No. _____

In The
Supreme Court of the United States

HAROLD WADE AND LORRAINE WADE,
Petitioners,

v.

KREISLER LAW, P.C.,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

APPENDIX

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APPENDIX

TABLE OF CONTENTS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 18-2564
[Filed June 14, 2019]

HAROLD WADE AND LORRAINE WADE,
Debtors-Appellants,

v.

KREISLER LAW P.C.,
Creditor-Appellee.

Appeal from the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division.
No. 15-bk-01035 — LaShonda A. Hunt, Bankruptcy Judge.

ARGUED FEBRUARY 6, 2019 — DECIDED JUNE 14, 2019

Before KANNE, SYKES, and HAMILTON, Circuit Judges.

SYKES, *Circuit Judge*. Debtors Harold and Lorraine Wade moved for sanctions against Kreisler

Law, P.C., alleging that the law firm violated the automatic stay arising from their bankruptcy petition by filing a lien against Lorraine's home. The couple had voluntarily dismissed a prior bankruptcy petition just a few months earlier, so the bankruptcy judge denied their motion based on 11 U.S.C. § 362(c)(3), which lifts the automatic stay after 30 days in the case of a successive petition. But the bankruptcy courts are divided over the proper interpretation of § 362(c)(3), so the judge certified her order for direct appeal to this court under 28 U.S.C. § 158(d)(2)(A). A timely notice of appeal followed.

But the Wades never filed a petition for permission to appeal as required by Rule 8006(g) of the Federal Rules of Bankruptcy Procedure. Kreisler moved to dismiss the appeal based on this omission. We provisionally accepted the appeal and directed the parties to address the effect of the procedural violation in their merits briefs.

We now dismiss the appeal. Rule 8006(g) is a mandatory claim-processing rule, and if properly invoked, it must be enforced. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017). Because Kreisler properly objected, the appeal must be dismissed.

I. Background

The Wades filed a Chapter 13 bankruptcy petition in January 2015, which automatically stayed any collection actions against their property. *See* 11 U.S.C. § 362(a). But the petition was successive—they had voluntarily dismissed a different petition two months earlier—and § 362(c)(3) states that if a prior petition "was pending within the preceding 1-

year period but was dismissed," the automatic stay "shall terminate with respect to the debtor on the 30th day after the filing of the later case."

Just how much of the stay was lifted became relevant after the Wades discovered that Kreisler recorded a lien against Lorraine's home in April 2015. Because their bankruptcy case was active at that time, the Wades moved in the bankruptcy court to sanction Kreisler for violating the stay.

The parties disagreed about the meaning of § 362(c)(3). Kreisler contended that it lifts the entire stay. The Wades argued that the phrase "with respect to the debtor" limits the statute's effect so that it lifts the stay only for *non-estate* property. In their view the stay still prevented Kreisler from recording the lien because Lorraine's house was estate property.

The bankruptcy judge denied the Wades' motion, concluding that the entire stay lifted in February 2015, which validated Kreisler's April 2015 lien. The Wades appealed to the district court. But they also asked the bankruptcy judge to certify her order for direct appeal to this court under § 158(d)(2)(A). The judge granted that request and issued a certification order. The Wades then filed a notice of appeal, but they never filed a petition for permission to appeal as required by Rule 8006(g) of the Federal Rules of Bankruptcy Procedure. Kreisler moved to dismiss based on this procedural oversight. We provisionally accepted the appeal but instructed the parties to brief the dismissal motion with the merits.

II. Discussion

We begin (and end) with the question whether the failure to file a petition for permission to appeal requires dismissal of this appeal. We are permitted to consider a direct appeal from an order of the bankruptcy court if the bankruptcy judge certifies the order for appeal and we "authorize[] the direct appeal." 28 U.S.C. § 158(d)(2)(A). The Federal Rules of Bankruptcy and Appellate Procedure jointly set forth the procedural steps to obtain authorization for a direct appeal.

As relevant here, Bankruptcy Rule 8006(g) mandates that "[w]ithin 30 days after the [bankruptcy court's] certification becomes effective … , a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk." Ignoring this rule short-circuits our approval process, which is detailed in Rule 5 of the Federal Rules of Appellate Procedure. Rule 5 states that "[t]o request permission to appeal … , a party must file a petition for permission to appeal." FED. R. APP. P. 5(a)(1). Rule 5(b)(1) specifies the required contents of the petition, which include a statement of "the reasons why the appeal should be allowed and is authorized by a statute or rule." Rule 5(b)(2) provides a tenday window for other parties to oppose the petition or file a cross-petition. Whether opposed or not, under Rule 5(b)(3) the petition for leave to appeal is decided "without oral argument unless the court of appeals orders otherwise."

Because Rule 8006(g) is a "time limitation … found in a procedural rule, not a statute, it is properly classified as a nonjurisdictional claim-

processing rule." *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714 (2019). The question here is whether Rule 8006(g) is a "mandatory" claim-processing rule, which "[i]f properly invoked … must be enforced." *Hamer*, 138 S. Ct. at 7.

The Supreme Court's recent decision in *Nutraceutical Corp.* is instructive on this point. There the Supreme Court considered Rule 23(f) of the Federal Rules of Civil Procedure, which permits an interlocutory appeal of a class certification order if the appellant files a petition for permission to appeal "within 14 days after the order is entered." The Court held that Rule 23(f) is a nonjurisdicitonal mandatory claim processing rule, noting that "the Federal Rules of Appellate Procedure single out Civil Rule 23(f) for inflexible treatment," *Nutraceutical*, 139 S. Ct. at 715, because Rule 26(b)(1) bars courts from "extend[ing] the time to file … a petition for permission to appeal," FED. R. APP. P. 26(b).

That reasoning applies with equal force here. Like Rule 23(f), Rule 8006(g) speaks in mandatory terms. See FED. R. BANKR. P. 8006(g) (petition "must be filed" before the deadline). And like Rule 23(f), Rule 8006(g) requires a petition for permission to appeal, so Rule 26(b)(1) "singles [it] out … for inflexible treatment." *Nutraceutical Corp.*, 139 S. Ct. at 715. Rule 8006(g) is thus a mandatory claim-processing rule. Because Kreisler properly invoked the rule, it "must be enforced." *Hamer*, 138 S. Ct. at 17.

In response the Wades rely on the lead opinion in *In re Turner*, 574 F.3d 349 (7th Cir. 2009), and our decision in *Marshall v. Blake*, 885 F.3d 1065 (7th Cir. 2018). In both cases the appellants obtained

certification from the bankruptcy court for a direct appeal but failed to file a petition for permission to appeal as required by the Bankruptcy and Appellate Rules. In both cases we declined to dismiss the appeal, but the decisions rested on slightly different grounds.

The lead opinion in *Turner*, representing only the author's views, concluded that the record transmitted from the bankruptcy court contained the information that a petition for leave to appeal would have provided. *See* 574 F.3d at 352 (Posner, J.). Invoking the Supreme Court's decision in *Torres v. Oakland Scavenger Co.*, the lead opinion concluded that the record sent by the bankruptcy court brought

> the case within the principle that "if a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires."

Id. (quoting *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316– 17 (1988)). In the lead opinion's view, dismissal was unwarranted because treating the bankruptcy-court record as the "functional equivalent" of a petition would not prejudice the appellee. *Id.*; *see also id.* at 356 (Van Bokkelen, J., concurring in the judgment).

In *Marshall* we dropped any reliance on functional equivalence and instead emphasized *Turner's* discussion of harmlessness. *See* 885 F.3d at 1073 ("[W]e have excused the failure to file a Rule 5

petition if the party filed a timely notice of appeal and 'no one is harmed by the failure.'" (quoting *Turner*, 574 F.3d at 354)). *Marshall* found that the failure to comply with Rule 8006(g) was harmless in that case.

Turner was decided before *Hamer* clarified the effect of mandatory claim-processing rules. The lead opinion presumed that as long as a rule is not jurisdictional, courts could create equitable exceptions. *See* 574 F.3d at 354 ("[T]he failure to comply with a rule that is not jurisdictional … is not fatal if no one is harmed by the failure … ."). And *Marshall* postdates *Hamer* but does not mention the case. There the litigants framed the Rule 8006(g) objection in jurisdictional terms, and our opinion treated the issue accordingly, concluding that "we have jurisdiction to hear the direct appeal" after rejecting the appellee's Rule 8006(g) objection. *Marshall*, 885 F.3d at 1074.

Marshall and *Turner* are irreconcilable with the Supreme Court's recent decisions on the effect of noncompliance with mandatory claim-processing rules. *Marshall's* harmless-error analysis cannot coexist with the Court's decision in *Manrique v. United States*, 137 S. Ct. 1266, 1274 (2017), which held that "mandatory claim-processing rules … are not subject to harmless-error analysis." More broadly, the Court's recent decisions in this area have consistently compelled enforcement of mandatory claim-processing rules. *See, e.g.*, *Nutraceutical Corp.*, 139 S. Ct. at 714 (stating that mandatory claim-processing rules are "unalterable"); *Hamer*, 138 S. Ct. at 17 (stating that mandatory claim-processing rules "must be enforced");

Manrique, 137 S. Ct. at 1272 ("[T]he court's duty to dismiss the appeal was mandatory.") (quotation marks omitted). Adopting a harmless-error exception, as *Marshall* did, necessarily alters an "unalterable" claim-processing rule.

The approach of *Turner's* lead opinion is also unsustainable in light of the Court's recent cases. The Wades note that *Torres* remains on the books. True, but we're not persuaded that we may accept the bankruptcy court's certification order as the functional equivalent of a petition for permission to appeal.

To start, it's unclear if *Torres* itself ever extended that far. See 487 U.S. at 315–16 ("Permitting imperfect but substantial compliance with a technical requirement is not the same as waiving the requirement altogether … ."). Regardless, the Court has now clearly rejected the reasoning of the lead opinion in *Turner*. In *Manrique* a criminal defendant failed to file a second notice of appeal after the lower court issued an amended judgment, as Rule 4 of the Federal Rules of Criminal Procedure requires. The dissent reasoned that "the clerk's transmission of the amended judgment to the Court of Appeals [was] an adequate substitute for a second notice of appeal." *Manrique*, 137 S. Ct. at 1275 (Ginsburg, J., dissenting). But the Court didn't agree. It treated Rule 4 as a mandatory claim-processing rule and held that the court of appeals "may not overlook the failure to file a notice of appeal at all." *Id.* at 1274 (majority opinion). Because that omission ran afoul of Rule 4, the appeal had to be dismissed. *Id.*

The same result is required here. We cannot overlook the Wades' failure to file a petition for

permission to appeal. Because Kreisler properly objected to the violation of Rule 8006(g), our "duty to dismiss the appeal [is] mandatory." *Id*. at 1272 (quotation marks omitted). Based on the clear conflict with *Nutraceutical Corp.*, *Hamer*, and *Manrique*, we overrule *Turner* and *Marshall* to the extent that they approved exceptions to compliance with Bankruptcy Rule 8006(g) and Rule 5(a)(1) of the Federal Rules of Appellate Procedure—whether based on the functional equivalence doctrine, the harmless-error doctrine, or both.[1] The Wades must pursue their appeal through the ordinary process, which starts with the district court. APPEAL DISMISSED.

[1] Because this opinion overrules circuit precedent, we circulated it to all judges in active service. *See* 7TH CIR. R. 40(e). No judge favored rehearing en banc.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 18-2564
[Filed June 14, 2019]

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FINAL JUDGMENT

June 14, 2019

Before: MICHAEL S. KANNE, Circuit Judge

DIANE S. SYKES, Circuit Judge

DAVID F. HAMILTON, Circuit Judge

HAROLD WADE AND LORRAINE WADE Debtors – Appellants	)
v.	)
KREISLER LAW P.C. Creditor – Appellee	)

Originating Case Information:

Bankruptcy Case No: 15-01035
Northern District of Illinois, Eastern Division-BK
Bankruptcy Judge LaShonda A. Hunt

The APPEAL is DISMISSED, with costs, in accordance with the decision of this court entered on this date.

APPENDIX B

Name of Assigned Judge: Lashonda A. Hunt
Case No. 15BK01035
DATE June 6, 2018
Case Title In re Harold and Lorraine Wade
Title of Order Order Confirming Termination of Stay and Denying Sanctions

Docket Entry Text Order Confirming Termination of stay and Denying Sanctions

ORDER

At issue here is the scope of the termination of the automatic stay under 11 U.S.C. § 362(c)(3). Debtors, Harold and Lorraine Wade, assert that stay termination is limited to *property of the debtors only*, and, as such, creditor Kreisler Law P.C. ("Kreisler") should be sanctioned under § 362(k) for obtaining and recording a post-petition state court judgment against their personal residence. Kreisler, on the other hand, contends that the stay terminated as to *property of the debtors and property of the estate*, and, accordingly, seeks an order confirming the same pursuant to § 362(j). Bankruptcy courts are equally divided on this issue and the applicable statutory provision is subject to various interpretations. Nevertheless, for the reasons that follow, this court

agrees with rulings from this district and others, holding that the stay termination applies to debtors personally as well as both their estate and non-estate property.

Background

The relevant facts are largely undisputed. Debtors had a prior joint Chapter 13 case, 13bk36999, that was voluntarily dismissed on November 20, 2014. Debtors subsequently filed this Chapter 13 petition on January 15, 2015, listing Kreisler as a creditor and identifying two service addresses on Armitage Avenue and Milwaukee Avenue in Chicago, Illinois, for notice purposes. Because the 2013 case had been dismissed within a year of the new filing, pursuant to 11 U.S.C. § 362(c)(3), the automatic stay in this case would terminate after 30 days, unless Debtors sought and obtained an extension prior to that expiration date. Debtors timely filed a motion to extend the stay but noticed the hearing for a day on which the assigned judge was not sitting; therefore, it was stricken from the call. Debtors did not re-notice the motion, and the automatic stay under § 362(a) terminated on February 14, 2015.

About two months later, in April 2015, Kreisler obtained and immediately recorded a state court judgment for nearly $30,000, on a pre-petition debt owed by one of the Debtors. Kreisler claims they were not aware of the 2015 bankruptcy filing until October 2017, when Debtors' real estate agent reached out after preparing to sell the property and discovering the judgment lien on the title. Kreisler concedes that the Milwaukee Avenue address on the

creditor mailing matrix is accurate and that they received notice of the 2013 case dismissal in November 2014. Debtors further point out that the bankruptcy docket in this case reflects that their petition, proposed plan, motion to extend the automatic stay, and court-generated notices were all mailed to Kreisler at the Milwaukee Avenue address within the first few weeks of filing of this case.[1]

Kreisler initially agreed to vacate the post-petition judgment. But after further review, they concluded that the stay had actually terminated pre-judgment and their ensuing actions were proper. Debtors sought sanctions against Kreisler for violating the automatic stay. In response, Kreisler moved to confirm that the automatic stay had, in fact, terminated on February 14, 2015. Debtors filed a response to Kreisler's motion, contending that since the stay remained intact as to property of the estate, Kreisler was prohibited from pursuing any collection activity against their home. Furthermore, Debtors asserted that Kreisler had an affirmative duty to stay and/or dismiss the state court proceedings in light of the bankruptcy case. Although the court afforded Kreisler an opportunity to file a reply brief addressing these arguments, they did not do so.

Kreisler was apparently relying on representations in their earlier-filed motion to confirm, that during the 30-day period of the automatic stay, no action had been taken in state

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[1] The court takes judicial notice of the case docket and pleadings and papers filed, including notices sent to creditors by the Clerk of the Court. *See Inskeep v. Grosso (In re Fin. Partners)*, 116 B.R. 629, 635 (Bankr. N.D. Ill. 1989).

court against the Debtors. However, the court noticed that the public docket in the state court proceeding indicated a prove-up hearing had been set for February 10, 2015 (during the initial stay period), and continued to February 24, 2015. Upon further questioning on this point at a hearing on June 4, 2018, counsel for Kreisler indicated that she had reviewed the state court file and did not believe that they requested the continuance. In any event, the state court docket reflects that the actual prove-up hearing, judgment and collection activities all occurred after February 14, 2015.

Discussion

The termination of stay provision in the Bankruptcy Code provides that:

(3) [I]f a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease **shall terminate with respect to the debtor** on the 30th day after the filing of the later case . . . .

11 U.S.C. 362(c)(3)(A) (emphasis added). The operative phrase which has caused a divide courts is the phrase "with respect to the debtor."

The majority view interprets the phrase to mean that once the 30-day period lapses, the automatic stay only terminates with respect to non-estate property of the debtor, and remains in effect for property of the estate. *See e.g.*, *In re Holcomb*, 380 B.R. 813 (B.A.P. 10th Cir. 2008); *In re Jumpp*, 356 B.R. 789 (B.A.P. 1st Cir. 2006); *In re Roach*, 555 B.R. 840 (Bankr. M.D. Ala. 2016); *In re Scott-Hood*, 473 B.R. 133 (Bankr. W.D. Tex. 2012); *In re Rinard*, 451 B.R. 12 (C.D. Cal. 2011); *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006). Other courts, including some in this district, have determined that the stay terminates as to all of the debtor's property, whether or not it is part of the bankruptcy estate. *See*, *e.g.*, *In re Reswick*, 446 B.R. 362 (B.A.P. 9th Cir. 2011); *In re Smith*, 573 B.R. 298 (Bankr. D. Maine 2017); *In re Bender*, 562 B.R. 578 (E.D. N.Y. 2016); *In re Furlong*, 426 B.R. 303 (Bankr. C.D. Ill. 2010); *In re Daniel*, 404 B.R. 318 (Bankr. N.D. Ill. 2009); *In re Curry*, 362 B.R. 394 (Bankr. N.D. Ill. 2007). Debtors urge this court to follow the majority viewpoint but after reviewing the arguments on both sides, the court finds the reasoning and statutory analysis adopted by the "minority," as set forth by Judge Wedoff in *In re Daniel*, *supra*, more persuasive and consistent with Congressional intent.

In re Daniel dissects the various interpretations of the text. First, the phrase "with respect to the debtor" could mean that the stay terminates as to the debtor personally, while all of the debtor's property, both estate and non-estate, remains protected. 404 B.R. at 321– 22. In other words, the stay would be

terminated as to in personam collection actions, but not in rem collection actions. *Id.* at 322. However, Judge Wedoff rejected that notion, citing the fact that the statute also contains the phrase "with respect to a debtor or property securing such debt," and reading that to mean the stay must necessarily terminate as to some actions against property. *Id.*

A related approach involves treating the stay as terminating with regard to debtor and non-estate property. *Id.* at 323. Courts that favor this interpretation find this is the "plain meaning" of the statute, and most faithful to the bankruptcy policy of "obtaining a maximum and equitable distribution for creditors." *Holcomb*, 380 B.R. at 816. Those decisions point to language in § 362(a), which enumerates the actions subject to the stay, to show that when property of the estate is at issue, the word "estate" is specifically used. *Jumpp*, 356 B.R. at 794. While this is true, § 362(a) also specifically includes the phrases "against the debtor" and "against property of the debtor," neither of which are used in § 362(c)(3)(A). In fact, § 362(c)(3)(A) provides the only mention of the phrase "with respect to the debtor" contained in the section. Judge Wedoff points to this distinction as the reason the "estate-property" interpretation is untenable. Because the automatic stay applies to actions "against the debtor," "against property of the debtor," and "against property of the estate," there is no logical reason to read the phrase "with respect to the debtor" as applying to only two out of the three categories. *Daniel*, 404 B.R. at 323–24. Put another way,

> [S]ection 362(c)(3)(A) terminates the stay under subsection (a). In general, the stay

> under subsection (a) halts three kinds of acts: those directed against the debtor personally, 11 U.S.C. § 362(a)(1), (2), (6); those directed against property of the estate, 11 U.S.C. § 362(a)(2), (3), (4); and those directed against property of the debtor, 11 U.S.C. § 362(a)(5). A reference to the entirety of 'the stay under subsection (a)' would seem to extend to all types of acts covered by the stay. Likewise, a termination of the 'stay under subsection (a)' would seem to leave no part of the stay in place.

Smith, 573 B.R. at 302.

Next, courts also compare the language used in § 362(c)(3)(A) to § 362(c)(4)(A)(i), since both provisions address the automatic "stay under subsection (a)" for repeat filers. *See*, *e.g.*, *In re Paschal*, 337 B.R. 274, 278–79 (Bankr. E.D.N.C. 2006). Subsection 362(c)(3)(A), which applies to debtors with one prior case dismissed within a year of filing, terminates the stay "with respect to the debtor," while subsection 362(c)(4)(A)(i), which applies to debtors with two or more prior cases dismissed within a year of filing, provides that "no stay shall go into effect upon the filing of the later case." That suggests the stay terminating under § 362(c)(3)(A) must be more narrow; otherwise Congress would have used the same language in each subsection. *Paschal*, 337 B.R. at 278–79. But that interpretation, according to Judge Wedoff, would render § 362(c)(3)(B), permitting parties in interest to seek an order extending the automatic stay, almost meaningless. *Daniel*, 404 B.R. at 323. The trustee and creditors of the estate would never have a reason to seek an

extension of the stay, as there would be no incentive to protect the debtor from personal liability or collection actions against non-estate property. *Id.* *Accord Reswick*, 446 B.R. at 369 ("Property of the estate would have to be subject to the stay termination for any party other than the debtor to have sufficient reason to file the motion.").

Judge Wedoff also considered the argument that the statute may be interpreted to exclude no property whatsoever from termination of the stay, a reading that would allow any action against a piece of property securing a debt to proceed, and give meaning to an extension of the stay. *Id.* at 324–25. It also would not improperly distinguish between the three types of actions described previously. *Id.* at 325. But that position was rejected as well, since it renders the phrase "with respect to the debtor" superfluous. *Id.*

Where Daniel ultimately lands is on the "spousal-exclusion" interpretation, finding that the stay is terminated for all collection actions, but only towards a debtor or debtors who are subject to the termination. *Id.* at 326. In cases where one spouse had one or more prior bankruptcies, but the other spouse had none, "the phrase 'with respect to a debtor' can be read as referring to the serially-filing spouse, making that debtor subject to collection actions, both *in personam* and *in rem* (against estate and non-estate property) while leaving the stay completely in effect as to the newly-filing spouse's person and property." *Id.* As another court concluded, "[r]eading 'with respect to the debtor' . . . as distinguishing between a debtor and the debtor's spouse is entirely consistent with references to 'a single or joint case' at the beginning of section

362(c)(3)." *Reswick*, 446 B.R. at 370. This court also concurs that such a reading best gives meaning to each phrase in the statute, without making unsupported distinctions or surplusage. *Accord Reswick*, 446 B.R. at 370 ("the phrase 'with respect to the debtor' logically refers to *whom* (i.e. the serial filing spouse) termination of the automatic stay applies under section 362(c)(3)(A), not to *which property* the termination applies. . . .") (emphasis in original).[2]

Similarly, in *Curry*, Judge Schmetterer points out that the "spousal-exclusion" interpretation is supported by the legislative history of the provision. 362 B.R. at 401–02. A House Report created at the time of the 2005 amendments discussed provisions aimed at combating abuse of the bankruptcy process. H.R. Rep. No. 109-31(I), at 69–70. It states that "[s]ection 302 of the Act amends section 362(c) of the Bankruptcy Code **to terminate the automatic stay** within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual

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[2] Another equally plausible and persuasive approach rejects this reading as well but reaches the same result as the court does here. *See Bender*, 562 B.R. 580 ("The interpretation of § 362(c)(3)(A) that is most consistent with the principles of statutory analysis that should not focus, as the majority and minority do, on 'property of the debtor' or 'property of the estate', neither of which phrases are used in the statute. . . . The focus of this Court's analysis is on *specific actions* with respect *to specific property*, not the broader categories of property of the estate or property of the debtor. In other words, the stay is lifted 'with respect to a debt or *property securing such debt*' and with respect to leases—regardless of whether the property or the lease is property of the estate or property of the debtor.) (emphasis in original)

was a debtor in a previously dismissed case pending within the preceding one-year period." Id. at 69 (emphasis added). The phrase "to terminate the automatic stay" as used in this report is unqualified, and seemingly refers to all collection actions as enumerated in 11 U.S.C. § 362(a). That reading gives meaning to Congress' intent to prevent bad faith filings. In sum, if the stay terminates as to the debtor personally and non-estate property only, the subsection has no "teeth." *Compare Bender*, 562 B.R. at 580 ("In the case of a two time repeat filing, rather than requiring the secured creditor to seek relief under §362(d) the burden shifts to the debtor to affirmatively seek to impose the stay under § 363(c)(3)(B), or the stay will be lifted on the 30th day by operation of law as to real property foreclosures, evictions and other actions against secured collateral.").

Accordingly, the court finds that Kreisler properly pursued collection efforts against Debtors and their property of the estate after the automatic stay terminated on February 14, 2015. With respect to the 30-days when the automatic stay was in effect, the court likewise concludes that sanctions against Kreisler are not warranted here. The court agrees with Debtors that knowledge of this bankruptcy case should be imputed to Kreisler. There is no logical reason why they would receive notices at the Milwaukee Avenue address in the prior case but not this one filed only a few months later. Nevertheless, Debtors have not presented any evidence of wrongdoing by Kreisler during the stay. Creditors have no affirmative duty to dismiss a pending pre-petition collection action whenever a bankruptcy

case is filed. *See In re Tires N Tracks, Inc.*, 498 B.R. 201, 205 (Bankr. N.D. Ill. 2013). They should certainly inform that court or tribunal of the automatic stay and avoid further collection or enforcement activity against the debtor. But the mere fact that the action remains pending does not necessarily constitute "a commencement or continuation of a judicial proceeding in violation of Section 362(a)(1)." *In re Kuzniewski*, 508 B.R. 678, 687 (Bankr. N.D. Ill. 2014).

It is not entirely clear what happened at the court hearing on February 10, 2015— when Debtors were protected by the automatic stay—but it is undisputed that the status quo was maintained until *after* the stay terminated. Assuming Debtors were properly served with notice of the post-petition state court proceedings (and the court has no reason to think otherwise), they could have reached out to Kreisler (or asked their bankruptcy counsel to do so), or appeared in state court to advise of the bankruptcy filing, and potentially avoided this unfortunate situation. Indeed, the state court action did not proceed to a default judgment and recording until April 2015—months later. But nothing here suggests that while the stay was intact, Debtors were negatively impacted. There may be instances "where a creditor has set a process in motion pre-petition that will have the continuing effect of collecting a debt until terminated by such creditor" and, consequently, "failure to act can constitute a violation of the stay." *Id*. The facts presented in this case do not support that finding, though.

Conclusion

Creditor Kreisler Law P.C.'s motion to confirm the termination or absence of the automatic stay is GRANTED. The automatic stay terminated on February 14, 2015. Debtors' Harold and Lorraine Wade's motion for sanctions is DENIED.

Dated: June 6, 2018

/s/ Lashonda A. Hunt
LaShonda A. Hunt
United States Bankruptcy Judge

APPENDIX C

Fed. R. Bankr. P. 8006(g)

Rule 8006. Certifying a Direct Appeal to the Court of Appeals

(g) Proceeding in the Court of Appeals Following a Certification. Within 30 days after the date the certification becomes effective under subdivision (a), a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with F.R.App.P. 6(c).

Fed. R. App. P. 5

Rule 5. Appeal by Permission

(a) PETITION FOR PERMISSION TO APPEAL.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the

time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) CONTENTS OF THE PETITION; ANSWER OR CROSS-PETITION; ORAL ARGUMENT.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 10 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) FORM OF PAPERS; NUMBER OF COPIES; LENGTH LIMITS. All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.

(d) GRANT OF PERMISSION; FEES; COST BOND; FILING THE RECORD.

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter

the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

APPENDIX D

**IN THE U.S. BANKRUPTCY COURT
FOR THE NORTHERN DISTIRCT OF
ILLINOIS
EASTERN DIVISION**

**Case no: 15 BK 01035
Judge Lashonda Hunt**

[Filed June 11, 2018]

In Re:
Harold and Lorraine Wade
Debtors

Notice of Appeal

Harold and Lorraine Wade, by and through its undersigned counsel, appeals under 28 U.S.C. 158(a)(1) and Federal Rule of Bankruptcy Procedure 8001, from the Order entered June 6, 2018, by the Honorable Lashonda A. Hunt, United States Bankruptcy Judge for the Northern District of Illinois, [Dkt. No. 69]. The names of the parties to the Order and the names, addresses, and telephone numbers of their respective attorneys, are as follows:

Harold and Lorraine Wade, Appellants. c/o Michael A. Miller, The Semrad Law Firm, LLC, 20 S. Clark, 28th Floor, Chicago, IL 60603, 312-256-8728, mmiller@semradlaw.com

Kreisler Law P.C., Appellee, c/o Melanie Pennycuff, Kreisler Law Firm , P.C., 2846A North Milwaukee Avenue, Chicago, IL 60618, 773-428-9998, pennycuff@gmail.com

DATED: June 11, 2018

Respectfully Submitted,
Michael Miller
/s/ Michael Miller
The Semrad Law Firm, LLC
20 S. Clark, 28th Floor
Chicago, IL 60603
312-256-8728

APPENDIX E

IN THE U.S. BANKRUPTCY COURT
FOR THE NORTHERN DISTIRCT OF ILLINOIS
EASTERN DIVISION

Case no: 15 B 01035
Judge Lashonda Hunt

[Filed July 2, 2018]

In Re:
Harold and Lorraine Wade
Debtors

CERTFICATION FOR DIRECT APPEAL TO COURT OF APPEALS

Pursuant to 28 U.S.C. § 158(B)(i) of the Bankruptcy Code ("Code") and Bankruptcy Rule 8006, and at the request of debtors Harold and Lorraine Wade, the bankruptcy court certifies that the appeal in this matters meets requirements of 28 U.S.C. §§ 158(d)(2)(A)(i) and (ii) for direct appeal to the court of appeals.

BACKGROUND

1. Harold and Lorraine Wade are debtors in a chapter 13 case. The case was filed in January 2015. The Wades had an earlier chapter 13 case that was dismissed in November 2014.

2. Because the Wades had had a case dismissed within a year, the automatic stay the current case would terminate after 30 days unless within the 30-day period the Wades obtained an extension. *See* 11 U.S.C. § 362(c)(3). The Wades timely filed a motion to extend the stay but noticed the presentment on a day when the assigned judge was not sitting; therefore, the motion was not heard. The Wades did not re-notice the motion. The automatic stay under section 362(a) terminated in February 2015

3. Sometimes in late 2017, the Wades discovered that a creditor had recorded a judgment against their home in April 2015. They sought sanctions against the creditor under section 362(k) of the Code for a violation of the stay. The Wades concluded that the stay that was terminated in February 2015 was limited to *property of the debtors*, and therefore no collection action could be taken against their personal residence, which is property of the estate under 11 U.S.C. § 541(a). The Wades further argued that the creditor violated the stay by failing to dismiss its state court lawsuit (the lawsuit that produced the

judgment) after receiving notice of their bankruptcy case.

4. The creditor responded with its own motion to confirm termination of the stay under section 362(j) of the Code, as to *property of the debtors and property of the estate*. *See* 11 U.S.C. § 362(j). In response to the claimed stay violation, the creditor pointed out that no actions to collect has been taken during the 30 days the stay was in effect; consequently, there had been no stay violation.

5. The bankruptcy court ruled in factor of the creditor, holding that the stay had terminated as to the Wades, as well as to estate and non-estate property. The court also denied the Wades' request for sanctions, finding that the mere fact the lawsuit remained pending, with no action taken to pursue it, had not violated the stay.

6. The Wades filed a timely notice of appeal from the court's order. They also filed a timely request for certification of a direct appeal to the court of appeals, to which no objection had been raised.

DISCUSSION

7. The appeal satisfies three of the requirements in 28 U.S.C. §§ 158(d)(2)(A) for direct appeal to the court of appeals.

8. The appeal raises two questions of law: (1) under section 362(a)(3), does the stay terminate only to property of a debtor, or more broadly as to the debtor, the debtor's property, and property of the estate; (2) does the mere pendency of a creditor's collection action violate the stay, warranting sanctions under section 362(k).

9. First, the appeal involves questions of law on which there are no controlling decisions of the court of appeals for this circuit or the Supreme Court of the United States. *See* 28 U.S.C. §§ 158(d)(2)(A)(i).

10. Second, the appeal raises legal questions regarding resolution of conflicting decisions. *See* 28 U.S.C. §§ 158(d)(2)(A)(ii).

    a. Section 362(c)(3)(A) provides that when the 30-day period lapses, the stay "with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor." Some courts interpret that language to mean that the stay terminates only with respect to non-estate property, and remains in effect for estate property. *See*, *e.g.*, *In re Holcomb*, 380 B.R. 813 (B.A.P. 10th Cir. 2008); *In re Jumpp*, 356 B.R. 789 (B.A.P. 1st Cir. 2006); *In re Roach*, 555 B.R. 840 (Bankr. M.D. Ala. 2016); *In re Scott-Hood*, 473 B.R.

133 (Bankr. W.D. Tex. 2012); *In re Rinard*, 451 B.R. 12 (C.D. Cal. 2011); *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006).

b. Other courts interpret the statute to mean that the stay terminates as to all of the debtor's property, whether or not it is part of the estate. *See e.g.*, *In re Reswick*, 446 B.R. 362 (B.A.P. 9th Cir. 2011); *In re Smith*, 573 B.R. 298 (Bankr. D. Maine 2017); *In re Bender*, 562 B.R. 578 (E.D. N.Y. 2016); *In re Furlong*, 426 B.R. 303 (Bankr. C.D. Ill. 2010); *In re Daniel*, 404 B.R. 318 (Bankr. N.D. Ill. 2009); *In re Curry*, 362 B.R. 394 (Bankr. N.D. Ill. 2017).

11. Regarding sanctions for failing to dismiss a lawsuit, the dispute centers around section 362(a)(1), which prohibits the "continuation . . . of a judicial, administrative, or other action or proceeding against the debtor." Some courts have declined to impose an affirmative duty on creditors to dismiss a pending action or request a stay and placement on a bankruptcy calendar. *See*, *e.g.*, *In re Kuzniewski*, 508 B.R. 678, 687 (Bankr. N.D. Ill. 2014_; *In re Tires n Tracks, Inc.*, 498 B.R. 201, 205 (Bankr. N.D. Ill. 2013). Other courts have sanctioned creditors for not taking steps to discontinue to halt proceedings. *See*, *e.g.*, *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1214-15 (9th Cir. 2002); *Skillforce, Inc. v. Hafer*, 509 B.R. 523, 531-32 (E.D. Va. 2014).

12. Third, this appeal involve matters of "public importance" for purposes of section 158(d)(2)(A)(i), because the set of facts is common. This district had a high volume of chapter 13 filings, and many involve debtors who have re-filed immediately after an earlier case was dismissed. The bankruptcy court in Chicago addresses dozen of "extend stay" motions every week. Questions about the extent to which the stay applies if such a motion is denied and the stay is not extended, as well as the action creditors can lawfully take in other courts once a bankruptcy case has been filed, have led to starkly different results. A binding decision from the court of appeals addressing these questions would be beneficial.

DATED: July 2, 2019

/s/ Lashonda A. Hunt
LaShonda A. Hunt
United States Bankruptcy Judge

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 18-2564
[Filed July 25, 2018]

Everett McKinley Dirksen United States Courthouse
Room 2722 – 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

July 25, 2018

Before: FRANK H. EASTERBROOK, *Circuit Judge*

HAROLD WADE AND LORRAINE WADE Debtors – Appellants	)
v.	)
KREISLER LAW P.C. Creditor – Appellee	)

Originating Case Information:

Bankruptcy Case No: 15-01035
Northern District of Illinois, Eastern Division-BK
Bankruptcy Judge LaShonda A. Hunt

Upon consideration of the NOTICE OF APPEAL, filed on July 18, 2018, by counsel for the appellants,

IT IS ORDERED that appellee Kreisler Law shall respond to the appellants' filing by August 8, 2018.

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 18-2564
[Filed August 17, 2018]

Everett McKinley Dirksen United States Courthouse
Room 2722 – 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

August 17, 2018

Before: FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

HAROLD WADE AND LORRAINE WADE	)
Debtors – Appellants	)
	)
v.	)
	)
KREISLER LAW P.C.	)
Creditor – Appellee	)
	)

Originating Case Information:

Bankruptcy Case No: 15-01035
Northern District of Illinois, Eastern Division-BK
Bankruptcy Judge LaShonda A. Hunt

The following are before the court:

1. **NOTICE OF APPEAL**, filed on July 18, 2018, by counsel for the appellants.

2. **APPELLEE'S RESPONSE TO APPELLANT'S NOTICE OF APPEAL FILED ON JULY 18, 2018 AND APPELLEE'S MOTION FOR AFFIRMATIVE RELIEF (DISMISSAL OF APPEAL FOR LACK OF JURISDICTION) AS PERMITTED BY FEDERAL RULE OF APPELLATE PROCEDURE 27(a)(3)(B),** filed on August 8, 2018, by counsel for the appellee.

3. **APPELLANTS' REPLY TO APPELLEE'S MOTION FOR AFFIRMATIVE RELIEF,** filed on August 9, 2018, by counsel for the appellants.

The bankruptcy court has certified an order for appeal under 28 U.S.C. §158(d)(2)(A), and a notice of appeal to this court has been filed. The appeal satisfies the statutory criteria, and the court has decided to accept it for briefing and argument, but there is a dispute about whether appellant has satisfied the requirement of Bankr. R. 8006(g) that the appellant file a petition for leave to appeal under Fed. R. App. P. 5. Unless we treat the bankruptcy judge's opinion and certification as a Rule 5 petition, that requirement has not been satisfied. Appellee asks us to dismiss the appeal on that ground.

In re Turner, 574 F.3d 349 (7th Cir. 2009), holds that the filing of a bankruptcy judge's documents can be treated as a petition for leave to appeal, notwithstanding failure to comply with Rule 5. Accord, *Marshall v. Blake*, 885 F.3d 1065, 1073 (7th Cir. 2018). Both *Turner* and *Marshall* were decisions of divided panels; one judge on each panel concluded that the absence of a formal petition should have prevented appellate review. (Section 158(d) does not itself require a petition; that requirement rests on rules rather than the statutory text.)

Recently the Supreme Court held in *Hamer v. Neighborhood Housing Services*, 138 S. Ct. 13 (2017), that, although the requirements in the rules of federal procedure are not jurisdictional, they remain mandatory and must be enforced when a litigant requests their benefit. Keisler Law, the appellee, has asked us to dismiss the appeal because appellant has not complied with Appellate Rule 5 and Bankruptcy Rule 8006(g). Turner was issued years before *Hamer*, and *Marshall*, though it post-dates *Hamer*, does not mention it. Our order accepting this appeal therefore is provisional. The parties' briefs must address not

only the merits of the bankruptcy issue but also whether *Turner* and *Marshall* should be overruled in light of *Hamer*.

Briefing in the appeal shall proceed as follows:

1. The brief and required short appendix of the appellants are due by September 17, 2018.

2. The brief of the appellee is due by October 16, 2018.

3. The reply brief of the appellant, if any, is due by October 30, 2018.