Appendix to The Petition For A Writ Of Certiorari

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Oral Opinion of the United States Bankruptcy Court
Dated April 30, 2018

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

THOMAS W. MCDONALD, Plaintiff

Case No. 17-2118

v

WILDFIRE CREDIT UNION, et al,
Defendants.
_____/

IN RE: OPINION OF THE COURT
BEFORE THE HONORABLE DANIEL S.
OPPERMAN
TRANSCRIPT ORDERED BY: THOMAS
MCDONALD, JR., ESQ.

Before the Court is defendant Wenzloff and Wenzloff's PLC's motion to dismiss which has been concurred with by co-defendants Paul 15 Wenzloff, Joshua Fireman, and Wildfire Credit Union.

The plaintiff in this adversary proceeding is Thomas W. McDonald, the Chapter 13 trustee of debtor Jonathan Wild and debtor Tamara Moore's bankruptcy case prior to its conversion to Chapter 7. Plaintiff has also filed a motion for partial summary judgment in this adversary proceeding.

As to jurisdiction, the parties do not agree that this is a core proceeding. Therefore, the Court can only have jurisdiction over this proceeding if it is

determined to be a Court "related to", this Chapter 7 bankruptcy case pursuant to 28 USC Section 1334(b).

The Court makes the following findings of fact in support of its opinion issued here today. Debtors filed a Chapter 13 bankruptcy case on August 14 -- I'm sorry, August 19, 2014.

Their Chapter 13 plan was confirmed on October 14, 2014. The facts occurring after confirmation relevant to the instant
motions pending before the Court today are summarized succinctly by the District Court for the Eastern District of Michigan in its March 7, 2018 order denying motion to withdraw reference that I'll refer to as the March 7th order.

That order reads in part: "On April 10, 2017, the debtors filed a post-confirmation motion to approve a purchase of a 2014 GMC Arcadia to replace their older automobile that had mechanical problems.

The trustee approved the request. Id. debtors then filed an ex parte motion to approve the purchase, which the Bankruptcy Court granted. Id. Santander Consumer USA, the creditor who financed the GMC purchase, then filed a proof of claim. The defendants objected to the claim, Id. at 3.

The dispute as to the propriety of the trustee's approval of the purchase centers on the applicability of what counsel refer to as "the Fuller order". The Fuller order is described as a settlement embedded in an order in another (entirely separate) case in which plaintiff and defendant Wenzloff agreed plaintiff would "advise debtor's counsel that ex parte

motions to purchase contain certain information". Id at 4.

Plaintiff's position is that the Fuller order is not applicable to the Wild matter and did not limit his discretion 4 in proving the GMC purchase Id. Defendants have different -- have a different view.

Allegedly defendants filed "their pleadings" in the bankruptcy matter accusing plaintiff of misconduct in conjunction with its approval of the car purchase.

Plaintiff initiated the adversary proceeding on November 10 15, 2017. Soon thereafter on November 29, 2017, plaintiff filed a motion to withdraw the reference which was briefed for the District Court. The District Court entered the March 7 order 14 stating the facts that are cited above and determined that the reference should not be withdrawn. The District Court made the following specific findings as to all counts of plaintiff's complaint consisting of Counts 1 through 7.

Now turning to the order again, "Counts 1 and 5 -- 4, I'm sorry, seek declaratory and injunctive relief that the Fuller order is not applicable to the In Re: Wild matter and that plaintiff did not commit fraud on the Court when he approved the GMC purchase. Id. at 4 and 9.

On their face these counts raise core bankruptcy issues. The abuse of process counts, Counts 1 -- 2, and 3 allege defendants "filed the pleadings with the ulterior motive of obtaining money or property from the debtors and/or bankruptcy estate attempting to pressure debtors to convert or dismiss their bankruptcy case in an attempt to slander the trustee and damage his

reputation and in an attempt to create unnecessary delay and expense in the administration of this bankruptcy case", in violation of Rule 9011 thereby "undermining the whole bankruptcy system or process". Id. at 8.

Again, whether Rule 9011 was violated appears to raise a core bankruptcy law question.
Continuing on with the order, the defamation, liable, and slander counts, that's Counts 5 through 8 -- 7 are unrelated to the debtors' chapter proceeding other than they occurred during its administration. Plaintiff alleges defendants accused him of "wrongful conduct" involving moral turpitude", "cast his character in false light", accused him of "fraud, contempt of Court, and collusion of Court" –- let me try it again. Accused him of "fraud, contempt of Court, and collusion" and "breached the public trust in the office of the standing Chapter 13 trustee". Id. at 10.

Embedded in his three overlapping defamation counts, also appear a claim for "false light", a privacy tort distinct from defamation. Again, although the alleged wrongful conduct occurred in the context of a bankruptcy matter, Counts 5 through 7 assert only state law claims.

There is also no apparent predicate for the exercise of federal jurisdiction on the state law claims between Michigan citizens".
Continuing on with this Court's opinion. On the same day the instant adversary proceeding was filed, that is November 15, 2017, the debtors converted their Chapter 13 case to a 6 Chapter 7 case.

On December 7, 2017, the plaintiff in his capacity of the Chapter 13 trustee filed a final report

and account which states in the last paragraph. The trustee certifies that the foregoing summary is true and complete and all administrative matters for which the trustee is responsible have been completed.

The trustee requests that the trustee be discharged and granted such relief as may be just and proper. Dated December 7, 2017, signed by Thomas McDonald, trustee. And that comes from Docket number 142 filed in case number 14-21888.

The Chapter 7 trustee, Daniel Himmelspach filed a report of no distribution on January 17, 2018 after conducting and concluding the first meeting of creditors on December 13, 2017. The debtors received a Chapter 7 discharge on February 21, 2018. It appears that debtors' Chapter 7 bankruptcy case remains open due solely because of this adversary proceeding.

The Court now turns to a statement of the law that applies here. As to the standard for a motion to dismiss and lack of subject matter jurisdiction. Federal Rule of Civil Procedure 12(b)(1) applicable in this adversary proceeding through Federal Rule of Bankruptcy Procedure 7012 states: "every defense of law or fact to a claim for relief in any pleading, whether a claim, counter claim, cross claim, or third party claim, shall be asserted in a responsive pleading thereto if one is required except for the following defenses 7 made at the option of the pleader may be made by motion.

One, lack of jurisdiction over the subject matter. A motion making any of these defenses shall be made before 10 pleading if a further pleading is permitted.

Turning now to the issue of standing and mootness. In order to demonstrate standing generally a party must meet three elements. One, actual or threatened injury resulting from the conduct or action of another. Two, an injury which can be traced to the challenged conduct or action. Three, the injury may be redressed by a favorable decision by the Court. Citing *In Re Cormier*, 382 B.R. 377, 20 Page 410, a decision from the Western District of Michigan in 2008, the Bankruptcy Court there.

"Because standing is jurisdictional a dismissal for lack of standing has the same effect as a dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1)". *Stalley ex rel.* U.S. v *Orlando Regulatory Health Care System, Inc.*, 524 Fed 3d 1229, Page 1232, 11th Circuit case from 2008 which quotes *Cone Corporation* v *Florida Department of Transportation*, 921 F 2d 1190, Page 4 1203, 11th Circuit case from 1991.

Mootness must be examined at every stage of litigation and is a question of jurisdiction. A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Carras* v *Williams*, 807 F 2d 1286, Page 1289, a 6th Circuit case from 1986 which quotes *Powell* v *McCormack*, 395 US 486, Page 497, a 1969 decision.

"Mootness is a jurisdictional issue because the jurisdiction in Federal Courts extend only to actual ongoing cases or controversies". *In Re Meridian Partners –- Meridian Venture Partners, LLC*, 201 Westlaw 6489974 at Page 7, a bankruptcy decision

from the 6th Circuit – Bankruptcy Appellate Panel for the 6th Circuit from December of 2013 which quotes *Ohio Citizen Action* v *City of Englewood*, 671 F 3d 564, 19 Page 581, a 6th Circuit case from 2012.

And finally -- close to finally. Section 11 USC Section 348(e) states: "conversion of a case under Section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion". Conversion of a case from Chapter 13 to Chapter 7 immediately terminates the service of the Chapter 13 trustee replacing her with a Chapter 7 trustee. *Harris* v *Viegelahn*, 135 Sup Ct 1829, Page 1836, a 2015 decision.

The Harris Court held that a Chapter 13 trustee is barred from providing a typical service of a Chapter 13 trustee, that is disbursement of payments to creditors after conversion to Chapter 7. Id. at 1838. Citing Section 348(e), the Harris Court concluded that the moment a case is converted to Chapter 13 -- from Chapter 13 to Chapter 7, the Chapter 13 trustee is 10 stripped of authority to provide that service. Id.

Now the standard for the motion to dismiss for the failure to state a claim. Federal Rule of Civil Procedure 13 12(b)(6) which is also applicable under Rule 7012 states: "every defense in law or fact to a claim or for relief in any pleading whether a claim, counter claim, cross claim, or third party claim, shall be asserted in a responsive pleading thereto if one is required except that the following defenses may be at the option of the pleader, made by motion.

Six, failure to state a claim upon which relief can be granted. A motion brought under 12(b)(6)

tests the sufficiency of a complaint, Conley v Gibson, 351 US Page 41 and 46, a 1956 decision.

And finally the summary judgment standard. Federal Rule of Civil Procedure 56 is made applicable in its entirety to bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. 7056(c) provides that summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits if any, show that there is no genuine issue to any material fact and that the moving party is entitled to judgment as a matter of law. See, Choate v Landis Tool 7 Company, 46 (sic) F Sup 774, an Eastern District of Michigan 8 case in 1980.

The moving party bears the burden of proving the absence of a genuine issue of material fact as to the central element of the non-moving party's case. Street v J.C. Bradford and Company, 886 F 2d 1472, a 6th Circuit case from 1989 that cites the case of *Celotex Corporation* v *Catrett*, 477 US 317, a 1986 decision.

The burden then shifts to the non-moving party once the moving party has met its burden and the non-moving party must then establish that a genuine issue of material fact does indeed exist. *Janda* v *Riley-Meggs Industries, Inc.*, 764 F 19 Supp 1223, an Eastern District of Michigan case of 1991.

The Court now begins its analysis. The Court starts and ends with subject matter jurisdiction. Plaintiff no longer has standing to pursue any counts of his complaint. Namely, plaintiff cannot satisfy element one, recalling an actual or threatened injury resulting from the conduct or action of another.

Plaintiff has initiated this action in his capacity as a Chapter 13 trustee. His services as a Chapter 13 trustee were terminated on November 15, 2017. As stated by the United States Supreme Court in Harris, the Chapter 13 trustee is stripped of authority to provide any service previously given to him upon conversion which would include the authority to bring the instant adversary proceeding.

Thus, plaintiff has no injury, either actual or threatened, which can result from the conduct of the defendants in this case and at this time. Even if plaintiff did have standing to pursue this action, which this Court concludes he does not, this matter is moot pursuant to Section 348(e) and the United States Supreme Court's decision in Harris.

Counts 1 and 4 are moot because any determination as to whether the Fuller order should apply to this case is irrelevant because the main case is now a Chapter 7 ready to be closed. There is no longer a live issue as the parties no longer have a legally cognizable interest in the outcome.

While plaintiff may like an advisory opinion on this issue, these counts fit the classic definition of mootness. And this Court does not have jurisdiction to make this determination.

Regarding Counts 2 and 3, alleging abuse of process by defendants warranting Rule 9011 sanctions, including the award of sanctions to plaintiff in his previous capacity as the Chapter 13 trustee, there is longer a live controversy. Plaintiff's service and his duty to the bankruptcy estate and its creditors terminated upon conversion to Chapter 7.
Finally, Counts 5 through 7 alleging defamation, liable, and slander, are personal in nature and

involve state law causes of action. The Court concludes that these counts never had a connection with plaintiff's service as a Chapter 13 trustee. Indeed, the District Court recognized this as well stating, "there is also no predicate for the exercise of federal jurisdiction on the state law claims between Michigan citizens". And it comes from Page 3 of the District Court order.

And this Court would note, the damages that could be recovered by plaintiff in the State Court causes of action, can and should include any damages claimed by the plaintiff in his Rule 9011 claims. While not stated previously, the potential for a double recovery of damages by plaintiff both here and the 9011 claims, and in State Court for the defamation, liable, and slander claims, causes this Court to conclude that since this Court lacks jurisdiction to hear the state law claims of defamation, liable, and slander, and if the Court is incorrect that the Rule 9011 claims are moot, the doctrine of avoiding duplication of actions mandates this Court dismiss plaintiff's complaint in this Court but reserves those claims for a State Court determination.

And the Court will make a side note at this time regarding Rule 9011. Plaintiff makes an argument that Rule 9011 applies, but that rule is of no avail here. The 21 day safe harbor provision has not been met and compliance is an absolute requirement. Ridder v City of Springfield, 109 F 3d 7 288, Page 296, a 6th Circuit case from 1997.

Here no service of a requisite paper occurred 21 days before plaintiff's pleadings were filed, so Rule 9011 sanctions cannot be awarded.

Accordingly, this Court does not have subject matter jurisdiction over this proceeding. The Court need not further analyze -- let me back up. Accordingly, this Court does not have subject matter jurisdiction over this proceeding and pursuant to Rule 20(b) all counts of plaintiff's complaint are dismissed. The Court need not further analyze defendants'
motion to dismiss under Rule 20(b)(6) or plaintiff's motion for partial summary judgment because the Court holds that dismissal is appropriate under Rule 20(b)(1).

But before this opinion is closed a coda. The Court suspects the parties may find that the lack of finality from today's opinion unsatisfactory. Perhaps as much as this Court has in reading this -- reaching this conclusion and giving this opinion today. But this is a Court of limited jurisdiction.

Also this Court cannot address all ills, wrongs, or slights perceived by parties and their counsel. Instead as President Lincoln referenced in his first inaugural address, this Court asks that all involved examine past actions, their current stances, and the future plans of action. And again be touched by the better angels of our nation.

That's the completion of the Court's opinion.

Opinion of the United States District Court on
Appeal Dated October 25, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

THOMAS MCDONALD, JR.
CHAPTER 13 TRUSTEE

Plaintiff,

Hon. Thomas L. Ludington

v.

Adversary Proceeding:
Case No. 17-02118-dob

PAUL WENZLOFF,
JOSHUA FIREMAN
WENZLOFF & WENZLOFF P.L.C., and
WILDFIRE CREDIT UNION,

Defendants.
_____/

ORDER AFFIRMING THE BANKRUPTCY COURT AND DISMISSING THE APPEAL

Notably, this appeal has little to do with the Debtors, Jonathan Wild and Tamara Moore, who are not parties to the adversary proceeding. Indeed, the Debtors received a Chapter 7 discharge on

February 13, 2018. Yet the bankruptcy matter remained open solely because of the instant adversary proceeding, which continues to roll on. The appeal is also unrelated to Wildfire Credit Union's unsecured claim for $9,391.05, a claim which is surely exceeded by the cost of litigating the adversary proceeding, the motion to withdraw the reference, and now this appeal. The dispute can succinctly be explained as follows.[3] At some point during the administration of the bankruptcy matter, creditor's counsel (Wenzloff) took issue with the fact that the Chapter 13 Trustee (McDonald) approved the Debtors' purchase of a new vehicle.

According to McDonald, Wenzloff accused him of, among other things, fraud on the court and failure to observe the proper procedure for handling the debtors' post plan confirmation purchase request. McDonald believed that such accusations amounted to abuse of process, libel, slander, defamation, and false light. McDonald then filed an adversary proceeding against Wenzloff, his law firm (Wenzloff and Wenzloff L.L.C.), Joshua Fireman (another attorney at the firm), and the Wildfire Credit Union (Creditor) (collectively, "Appellees"). (Case No. 17-02118-dob).[4] The Bankruptcy Court

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[3] The full factual and procedural history up to and including the adversary proceeding has been briefed multiple times by each party and reviewed by the Court over the past year. An exhaustive summary can be found in this Court's order denying the motion to withdraw the reference (Case No. 17-13858, ECF No. 16).

[4] The complaint contains 7 counts alleging abuse of process, slander, libel, defamation, and false light. As for relief, Plaintiff asks the court to "strike the entirety of the pleadings,

dismissed the adversary proceeding based on lack of standing[5], mootness, and lack of subject matter jurisdiction.

Much like the parties' skirmish earlier this year regarding withdrawal of the reference, the parties largely gloss over the narrow questions before this Court. Rather than squarely addressing the grounds the Bankruptcy Court articulated for dismissing the adversary proceeding, the parties rehash their disagreement over the propriety of the debtor's vehicle purchase and financing, as well as their displeasure with each other's behavior. At this point in the proceedings, they have surely devoted hundreds of pages of briefing to this task. Because the questions before this Court on appeal involve no review of the merits of the underlying claims, the Court will not return to those issues.

Final orders of a bankruptcy court are appealable to a federal district court under 28 U.S.C. § 158(a). *In re Gourlay*, 496 B.R. 857, 859 (E.D.

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statements and discovery from the record due to their scandalous, disparaging and unnecessary and untrue nature." *Id.* at 13. He also asks the court to dismiss Defendant's allegations in the Chapter 13 matter, award costs and fees, set aside the *Fuller* order in its entirety, and impose sanctions. Finally, Plaintiff seeks punitive damages of $100,000 "to be distributed as follows: $50,000 to a charity promoting bankruptcy education or assistance of the court's choosing and $50,000 to the Office of the Chapter 13 Trustee for having been forced to defend and respond [to] the Pleadings . . .," and additional damages for defamation, libel, and slander. *Id*

[5] Because mootness and lack of subject matter jurisdiction are sufficient to sustain the Bankruptcy Court's decision, the Court will not analyze standing.

Mich. 2013). "Th[is] Court reviews bankruptcy court's findings of fact for clear error and its conclusions of law de novo." *Id.* (citing *AMC Mortg. Co. v. Tenn. Dep't of Revenue,* 213 F.3d 917, 920 (6th Cir.2000)).

Federal Rule of Civil Procedure 12(b)(1) provides for dismissal for lack of subject matter jurisdiction. Article III of the United States Constitution prescribes that federal courts may exercise jurisdiction only where an actual "case or controversy" exists. *See* U.S. Const. art. III, § 2. "A Rule 12(b)(1) motion for lack of subject matter jurisdiction can challenge the sufficiency of the pleading itself (facial attack) or the factual existence of subject matter jurisdiction (factual attack)." *Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014) (citing *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir.1994)).

Counts I and IV seek declaratory and injunctive relief that the *Fuller* order[6] is not applicable to the *In re Wild* matter and that Plaintiff did not commit fraud on the court when he approved the GMC purchase. *Id.* at 4, 9. The Bankruptcy Court dismissed these counts based on mootness. Op. at 11, Bkr. Dkt. 56 (Case No. 17-02118-dob).

"A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986). Mootness is

[6] The *Fuller* order was allegedly the order establishing the procedure for approval of post plan confirmation purchases by the debtor. According to McDonald, Wenzloff accused him of violating the *Fuller* order.

jurisdictional because the jurisdiction of federal courts extends only to actual, ongoing cases or controversies. *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 581 (6th Cir. 2012).

As the Bankruptcy Court correctly concluded, there is no live dispute as to the applicability of the *Fuller* order or the propriety of the vehicle purchase. The Chapter 7 case is closed. The debtors and creditor were the only parties with a legally cognizable interests in the outcome of that issue. No party is presently challenging any disposition of assets arising out of the Debtors' purchase of the new vehicle. In this context, granting purely declaratory relief would be an advisory opinion.[7]

The Trustee argues that a mootness exception applies for "wrongs capable of repetition yet evading review," and for issues affecting the public interest. Br. at 16–17. ECF No. 6. According to the Trustee, the creditor attempted (apparently unsuccessfully) to set aside the ex parte order approving the vehicle purchase. It is unclear how, from the Trustee's perspective, this constitutes a "wrong" that ought to be reviewed by this Court, considering the Appellees did not succeed in setting aside the purchase. The Trustee's desire to discourage similar attempts in future cases does not constitute a justiciable controversy, nor does it affect the public interest. Accordingly, the Bankruptcy Court's dismissal of Counts I and IV will be affirmed.

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[7] The truth or falsity of the alleged defamatory statement would perhaps be relevant to the defamation counts. This does not, however, create a live controversy for the purposes of a standalone declaratory judgment claim.

The abuse of process counts (counts II and III) seek sanctions under Federal Rule of Bankruptcy Procedure 9011. The Bankruptcy Court dismissed these counts for the same reasons as counts I and IV, namely the lack of a live controversy. Op. at 11, Bkr. Dkt. 56. The Bankruptcy Court further explained that "*if the Court is incorrect that the Rule 9011 claims are moot*," then sanctions are nevertheless inappropriate because 1) sanctions would be duplicative of the relief sought by the defamation claims, and 2) the 21-day safe harbor provision was not met. *Id.* at 12–13 (emphasis added). The Trustee takes issue with the latter conclusion. The Trustee does not, however, advance any argument regarding mootness or duplication. Because the Trustee only addresses one of the Bankruptcy Court's three independent bases for dismissal, the Bankruptcy Court's dismissal of Counts II and III will be affirmed.

The defamation, libel, and slander counts (counts V-VII) are unrelated to the Debtors' chapter proceeding other than that they occurred during its administration. Plaintiff alleges Defendants accused him of "wrongful conduct involving moral turpitude," "cast his character in a false light", accused him of "Fraud, Contempt of Court and collusion," and "breached the public trust in the office of the Standing Chapter 13 Trustee." Embedded in his three repetitive defamation counts also appears to be a claim for "false light," which is in fact a privacy tort distinct from defamation. The Bankruptcy Court dismissed these claims for lack of subject matter jurisdiction. The Trustee did not challenge that conclusion in his initial brief.

However, in his reply brief as well as during oral argument[8] the Trustee did make an overarching jurisdictional argument. It is difficult to engage with this argument intelligently because it is largely unintelligible. It appears to go something like this: although Appellees are not the one's suing the Trustee (he is in fact suing them), their "claims" against him[9] implicate federal subject matter jurisdiction because he (as the Chapter 13 Trustee) is an officer of the Court and of the United States. Thus, anyone who accuses the Trustee of malfeasance in conjunction with the exercise of his official duties does so at their peril. Such accusations must be accorded the legal status of a claim arising under federal law, and the accuser must be prepared to substantiate their claims. Because these "claims" against the Trustee arise under federal law, this Court has supplemental jurisdiction over the Trustee's related state law claims for defamation.

It seems self-evident that this theory does not warrant a lengthy analysis. Suffice it to say that the only legal authority the Trustee offers to support this argument is inapposite. It involved a lawsuit

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[8] The Bankruptcy Court held oral argument. This Court did not.

[9] The Trustee's repeated reference to the "claims" against him appears to refer to the accusations Appellees made in conjunction with their unsuccessful attempt to set aside the ex parte order approving the vehicle purchase. These accusations apparently include 1) that the Trustee did not comply with the *Fuller* order in approving the purchase, 2) that he perpetrated a fraud on the court in doing so, and 3) that he colluded with the Bankruptcy Judge.

initiated by the debtor *against* the Trustee, which is not the situation at hand. *See* Reply at 9-11 (citing *In re Heinsohn*, 231 B.R. 48 (E.D. Tenn 2000)). Accordingly, the Bankruptcy Court's dismissal of counts V-VII will be affirmed.

Accordingly, it is **ORDERED** that the Bankruptcy Court's order dismissing the adversary proceeding (Bkr. Dkt. 56, Case No. 17-02118-dob), is **AFFIRMED.**

/s/Thomas L. Ludington
United States District Judge

Dated: October 25, 2018

Opinion of the Sixth Circuit Court of Appeals on Appeal Dated April 1, 2019

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-2274

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: JONATHAN WILLIAM WILD
TAMERA JEAN MOORE,
Debtors.

THOMAS W. MCDONALD, JR.,
Chapter 13 Trustee,
Appellant,
v.

PAUL E. WENZLOFF, et al.,
Appellees.

ORDER

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Before: NORRIS, SUTTON, and COOK, Circuit Judges.

Thomas W. McDonald, a Chapter 13 Bankruptcy Trustee ("Trustee"), appeals the district court's judgment affirming the bankruptcy court's dismissal of the adversary proceeding that he filed in a Chapter 13 bankruptcy proceeding. The parties have waived oral argument, and the panel unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

In October 2014, the bankruptcy court entered an order confirming a Chapter 13 plan for Jonathan William Wild and Tamera Jean Moore ("the debtors"). In April 2017, while the Chapter 13 proceeding was still active, the debtors filed an ex parte motion for an order granting them authority to finance the purchase of a vehicle. The Trustee approved the purchase, and the bankruptcy court entered an order authorizing the purchase. The debtors then filed a notice informing their creditors of the post-petition claim by Santander Consumer USA, which had financed the purchase. One of the debtors' creditors, Wildfire Credit Union ("Wildfire"), objected to the post-petition claim. In subsequent pleadings, Wildfire argued that the Trustee knowingly violated a settlement agreement entered in a separate case—In re Woodrow Fuller, No. 13-22203 (Bankr. E.D. Mich.)—when he authorized the vehicle purchase and that the bankruptcy court's order authorizing the purchase was based upon the Trustee's fraud and misrepresentations.

On November 14, 2017, the Trustee filed an adversary proceeding against defendants Wildfire; Wenzloff & Wenzloff, PLC, the law firm representing Wildfire; and Paul E. Wenzloff and Joshua R. Fireman, the two attorneys representing Wildfire. He alleged that the defendants made false allegations against him in the pleadings that they filed

in the debtors' Chapter 13 proceeding. The Trustee sought: an injunction and declaratory judgment stating that the settlement agreement entered in Fuller could not be enforced in any other case (Count I) and that the Trustee did not commit contempt of court or fraud (Count IV); sanctions under Federal Rule of Bankruptcy Procedure 9011 for filing pleadings without any evidentiary support and for an improper purpose (Counts II and III); and damages for defamation of character (Count V), libel (Count VI), and slander (Count VII). On November 15, 2017, the debtors converted their case to a Chapter 7 bankruptcy proceeding. A different trustee took over the debtors' Chapter 7 case.

On May 3, 2018, the bankruptcy court dismissed the Trustee's adversary proceeding. It found that the Trustee lost "standing to pursue any counts of his complaint" once the debtors converted their Chapter 13 case into a Chapter 7 proceeding. Alternatively, the bankruptcy court found that Counts I through IV were moot. It also found that there was a "potential for a double recovery of damages by plaintiff both [on Counts V through VII] and [on] the 9011 claims" and that, as a result, "the doctrine of avoiding duplication of actions" required it to dismiss Counts V through VII. Finally, the bankruptcy court concluded that Rule 9011 did not apply because "[t]he 21-day safe harbor provision has not been met and compliance is an absolute requirement."

The Trustee appealed to the district court, arguing that the bankruptcy court erred by finding that: (1) he lacked standing to pursue the adversary proceeding because the underlying case had been converted to a Chapter 7 proceeding; (2) his claims were moot; and (3) he was not entitled to sanctions because he did not provide the defendants a safe harbor under Rule 9011. The district court affirmed the bankruptcy court's judgment.

On appeal, the Trustee argues that the district court erred in finding that he no longer had standing to pursue his

adversary proceeding once the debtors' bankruptcy case was converted from a Chapter 13 to a Chapter 7 proceeding. The appellees argue, among other things, that the Trustee has waived appellate review of the lower courts' conclusions regarding mootness, subject-matter jurisdiction, and the safe-harbor provision and that these conclusions, standing alone, are sufficient to affirm the bankruptcy court's decision.

We review a bankruptcy court's decision directly, not the district court's decision. Mediofactoring v. McDermott (In re Connolly N. Am., LLC), 802 F.3d 810, 814 (6th Cir. 2015).

Generally, the bankruptcy court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo. Id. However, an appellant forfeits appellate review of claims that he does not raise in his initial appellate brief. See Agema v. City of Allegan, 826 F.3d 326, 331 (6th Cir. 2016).

As noted above, in addition to the lack of standing, the bankruptcy court found that Counts I through IV were moot. It also found that "the doctrine of avoiding duplication of actions mandate[d]" dismissal of Counts V through VII. The Trustee did not challenge either of these findings in his initial appellate brief or, for that matter, in his reply brief, which was filed after the appellees pointed out the forfeiture. In fact, the Trustee reiterated in his reply brief that standing was the "sole issue" that he was raising on appeal. Because the Trustee failed to address the bankruptcy court's mootness and duplication-of-actions findings, he has forfeited appellate review of those dispositive conclusions and we need not address the standing issue. See id.

Accordingly, we AFFIRM the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk