decision it states "We have noted, however, that the enumerated examples in the similarly-worded prevision under Chapter 7 are non-exhaustive." This is a **Chapter 13 bankruptcy case**, not a Chapter 7 bankruptcy case. U. S. 11 Code 1307(c) (5) nor *Nelson NC-05-1293-KRyB Appeal U.S. Bankruptcy Court of Northern District of California 9th Circuit May 15, 2006,* was not followed by Judge Ray. DEBTOR filed Appeal 16-60354 on Judge Ray's order that he didn't have jurisdiction Feb 11, 2016 to rule on Motion to Reinstate bankruptcy case and Motion to Vacate Dismissal of Bankruptcy case. District Judge Bloom ordered that all pending motions be ruled on so Appeal could take effect. Judge Ray denied Motion to Vacate Dismissal of case May 19, 2016. Since Judge Ray did not rule on Motion to Stay or all pending motions filed by Debtor until May 2016, **Appeals took effect when pending motions were disposed of.** The 11th Circuit Court **must review ALL 3 APPEALS** filed by Debtor to fulling Review this Chapter 13 Bankruptcy case 15-18660. On Feb 19, 2016, Debtor filed both **Appeal 16-60354** and **Appeal 16-60355** against 2 of Judge Ray's rulings. 11th Circuit's decision states "we review the bankruptcy court's factual findings for clear error, and **we review do novo** the legal conclusions of both the bankruptcy court and the District court. **Dismissals "for Cause" are reviewed for abuse of discretion.**" The reason Debtor had to file 3 Appeals is because Judge Ray refused to rule on Debtor's pending motions and did not dispose to bankruptcy

case until May 2016, at which time **Appeal 16-60163** would have taken effect. But Judge Ray dismissed Appeal 16-60163 because Debtor had not filed designation of items to be included in the record within certain number of days. Each appeal was heard and ruled on by a different District court Judge (Bloom/Cohn). If 11th Circuit is truly reviewing 'de Novo' then there must be a REVIEW of both other appeals filed against Judge Ray's orders. DEBTOR filed Appeal 16-60355 Appealing Judge Ray's dismissal of Appeal 16-60163 filed Jan 27, 2016 for not filing designation of items to be included in the record. On Oct 19, 2016 District Judge Cohn ordered to **Vacate Dismissal of Appeal 16-60163, be reversed.**

AS SET FORTH IN THIS **SWORN MOTION**/AFFIDAVIT SETTING FORTH FACTS AND REASONS why PRO SE LITIGANT's Bankruptcy case 15-18660. Debtor REQUESTS RELIEF from Judge Ray's **UNFAIR DISMISSAL** without "CAUSE" and **REINSTATMENT** of her CHAPTER 13 BANKRUPTCY CASE so that she can pay payments for the designated time period. Paula Kunsman **swears** to this Court that she HAS TOLD AND ALWAYS WILL TELL THE TRUTH in this case and her Bankruptcy was UNFAIRLY dismissed. Paula Kunsman has never lied about anything in any court. Paula Kunsman is very **trust worthy**. Her word has never been disqualified in any court. Paula Kunsman certifies that she has never been found guilty fraud or perjury in any jurisdiction. Under penalty of perjury, Paula Kunsman **swears that she has prepared this Sworn Motion/Affidavit and the facts contained in it are true**. FURTHER AFFIANT SAYETH NAUGHT.

_____

Paula Kunsman 20 S. E. 7 Street Pompano Beach, FL 33060

The foregoing instrument was acknowledged/signed before me this ___ day of _____ 2018 by _____(personally known to me)(or who has produced) _____(as Identification).

_____

Signature of Notary

CERTIFICATE OF SERVICE

I, Paula Kunsman, hereby certifies that a true, correct copy of this motion was emailed to Joel Wall 1750 SW 51 Terr Plantation, FL 33317 (954)581-6931&David Langley on this 4th day of December 2018. _____Paula Kunsman, 20 S.E. 7 St. Pompano Beach, FL 33060

original Appendix C

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10339
Non-Argument Calendar

D.C. Docket No. 0:16-cv-60163-MGC,
Bkcy No. 15-bkc-18660-RBR

In re:
PAULA JO KUNSMAN,

Debtor.

PAULA JO KUNSMAN,

Plaintiff-Appellant,

versus

JOEL WALL,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(November 26, 2018)

Before MARCUS, ROSENBAUM and BLACK, Circuit Judges.

PER CURIAM:

Paula Jo Kunsman, a Chapter 13 debtor proceeding pro se, appeals from the district court's order dismissing her appeal of the bankruptcy court's denial of her 14th Amended Chapter 13 Plan (the "14th Plan") and dismissal of her bankruptcy case. We liberally construe Kunsman's brief as challenging: (1) the bankruptcy judge's denial of her request for recusal; (2) the bankruptcy court's dismissal of her bankruptcy case; and (3) several ancillary actions of the bankruptcy court. We address each issue in turn.

I. DISCUSSION

A. Recusal[1]

A federal judge must recuse himself "in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Recusal under § 455(a) is required only when the alleged bias is personal in nature—that is, it stems from an extrajudicial source. *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000). Adverse rulings alone, either in the same or a related case, generally do not constitute a valid basis for recusal. *Id.* The standard is "whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on

[1] We review both a denial of a motion for disqualification and a refusal to recuse for an abuse of discretion. *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000); *Giles v. Garwood*, 853 F.2d 876, 878 (11th Cir. 1988).

which recusal was sought would entertain a significant doubt about the judge's impartiality." *Bolin*, 225 F.3d at 1239.

In addition, 28 U.S.C. § 144 provides for disqualification of a judge upon a party's making and timely filing a sufficient affidavit attesting that the judge has a personal bias or prejudice for or against any party. 28 U.S.C. § 144. The affidavit must "be filed not less than ten days before the beginning of the term at which the proceeding is to be heard," unless good cause excuses a delay, and it must "be accompanied by a certificate of counsel of record stating that the affidavit is made in good faith." *Id.*; *see United States v. Perkins*, 787 F.3d 1329, 1343 (11th Cir. 2015). Before the judge recuses himself, the "§ 144 affidavit must be strictly scrutinized for form, timeliness, and sufficiency." *Perkins*, 787 F.3d at 1343 (quotation omitted). And in order to prevail under § 144, the moving "party must allege facts that would convince a reasonable person that bias actually exists." *Christo*, 223 F.3d at 1333. The alleged bias or prejudice under § 144 must stem from an extrajudicial source, or it must demonstrate a predisposition "so extreme as to display clear inability to render fair judgment." *Liteky v. United States*, 510 U.S. 540, 544, 551 (1994). Unsupported and conclusory allegations are not sufficient to warrant disqualification. *Giles v. Garwood*, 853 F.2d 876, 878 (11th Cir. 1988).

Kunsman fails to show that the bankruptcy judge should have recused himself or been disqualified from her bankruptcy proceedings. The only "bias" she points to are adverse decisions in the case, and nothing in the record reflects facts which would suggest the judge had a predisposition "so extreme as to display clear inability to render fair judgment." *Liteky*, 510 U.S. at 551. Moreover, Kunsman failed to comply with § 144's procedure for seeking to disqualify the bankruptcy judge. She did not file an affidavit, and she otherwise offered no verified facts to support her conclusory allegations that the judge was biased. The bankruptcy judge therefore did not abuse his discretion by declining to recuse himself.

B. Dismissal[2]

When appealing a bankruptcy-court order to the district court, the appellant must designate the items to be included in the record on appeal, including transcripts of oral rulings. Fed. R. Bankr. P. 8009(a)(1)(A), (a)(4). To challenge a finding or conclusion as unsupported by or contrary to the evidence, the appellant must designate the transcript of any relevant testimony or exhibits as a part of the record on appeal. Fed. R. Bankr. P. 8009(b)(5).

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[2] "As the second court of review of a bankruptcy court's judgment, we independently examine the factual and legal determinations of the bankruptcy court and employ the same standards of review as the district court." *In re Int'l Admin. Servs., Inc.*, 408 F.3d 689, 698 (11th Cir. 2005) (quotation omitted). Specifically, we review the bankruptcy court's factual findings for clear error, and we review de novo the legal conclusions of both the bankruptcy court and the district court. *Id.* Dismissals "for cause" are reviewed for abuse of discretion. *In re Piazza,* 719 F.3d 1253, 1271 (11th Cir. 2013). That standard allows for a "range of choice for the [bankruptcy] court, so long as that choice does not constitute a clear error of judgment." *In re Rasbury*, 24 F.3d 159, 168 (11th Cir. 1994).

The Federal Rules of Appellate Procedure also specify that if an appellant intends to urge on appeal that a finding or conclusion is unsupported by or contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion. Fed. R. App. P. 10(b)(2). We have explained that the appellant has the burden "to ensure the record on appeal is complete, and where a failure to discharge that burden prevents us from reviewing the district court's decision we ordinarily will affirm the judgment." *Selman v. Cobb Cty. Sch. Dist.*, 449 F.3d 1320, 1333 (11th Cir. 2006) (referring to this as the "absence-equals-affirmance-rule"); *see also Pensacola Motor Sales Inc. v. E. Shore Toyota, LLC*, 684 F.3d 1211, 1224 (11th Cir. 2012) . A pro se litigant's pleadings are construed liberally, but pro se litigants must nonetheless conform to procedural rules, including the requirement that an appellant provide relevant transcripts for the record on appeal. *Loren v. Sasser,* 309 F.3d 1296, 1304 (11th Cir. 2002).

The Bankruptcy Code provides that, after notice and a hearing, a Chapter 13 case may be dismissed "for cause." 11 U.S.C. § 1307(c).[3] The Code also suggests that a dismissal "for cause" would be appropriate where a Chapter 13 plan was not confirmed, and a debtor's request for additional time to file a new plan was denied.

[3] Section 1307(c) also requires that a dismissal "for cause" be issued upon motion by the Trustee or a party in interest, but Kunsman does not argue the bankruptcy court erred in dismissing the case sua sponte and has therefore abandoned any challenge in that regard. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

Id. § 1307(c)(5). We have noted, however, that the enumerated examples in the similarly-worded provision under Chapter 7 are non-exhaustive. *In re Piazza*, 719 F.3d 1253, 1261 (11th Cir. 2013).

Kunsman's Chapter 13 plan was denied confirmation, and she does not dispute that she never made a request for additional time to file a new plan. Thus, the bankruptcy court may have been within its discretion to dismiss Kunsman's case "for cause." In any event, we affirm the dismissal of Kunsman's bankruptcy case under the absence-equals-affirmance rule. *See Pensacola Motor Sales Inc.*, 684 F.3d at 1224. Kunsman failed to order transcripts or otherwise provide a record of the proceedings that occurred in the bankruptcy court, particularly the January 2016 confirmation hearing. The bankruptcy court's order denying confirmation and dismissing the case does not set forth its reasoning; instead, it references "reasons argued and stated on the record." Without a transcript of the confirmation hearing, we cannot meaningfully review Kunsman's arguments or determine whether the bankruptcy court abused its discretion by dismissing her case.

C. Ancillary Actions[4]

Under Article III of the United States Constitution, our jurisdiction is limited to "ongoing cases or controversies." *Flanigan's Enters., Inc. of Ga. v. City of*

[4] We review jurisdictional issues, such as whether a case has become moot, sua sponte and de novo. *Nat'l Advert. Co. v. City of Miami*, 402 F.3d 1329, 1331–32 (11th Cir. 2005).

Sandy Springs, 868 F.3d 1248, 1255 (11th Cir. 2017) (en banc). As "the Supreme Court has made clear," we have "no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before [us]." *Christian Coal. of Fla., Inc. v. United States,* 662 F.3d 1182, 1189 (11th Cir. 2011) (quotations omitted). In considering whether a case is moot, we "look at the events at the present time, not at the time the complaint was filed or when the federal order on review was issued." *Dow Jones & Co., Inc. v. Kaye,* 256 F.3d 1251, 1254 (11th Cir. 2001). We have also held that "the dismissal of a Chapter 13 case moots an appeal arising from the debtor's bankruptcy proceedings." *Neidich v. Salas*, 783 F.3d 1215, 1216 (11th Cir. 2015).

Because we affirm the bankruptcy court's dismissal of Kunsman's Chapter 13 case, her additional challenges to the bankruptcy court's administration of her case are now moot. *See Neidich*, 783 F.3d at 1216.

II. CONCLUSION

We affirm the bankruptcy court's dismissal of Kunsman's Chapter 13 case and its denial of recusal. We dismiss the remainder of Kunsman's appeal because it involves moot issues. We likewise deny as moot Kunsman's request for counsel in any further bankruptcy proceedings.

AFFIRMED IN PART AND DISMISSED IN PART; MOTION DENIED.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-60163-Civ-COOKE

PAULA JO KUNSMAN,

Appellant,

vs.

JOEL WALL,

Appellee.
_____/

ORDER ON BANKRUPTCY APPEAL

THIS MATTER is before me on bankruptcy appeal from *Kunsman v. Weiner*, No. 15-18660 (Bankr. S.D. Fla.). I have jurisdiction under 29 U.S.C. § 1334(a).

BACKGROUND

On January 19, 2016, United States Bankruptcy Judge Raymond B. Ray entered an Order Denying Confirmation of [Appellant Paula Jo Kunsman's] Fourteenth Amended Plan and Dismissing Case. (ECF No. 2-1). Kunsman filed her Notice of Appeal of Judge Ray's Order on January 27, 2015. (ECF No. 1). Judge Ray dismissed Kunsman's appeal on February 16, 2016 for failure timely to file the designation of the items for the record or her statement of the issues. (ECF No. 5). She then filed two more notices of appeal which were assigned to Judge Cohn and Judge Bloom. *See* Case Nos. 16-60355-Cohn and 16-60354-Bloom. On October 19, 2016, Judge Cohn reversed dismissal of Kunsman's appeal, permitting her to proceed before this Court. Kunsman thereafter filed a Motion to Reopen Appeal in this case (ECF No. 23), which I granted (ECF No. 27).

STANDARD OF REVIEW

The Eleventh Circuit addressed the standard of review applicable to an appeal from the bankruptcy court in *In re Holywell*, 913 F.2d 873, 879 (11th Cir. 1990) (citations omitted):

> We note at the outset that we must affirm the factual findings of the bankruptcy court unless they are clearly erroneous. The test for this court, as well as for the district court, is "not whether a different conclusion from the evidence would be appropriate, but whether there is sufficient evidence in the record to prevent clear error in the trial

> judge's findings." Conclusions of law, however, are subject to *de novo* review.

See also Fed. R. Bankr. P. 8013.[1]

A district court may not casually circumvent the clearly erroneous standard. The only time a district court should determine a bankruptcy judge's factual findings to be clearly erroneous is only when it, on the entire record, is left with a definite and firm conviction that a mistake has been made. *See Acquisition Corp. of Am. V. Fed. Sav. & Loan Ins. Corp.*, 96 B.R. 380, 382 (S.D. Fla. 1988). As the Seventh Circuit has written:

> Once a [factual] determination is made, the district court in review may only accept such findings or reject them as 'clearly erroneous;' the district court may not accept findings of the bankruptcy court and then go on to make additional findings having the effect of contradicting the conclusions of the bankruptcy court.

In re Neis, 723 F.2d 584, 589 (7th Cir. 1983).

DISCUSSION

Kunsman's argues Judge Ray made several errors of fact and/or law that justify reversal of his Order. I disagree. I have reviewed Kunsman's Bankruptcy Petition and Judge Ray's Order, and conducted a *de novo* review of Judge Ray's legal analysis. I concur with his legal conclusions and, with respect to his factual findings, am not persuaded he made any clear mistakes. Accordingly, it is **ORDERED and ADJUDGED** that this appeal is **DIMISSED *with prejudice***. The Clerk is directed to **CLOSE** this case. All pending motions, if any, are **DENIED *as moot***.

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[1] Bankruptcy Rule 8013 provides:

> On appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

DONE and ORDERED in chambers, at Miami, Florida, this 22nd day of January 2018.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
The Honorable Raymond B. Ray, U.S. Bankruptcy Judge

Counsel of Record

Paula Jo Kunsman, pro se
20 SE 7th Street
Pompano Beach, FL 33060

Additional material from this filing is available in the Clerk's Office.