

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10415
Non-Argument Calendar

D.C. Docket Nos. 9:16-cv-81993-KAM; 9:16-bkc-01046-EPK

In re: JOSEPH LLEWELLYN WORRELL,

Debtor

JOSEPH LLEWELLYN WORRELL,

Plaintiff-Appellant,

versus

EMIGRANT MORTGAGE COMPANY,
RETAINED REALTY, INC.,

Defendants-Appellees.

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

(April 15, 2019)

Before JORDAN, NEWSOM, and FAY, Circuit Judges.

PER CURIAM:

Joseph Worrell, proceeding *pro se*, appeals from the district court's *sua sponte* dismissal of his bankruptcy appeal for failure to prosecute.

We review for abuse of discretion a district court's order dismissing a bankruptcy appeal on procedural grounds. *See In re Pyramid Mobile Homes, Inc.*, 531 F.2d 743, 746 (5th Cir. 1976) (per curiam).¹

We read briefs filed by *pro se* litigants liberally, but issues not briefed on appeal by a *pro se* litigant are abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam). A litigant also abandons his claim by making only passing references to it or failing to support it with arguments and authority. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014).

Further, we do not address arguments raised for the first time in a *pro se* litigant's reply brief. *Timson*, 518 F.3d at 874 (citation omitted). *Pro se* litigants are also required to conform to procedural rules. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (per curiam).

In bankruptcy appeals to the district court, the appellant must file a brief within 30 days after the docketing of notice that the record has been transmitted, unless the district court specifies different time limits. Fed. R. Bankr. P.

¹ *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981).

8018(a)(1). If the appellant fails to timely file a brief, the district court may dismiss the appeal on its own motion after notice. *Id.* 8018(a)(4). In the bankruptcy context, we have explained that filing briefs, unlike filing a notice of appeal, is not a jurisdictional prerequisite; accordingly, a showing of bad faith, negligence, or indifference is necessary to a determination that dismissal is appropriate for failure to file a brief. *In re Beverly Mfg. Corp.*, 778 F.2d 666, 667 (11th Cir. 1985) (interpreting former Bankruptcy Rule 8009(a)(1), requiring timely filing of briefs).

Worrell has abandoned any claim that the district court abused its discretion in dismissing his appeal for failure to prosecute on the ground that he filed his initial brief almost seven months late. Even reading his opening brief in this Court liberally, Worrell has not raised any argument as to the district court's dismissal of his appeal for failure to prosecute, let alone any argument that his failure to prosecute was not negligent, indifferent, or done in bad faith. Instead, he has raised arguments pertaining only to the lawfulness of the foreclosure sale of his home. Although Worrell contends in his reply brief that the district court's dismissal was improper because any delay was caused by the court, not him, we will not consider arguments raised for the first time in a reply brief, even from a *pro se* litigant. *Timson*, 518 F.3d at 874.

Moreover, even if we were to conclude that Worrell had not abandoned his position, we would hold that the district court did not abuse its discretion in determining that he had demonstrated indifference and negligence by (1) filing his initial district court brief almost seven months late, (2) ignoring the district court's initial order to explain the delay and show cause why his appeal should not be dismissed for failure to prosecute, and then (3) failing for five months to respond to the court's second show-cause order. Accordingly, we **AFFIRM**.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 15, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-10415-JJ
Case Style: Joseph Worrell v. Emigrant Mortgage Company, et al
District Court Docket No: 9:16-cv-81993-KAM
Secondary Case Number: 9:16-bkc-01046-EPK

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-81993-CIV-MARRA

JOSEPH L. WORRELL,

Appellant,
v.

EMIGRANT MORTGAGE CO.,
INC., RETAINED REALTY, INC.,
et al.,

Appellee.

ORDER DISMISSING APPEAL

THIS CAUSE is before the Court upon Appellant, Joseph L. Worrell's ("Worrell") failure to comply with this Court's Order requiring him to "explain and justify the profound delay in filing his appellant brief and why this appeal should not be dismissed for Appellant's failure to prosecute the appeal in a timely manner as required by the Bankruptcy Rules." DE 14 dated August 24, 2017. Worrell was given until September 1, 2017 to respond to the Court's directive, but to date, he has not filed anything.

In a bankruptcy appeal to the district court, an appellant has 30 days to file a brief "after the docketing of notice that the record has been transmitted or is available electronically." Fed. R. Bankr. P. 8018(a)(1). "[I]n its discretion," the district court may extend this time "for cause shown" either (1) with or without motion before the time to act has expired, or (2) on motion made after the time to act has expired "where the failure to act was the result of excusable neglect." Fed.

R. Bankr. P. 9006(b)(1); *see also Rosenberg v. DVI Receivables XIV, LLC*, 818 F.3d 1283, 1287-89 (11th Cir. 2016). If the appellant fails to file a brief on time or within an extended time authorized by the district court, the court may dismiss the appeal, either on motion of the appellee or on the court's own motion after providing notice to the appellant. Fed. R. Bankr. P. 8018(a)(4); *Reverse Mortgage Sols., Inc. v. Inmon*, No. 8:15-CV-809-T-36, 2015 WL 6124049, at *2-3 (M.D. Fla. Oct. 16, 2015); *Stranger v. Ross*, No. 2:15-CV-275-FtM-38, 2015 WL 7351389, at *2 (M.D. Fla. 2015)

In general, dismissal for failure to prosecute an appeal "is discretionary and should be considered in light of the prejudicial effect of delay on the appellee and the bona fides of the appellant." *Pyramid Mobile Homes, Inc. v. Speake*, 531 F.2d 743, 746 (5th Cir. 1976).¹ Rule 8018(a)(4) authorizes dismissal for failure to file a brief on time, but "routine dismissal for failure to timely file briefs" is not appropriate. *Brake v. Tavormina (In re Beverly Mfg. Corp.)*, 778 F.2d 666, 667 (11th Cir. 1985) (rejecting the appellee's position that this Court adopt a "stringent rule of dismissal for failure to timely file briefs"). Rather, "dismissal is proper only when bad faith, negligence or indifference has been shown." *Id.*; *In re Tucker*, 665 F.App'x 841, 843-44 (11th Cir. 2016); *Lawrence v. Educ. Credit Mgmt., Corp.*, 522 F.App'x 836, 839-840 (11th Cir. 2013) ("Lawrence") (a debtor's failure to timely file an initial brief or

¹ The Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*).

otherwise prosecute his bankruptcy appeal is grounds for dismissal when “bad faith, negligence or indifference” is found).

The Eleventh Circuit found that standard was met in light of Lawrence's nearly “complete failure to take any steps” to prosecute his bankruptcy appeal before the district court. *Lawrence*, 522 Fed. Appx. at 839-40. The Eleventh Circuit noted that Lawrence (1) never filed any documents to perfect the appeal, (2) never inquired as to the status of his appeal in the more than five months between the time that he served the Notice on ECMC and the date of the district court's order of dismissal; (3) never requested an extension of time to file his initial brief; and (4) did not take any other action to prosecute his appeal. *Id.*

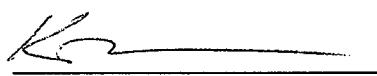
Likewise, in this case, Worrell only filed his initial brief when the Court issued an Order to Show Cause - almost *seven months* after the docketing of notice that the record had been transmitted. Worrell, likewise, never inquired in any way to this Court about his appeal, never requested an extension of time pursuant to Fed. R. Bankr. P. 9006, or took any other action to prosecute his appeal. In fact, when this Court required Worrell to show cause why this case should not be dismissed for failure to prosecute the appeal, Worrell merely filed his brief, without explanation or comment. Accordingly, the Court issued *another* Order, requiring Worrell to explain and justify the profound delay in his failure to prosecute his appeal. See DE 14. He never responded. That was five months ago.

It has been almost one year since the filing of his notice of appeal, yet Worrell had made no effort whatsoever to further prosecute his appeal and comply with the Bankruptcy Rules. The particular circumstances in this case demonstrate blatant indifference, negligence, and consistent dilatory conduct on the part of Worrell. Thus, in light of Worrell's failure to file his initial appeal for almost seven months, and then to only file it when the Court issued a Show Cause Order, and then to remain silent when the Court required Worrell to explain or justify the profound delay in filing his initial appellant brief, the Court finds good cause to *sua sponte* dismiss this case for failure to prosecute. Accordingly, it is hereby

ORDERED AND ADJUDGED that Appellant Joseph L. Worrell's Appeal of the Bankruptcy Court's Order Enjoining Joseph Worrell and Awarding Sanctions [DE 142] and Amended Order Enjoining Joseph Worrell and Awarding Sanctions [DE 143] is hereby **DISMISSED**.

The Clerk shall enter judgment accordingly, transmit a copy of this Order and the Judgment to the Clerk of the Bankruptcy Court, terminate the appeal, and close this case.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 24th day of January, 2018.



KENNETH A. MARRA
United States District Judge

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