

UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

CASE No.: 17-1406

COMPLETE TITLE:
IN RE GALEN LEMAR AMERSON, and
FRANCES MOORER SCOTT
Appellants,
v.
UNITED STATES BANKRUPTCY
COURT, District of Colorado,
Appellee,

APPEAL FROM
THE UNITED STATES DISTRICT
COURT for the DISTRICT OF
COLORADO No 17-CV-2177

OPINION FILED: February 6, 2018
SUBMITTED ON BRIEFS:

SOURCE OF APPEAL:
COURT: United States District Court
DISTRICT: Colorado
JUDGE: R. Brooke Jackson

JUSTICES:
CONCURRED: KELLY, P. J., J. concurs
(Opinion Filed).
CONCURRED/ MATHESON and
MURPHY concur
DISSENTED:

NON PARTICIPATING:

Attorneys:

For appellant FRANCES MOORER SCOTT, Pro Se

For appellee United States Bankruptcy Court for the District of Colorado, none, the Court did not appear.

No. 17-cv-02177

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

IN RE GALEN LEMAR AMERSON, and
FRANCES MOORER SCOTT

Appellant,

v.

United States Bankruptcy Court for the District of Colorado,
Appellees.

APPEAL of a decision from the United States District Court for the District of Colorado.

KELLY, P. J., Circuit Judge.

ORDER AND JUDGMENT*

Before MATHESON, KELLY, and MURPHY, Circuit Judges.**¹⁶

Plaintiffs-Appellants Frances Moorer Scott and Galen Lemar Amerson appeal from the district court's judgment denying their petition for a writ of mandamus

¹⁶ ** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

and dismissing the case with prejudice. Having jurisdiction under 28 U.S.C. § 1291, we affirm.

The petitioners sought an order directing the clerk of the bankruptcy court to transfer that court's files to the district court for the purpose of a de novo review of certain bankruptcy court orders. The district court viewed the petition as either an untimely attempt to appeal a bankruptcy order (and reconsideration) or a motion to withdraw the reference to the bankruptcy court. The district court also noted that the underlying issues had been resolved against petitioners. See In re Amerson, 839 F.3d 1290 (10th Cir. 2016), cert. denied sub nom. Scott v. King, 138 S. Ct. 121 (2017). For substantially the same reasons, the judgment is

AFFIRMED.

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UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO

CASE No.: 17-CV-02177

COMPLETE TITLE:
GALEN LEMAR AMERSON and
FRANCES MOORER SCOTT
Plaintiffs,

v.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Defendant.

WRIT OF MANDAMUS FROM
BANKRUPTCY COURT,

OPINION FILED: October 16, 2017
SUBMITTED ON BRIEFS:
ORAL ARGUMENTS: None

SOURCE OF APPEAL:
COURT: Bankruptcy
DISTRICT: Colorado
JUDGE: R. BROOK JACKSON

JUSTICES:
CONCURRED: NONE

CONCURRED/ NONE.

Attorneys:
For Galen Lemar Amerson and Frances Moorer Scott, pro se.

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For Defendant,
UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO,
did not appear.

No. 17-CV-02177
(Bankr. No. 12-17345, Chapter 7)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

GALEN LEMAR AMERSON and FRANCES MOORER SCOTT

Plaintiffs,

v.

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO,
Defendant.

Writ of Mandamus, for Bankr. Rule 5011-1, Withdrawal of Reference, for de novo review of Subject Matter Jurisdiction from the United States Bankruptcy Court, for the District of Colorado. *Affirmed*

R. BROOKE JACKSON, Judge

ORDER DENYING PETITION

On September 8, 2017 petitioners Galen LeMar Amerson and Frances Moorers Scott filed a Petition for Mandamus seeking an order directing the Clerk of the United States Bankruptcy Court for the District of Colorado to transfer that court's files to this Court for purposes of a de novo review of certain orders of the bankruptcy court. Petitioners cite Bankruptcy Rule 5011- 3(a)(3). There is no such

rule, either in the Federal Rules of Bankruptcy Procedure or in the Local Bankruptcy Rules of the United States District Court for the District of Colorado. I deem the Petition, in substance, either to seek a withdrawal of the reference pursuant to Bankruptcy Rule 5011(a) and Local Bankruptcy Rule 5011-1 or an appeal to the district court pursuant to Bankruptcy Rule 8005.¹

The bankruptcy court's Order on Pending Motions issued July 13, 2017 summarizes the history of this matter. Bankruptcy Case No. 12-17245-KHT, Doc. No. 305 (also attached to the pending Petition).² In January 2012 a gentleman by the name of Seale A. Moorner executed a will in the state of Florida. Petitioner Frances Moorner Scott is the daughter of Mr. Moorner, and Petitioner Galen LeMar Amerson is Ms. Scott's husband. A month after the will was executed Mr. Moorner died. Two months later Mr. Amerson and Ms. Scott filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Colorado. *Id.* at 2.

Mr. Amerson and Ms. Scott did not disclose Mr. Moorner's death or Ms. Scott's anticipated inheritance in their bankruptcy case. Ms. Scott did, however, file a suit in Florida to contest the will. Mr. Amerson and Ms. Scott did not inform the bankruptcy court or the Trustee of that suit until sometime in 2013. However, upon

¹ As discussed later in this order, on July 13, 2017 the bankruptcy court denied several motions filed by Mr. Amerson and Ms. Scott, a major issue being their attempt to relitigate issues concerning a previous bankruptcy court order dubbed the "Settlement Order." Bankruptcy Case No. 12-17345-KHT, Doc. No. 305. Mr. Amerson and Ms. Scott moved for reconsideration. Doc. No. 307. The court denied the motion on August 1, 2017. Doc. No. 310. Mr. Amerson and Ms. Scott filed a Notice of Appeal on August 16, 2017.

learning of the Florida suit, the Trustee reopened the Chapter 7 proceeding and began to participate in the Florida case on behalf of the bankruptcy estate. Mr.

Amerson and Ms. Scott unsuccessfully petitioned the bankruptcy court to order the Trustee to abandon the estate's interest in the will contest, and on July 14, 2014 the bankruptcy court approved the Trustee's settlement of the Florida case. *Id.* at 2-3.

The bankruptcy court refers to that approval as the "Settlement Order." *Id.* at 3.

2017. Doc. No. 314. On August 18, 2017 the BAP issued an order to show cause by August 31, 2017 as to why the appeal should not be dismissed for lack of jurisdiction. Doc. No. 316. The order noted that an appeal was due within 14 days after the bankruptcy court's denial of the motion for reconsideration (rehearing), but the notice of appeal was filed on the 15th day. On September 1, 2017 the BAP dismissed the appeal for failure to prosecute. Doc. No. 318. On October 10, 2017 Mr. Amerson and Ms. Scott filed an "Amended Notice of Appeal" in which they attempted to clarify that they wished to appeal to this Court, not to the BAP.

Mr. Amerson and Ms. Scott at that time had the right to appeal the Settlement Order either to this Court or to the BAP. 28 U.S.C. § 158(a)(1), (b)(1). *See* Bankruptcy Rules 8001- 8005. Represented by counsel Edward Levy they elected to appeal to the BAP. However, that court affirmed the Settlement Order, holding that Ms. Scott's interest under her father's will and in the will contest of that will were property of Ms. Scott's bankruptcy case. Bankruptcy Case No. 12-17345, Doc. No. 305 at 3. *See In re Galen Lemar Amerson*, 2015 WL 5162763 at *9. Mr. Amerson and Ms. Scott, still represented by Mr. Levy, then appealed to the United States

Court of Appeals for the Tenth Circuit, which affirmed the decision of the BAP. No. 12-17345, Doc. No. 305 at 3. *See In re Amerson*, 839 F.3d 1290 at 1301. Mr. Amerson and Ms. Scott petitioned for a writ of certiorari to the United States Supreme Court, which denied the petition just two weeks ago, *sub nom Scott, Frances M. v. King, Dennis W.*, No 16-1429, 2017 WL 2362655 (Oct. 2, 2017).

While the petition for a writ of certiorari was pending Mr. Amerson and Ms. Scott filed the several motions in the bankruptcy court which were the subject of that court's Order on Pending Motions. The bankruptcy court denied their motion challenging attorney Levy's compensation. Bankruptcy Case No. 12-17345-KHT, Doc. No. 305 at 4. The court denied their motion seeking compensation from the Trustee for the loss of Ms. Scott's inheritance, finding that it was an impermissible collateral attack on the Settlement Order. *Id.* at 5-6. Put another way, the court found that it was impermissible attempt to relitigate issues that had already been addressed in the Settlement Order and on appeal of that order to the BAP and the Tenth Circuit.

I note that in the same order the bankruptcy court addressed arguments advanced by Mr. Amerson and Ms. Scott concerning the "Barton doctrine," which prevents in some circumstances the assertion of claims against the trustees for acts committed while acting in their official capacity. *Id.* at 5. The court also addressed Mr. Amerson and Ms. Scott's "*Stern* Motion," in which they asserted that the Settlement Order was not a final order, and that the bankruptcy court lacked jurisdiction of enter it. I mention the Barton doctrine and the *Stern* motion because

those same issues are mentioned again in the pending Petition. The Barton doctrine matter is moot. To the benefit of Mr. Amerson and Ms. Scott, the bankruptcy court did not rely on that doctrine. *Id.* The Court rejected the *Stern* motion, finding that it was an attempt to relitigate

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To the extent that the pending Petition is an appeal from the bankruptcy court's order of July 13, 2017 and its denial of reconsideration on August 1, 2017,

it appears to be untimely under Bankruptcy Rule 8002(a)(1). *See supra* n.1. But regardless whether it is an appeal, a motion to withdraw the reference, or something else, the substance is that Mr. Amerson and Ms. Scott, having struck out in the bankruptcy court, the BAP, the Tenth Circuit, and even the United States Supreme Court, are looking to this Court as the last (or latest) port in the storm. Unfortunately, there is nothing that this Court can or will do. The issues have been fully litigated and decided.

ORDER

For the reasons given in this order, the Petition is denied and the matter is dismissed with prejudice.

DATED this 16th day of October, 2017.

BY THE COURT:

R. Brooke Jackson
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT DISTRICT OF COLORADO

GALEN LEMAR AMERSON, and
FRANCES MOORER SCOTT
Debtors. CASE NO.: 12-17345

ORDER STRIKING IMPROPER NOTICES AND REQUESTS FOR RELIEF

THIS MATTER comes before the Court on several pending notices and requests for relief filed by the Debtors in this case. For the reasons discussed below, the Court finds each notice or request to be improper.

1. The Debtors' Letter to the Clerk of Court dated August 15, 2017 (docket #317).

For the reasons stated in this Court's Order on Pending Motions (docket #305) and in this Court's Notice of No Further Action (docket #311), there is no pending matter that can be transferred to the U.S. District Court. The Court's July 24, 2014, Order approving the Trustee's settlement of pending litigation (the "Settlement Order," docket #156), is a final order that has been affirmed by the Tenth Circuit Bankruptcy Appellate Panel (case no. CO-14-045) and by the Tenth Circuit Court of Appeals (case no. 15-1343). The U.S. Supreme Court has denied the Debtors' petition for certiorari. The Debtors' repeated requests for further review and for relief from the Settlement Order are improper and will be struck.

2. The *Debtors*['] *Response to Clerks Notice to Show Cause Nunc Pro Tunc* (the "Response," docket #319).

The Response appears to be a response to an Order to Show Cause issued by the Tenth Circuit Bankruptcy Appellate Panel in case number CO-17-038. This Court

transmitted the Response to the Bankruptcy Appellate Panel on October 5, 2017. The Bankruptcy Appellate Panel construed the Response as a Motion to Reconsider (docket #13 in case no. CO-17-038) and denied that Motion (docket #15 in case no. CO-17-038). The Response is not properly filed in this Court and will be struck.

3. The Debtors['] Declaration of Trustee's Deliberate False Statement(s) to Deceive the Court and Creditors in Trustee's Notice of Intent to Abandon Estate's Interests in Probate Estate of Rixine Moorer Collins *Document #93 Filed by Trustee February 4, 2014 and Request to Correct the Record*

4. ORDER STRIKING IMPROPER NOTICES AND REQUESTS FOR RELIEF Case No. 12-17345 KHT (the "Declaration," docket #320).

The Declaration requests relief that is inconsistent with the Court's Settlement Order and is therefore improper. The Court will not entertain any further requests for relief from the Settlement Order, in any form. The Declaration will be struck.

5. The Debtors' *Amended Notice of Appeal* (docket #322).

The Amended Notice of Appeal appears to be an attempt to revive the Debtors' previously-filed Notice of Appeal (docket #314), which proceeded before the Bankruptcy Appellate Panel as case number CO-17-038. That appeal has been dismissed, and the mandate has issued. The Amended Notice of Appeal has no legal effect in this or any other court. It is improperly filed and will be struck.

6. The Debtors' *Notice to the Court Regarding Unapproved Trustee Settlement Agreement Dated April 24, 2014, Was Entered On March 20, 2017, and Approved by the Collier County Florida, Court May 10, 2017* Nunc Pro Tunc (the "Notice,"

docket #323).

The Notice is another attempt to obtain relief that is inconsistent with this Court's Settlement Order. It is improper and will be struck.

Accordingly, it is HEREBY ORDERED that the Letter (docket #317); the Response (docket #319); the Declaration (docket #320); the Amended Notice of Appeal (docket #322); and the Notice (docket #323) are STRUCK.

Dated October 17, 2017

BY THE COURT:

/s/ _____

Kimberly H. Tyson, Judge

United States Bankruptcy Court