

**In The
Supreme Court of the United States**

BILLIE ODELL STONE, DBA STOBIL ENTERPRISE,

Petitioner,

v.

MARY K. VIEGELAHN,

Respondent,

MOTION TO IMMEDIATELY FILE OUT-OF-TIME BRIEF

COME NOW, Petitioner before the Honorable Court and respectfully petition to be granted an "Immediate" filing of his Out-of-Time Brief for the following justifications.

1. ***Background***

Petitioner's Brief was due by 8 January 2021, and that day has passed. Due to a harmless error, Petitioner's Brief was postmarked dated 28 February 2021, and received by the Court 9 March 2021.

2. ***Authority***

Supreme Court Rule 5.02; Clerk's Letter Dated 1 May 2021.

3. ***Reasons***

▪Petitioner materially construed his Brief was due in 90 day time from the Clerk's 30 November 2020 Memorandum, granting authority subject consequentially to Rule 13, per the language construction of said Memorandum. Whereas, Petitioner filed his Brief in good faith believing it was due 28 February 2021.

▪State of Texas Executive Orders coinciding with COVID-19 disaster proclamation and mandates from March 2020 through May 2021 administratively effecting Federal, State, and Local Commerce Operations doing Business.

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•Petitioner is, a **Governmental Entity, Federally Protected Class (Vietnam Era Veterans' Readjustment Assistance Act of 1974)** coming under the American with Disability Act; a Federal Government DOD Contractor; a United States Military Retired and Former Member of the United States US Armed Forces iaw 38 U.S.C. §101(10) other than Active Duty for Training iaw 38 U.S.C. §101(21); a Veteran subject to 38 U.S.C. §101(2); and a United States Federally Protected 100% Total and Permanent Military Veteran that was actively litigating in multiple Civil actions in this same cause. Additionally, actions were being taken at the time for an investigation of this same cause under Criminal jurisdictions.

Because of the foregoing justifications, Petitioner asks for the Court's permission to file his Brief immediately and in the Interest of Justice as a Federally Protected Entity.



BILLIE O. STONE
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to Immediately File Out-of-Time Brief was sent by email on 30 August 2021 to:

VANESSA DELEON GUERRERO, Office of the Chapter 13 Trustee
10500 Heritage Boulevard, Suite 201
San Antonio, Texas 78216
(210)804-4072/vguerrero@sach13.com



BILLIE O. STONE, Petitioner

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 17, 2020

Lyle W. Cayce
Clerk

No. 19-51047
Summary Calendar

In the Matter of: BILLIE ODELL STONE,

Debtor

BILLIE ODELL STONE,

Appellant

v.

MARY K. VIEGELAHN,

Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:18-CV-1068

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Debtor-Appellant Billie Odell Stone, appearing pro se, filed a petition for bankruptcy under Chapter 13 of the United States Bankruptcy Code. The bankruptcy court dismissed Stone's third successive Chapter 13 bankruptcy petition. On appeal, the district court affirmed the bankruptcy court's decision. Stone urges us to find that his third Chapter 13 petition was merely a "re-filing" improperly dismissed *sua sponte*, and he seeks reversal of the bankruptcy court's order denying his Motion for Imposition of Stay and Emergency Motion to Vacate Foreclosure.

Review of cases originating in bankruptcy requires that "we perform the same function as did the district court: Fact findings of the bankruptcy court are reviewed under a clearly erroneous standard and issues of law are reviewed *de novo*." *Nationwide Mut. Ins. Co. v. Berryman Prods. (In re Berryman)*, 159 F.3d 941, 943 (5th Cir. 1998). "Whether a petition was filed in good faith is a question of fact that we review for clear error. When a finding of fact is premised on an improper legal standard, or a proper one improperly applied, however, that finding is reviewed *de novo*." *In re Stanley*, 224 F. App'x 343, 346 (5th Cir. 2007) (internal citations and quotations omitted).

Since its enactment in 1978, the Bankruptcy Code has included 11 U.S.C. § 362 which effects an automatic stay of all creditor collection effort immediately upon the filing of a bankruptcy petition. "Section 362(c)(4)(B) provides that the Court may impose the stay if (1) the debtor requests the Court to do so, (2) the request is made within 30 days after the petition was filed, (3) notice is given to parties in interest and a hearing is held, and (4) the movant proves that the filing of the current case is in good faith as to the parties to be stayed." *In re Ortiz*, 355 B.R. 587, 590 (Bankr. S.D. Tex. 2006). "Section 362(c)(4)(D) provides that there is a statutory presumption that the latest case was not filed in good faith under certain circumstances. If the

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statutory presumption applies, then a debtor must prove good faith by clear and convincing evidence.” *Id.*

On April 19, 2018, Appellant filed his first Chapter 13 bankruptcy petition, which was dismissed on May 10, 2018 for failure to file a plan and schedule of assets and liabilities pursuant to the rules. On June 29, 2018, Appellant filed his second Chapter 13 bankruptcy petition, which after notice and hearing on a motion filed by the creditor was dismissed without prejudice on August 3, 2018. On August 31, 2018, Appellant filed his third Chapter 13 bankruptcy petition and disclosed his interest in three parcels of real property in San Antonio, Texas. On September 7, 2018, Stone filed a motion for imposition of stay maintaining that a foreclosure of his real property took place three days prior by Randolph Brooks Federal Credit Union. Stone contended that the foreclosure was in violation of an automatic stay which he claimed took effect upon filing the instant petition.

On September 24, 2018, the bankruptcy court scheduled the hearing on Stone’s Motion for Imposition of Stay and Motion to Vacate Foreclosure. Stone conceded that the current case was his third case and that he filed a total of three cases within the past one year period. The bankruptcy court concluded that when the foreclosure sale was conducted on September 4, there was no violation of the stay because Stone was a petitioner in two bankruptcy cases within the year prior to filing this case and therefore section 362(C)(4)(A)(i) applies to deny automatic imposition of the § 362 stay.

The bankruptcy court properly granted the motion to dismiss, based on bad faith of the filing, as clearly demonstrated by the record. *See* 11 U.S.C. § 1112(b); *see In re Little Creek Development Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986) (noting that the good faith requirement “prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way” and “protects the jurisdictional integrity

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of the bankruptcy courts"). Moreover, Stone's bad faith conduct is also "just cause" for dismissal as it is "tantamount to a ruling that the individual does not qualify as a debtor under chapter 13." *See Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 373 (2007) (noting that the bankruptcy laws were enacted to protect members of the class of "honest but unfortunate debtor[s]"); *see also* 11 U.S.C. § 1325(a)(3) (a plan must be "proposed in good faith and not by any means forbidden by law" to be confirmed) and 11 U.S.C. § 105 (authorizing bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title").

Stone also seeks review of the bankruptcy court's order denying the emergency motion to set aside foreclosure sale and the order denying the imposition of stay. However, as the district court properly noted, "[Stone] did not appeal the orders within 14 days of the ruling. Fed. R. Bankr. P. 8002. Thus, the [district court] lacks jurisdiction to hear an appeal from those orders." *See* 28 U.S.C. § 158(a)(1). Accordingly, we similarly lack jurisdiction to review these claims. *See In re Berman*, 737 F.3d 997 (5th Cir. 2013) ("When the district court lacks jurisdiction over an appeal from a bankruptcy court, this Court lacks jurisdiction as well." (internal citation omitted)).

Finally, Stone filed a Motion for Extension of Time to File Petition for Rehearing/En Banc Review pursuant to the Texas Rules of Appellate Procedure. The district court liberally construed this motion as one for an extension of time to file a notice of appeal. A motion filed pursuant to Fed. R. Civ. P. 59 "calls into question the correctness of a judgment." *Templet v. HydroChem, Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (quoting *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002)). However, a motion under Fed. R. Civ. P. 59 "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of the judgment." *Id.* at 479; *see also* *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473

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(5th Cir.1989) (noting that Rule 59(e) “serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence”). We find no error in the district court’s denial of reconsideration.

For these reasons, we DISMISS this appeal for lack of jurisdiction over the orders denying Stone’s emergency motion to set aside foreclosure sale and the order denying the imposition of stay and AFFIRM the district court’s decision.

United States Court of Appeals
for the Fifth Circuit

No. 19-51047

IN THE MATTER OF: BILLIE ODELL STONE,

Debtor,

BILLIE ODELL STONE,

Appellant,

versus

MARY K. VIEGELAHN,

Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:18-CV-1068

ON PETITION FOR REHEARING EN BANC

(Opinion 6/17/2020, 5 Cir., _____, _____ F.3d _____)

Before KING, GRAVES, AND WILLETT, *Circuit Judges*.

PER CURIAM:

(x) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

() Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ James E. Graves, Jr.
UNITED STATES CIRCUIT JUDGE

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