

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
ELIZABETH ANNE ROHR, § Case No. 04-44682
§ (Chapter 7)
Debtor. §

**REPORT AND RECOMMENDATION
TO DISTRICT COURT FOR WITHDRAWAL OF REFERENCE
AS TO DETERMINATION OF CRIMINAL CONTEMPT**

Because criminal contempt matters under 18 U.S.C. §401(3) and Rule 42 of the Federal Rules of Criminal Procedure must be tried by the District Court, *see Griffith v. Oles (In re Hipp, Inc.)*, 895 F.2d 1503 (5th Cir. 1990), and because this Court believes that the facts of this case may warrant consideration of prosecution for criminal contempt, the Court hereby recommends that the District Court *sua sponte* withdraw the reference with respect to all criminal and civil contempt matters in this bankruptcy case pursuant to 28 U.S.C. §157(d) for the limited purpose of considering criminal contempt proceedings or further civil contempt proceedings against the debtor, Elizabeth Anne Rohr.

Background¹

Elizabeth Anne Rohr (the “Debtor”), a medical doctor, initiated a bankruptcy case by filing a petition for relief under chapter 11 of title 11 of the United States Code on October 5, 2004. At the time she filed her chapter 11 case, the Debtor owned, together with her ex-husband, approximately 42 acres of real property on Bob Jones Road in Southlake, Denton County, Texas (the “Real Property”). Pursuant to the pre-bankruptcy

¹ The Fifth Circuit in *In re Hipp* held that criminal contempt “must be tried before the district court.” *In re Hipp, Inc.*, 895 F.2d at 1521. Therefore, this background is not intended as proposed findings of fact for the District Court. Rather, it is intended as illustrative of some of the facts that give rise to this Court’s recommendation that the reference be withdrawn.

agreement of the Debtor and her ex-husband, the Denton County District Court on July 1, 2003, issued the Agreed Final Decree of Divorce (the “Final Decree”) which provided that the Real Property was to be sold and the proceeds distributed to lienholders, the Debtor and the Debtor’s ex-husband.²

On March 10, 2005, the Court entered an agreed order allowing the Debtor’s bankruptcy counsel to withdraw from the case. [Dkt. No. 27.] The Debtor has represented herself *pro se* before the Bankruptcy Court since that time.

On March 28, 2005, the United States Trustee filed a motion seeking to convert the Debtor’s case to a liquidation proceeding under Chapter 7 of the Bankruptcy Code. [Dkt. No. 38.] The United States Trustee alleged that “cause” to convert existed under 11 U.S.C. §1112(b) because, among other things, (1) the Debtor was subject to a criminal indictment for removing her five children in violation of a state court custody order at the time she filed for bankruptcy; (2) the Debtor had been criminally convicted of abusing horses and was appealing that conviction at the time she filed for bankruptcy; (3) at the creditor’s meeting held pursuant to 11 U.S.C. §341 on November 19, 2004, the Debtor testified that she had been incarcerated for 28 days and had been released only the day before, which delayed employment of counsel and interfered with her ability to practice as a physician; (4) the Debtor had not filed federal income tax returns for 2002 or 2003; (5) the Debtor’s testimony regarding her assets at the creditor’s meeting was inconsistent with the assets described on her bankruptcy schedules; and (6) the Debtor had failed to fulfill her obligations as a chapter 11 debtor, which include the filing of monthly

² The Final Decree ordered the employment of Dianne Arnette of Ebby Halliday Select Property as real estate agent to list and sell the Real Property. On April 14, 2004, the Denton County District Court ordered the appointment of Ms. Arnette, as a receiver, to take possession of the Real Property for the purpose of disposition and sale.

operating reports. On May 26, 2005, the Court entered an order granting the motion of the United States Trustee to convert the case to a liquidation proceeding under chapter 7. Michelle H. Chow was appointed as the Chapter 7 trustee (the “Trustee”). [Dkt. No. 78.]

On June 13, 2005, the Trustee filed a motion to sell the Real Property, (the “Sale Motion”) which the Debtor opposed. [Dkt. Nos. 85 and 91.] A hearing on the Trustee’s motion was scheduled for July 12, 2005, but the Debtor failed to appear and, instead, filed a motion on the date of the hearing requesting a continuance. Based on testimony at the hearing suggesting that the Debtor’s representations in her request for a continuance were false, the Court issued an *Order to Show Cause as to Why Elizabeth Anne Rohr Should Not Be Sanctioned under Fed. R. Bankr. P. 9011* (the “Show Cause Order”). [Dkt. No. 114.] Nevertheless, the Court continued the hearing on the Sale Motion to July 26, 2005 – a time when several unrelated matters were scheduled to be heard in the Debtor’s bankruptcy case.

Immediately prior to the hearing on July 26, 2005, the Debtor filed a “Notice of Dismissal; Notice of Non-Suit; Bankruptcy” in which she purported to dismiss her bankruptcy case pursuant to Federal Rule of Civil Procedure 41(a). [Dkt. No. 126.] At the hearing, the Debtor asserted that the case had been dismissed and that the Court could not proceed. The Court declined to halt the sales hearing based on the Debtor’s purported dismissal and directed her attention to the requirements for dismissal set forth in 11 U.S.C. §707(a), which governs dismissals of chapter 7 proceedings and requires notice to creditors, a hearing and a showing of cause for dismissal.

On July 27, 2005, the Trustee filed an objection to the Debtor's request for dismissal of the bankruptcy case. [Dkt. No. 131.] The Court set the Debtor's request for dismissal for hearing on August 31, 2005.

On August 2, 2005, the Court entered an *Order Granting Motion to Sell Bob Jones Real Property Free and Clear of Any and All Liens, Claims and Encumbrances and to Approve Sale Procedures* (the "Sale Order").³ [Dkt. No. 133.] The Sale Order authorized the transfer of the Real Property to Spectra Land, L.P. ("Spectra") for \$3,100,000 free and clear of all liens, claims and encumbrances, with any liens, claims and encumbrances attaching to the proceeds of the sale. Among other things, the Sale Order ordered the Debtor not to interfere with the transfer of the Real Property to Spectra and to vacate the Real Property within ten days of the entry of the Sale Order or by August 2, 2005.

At or around the time the Court entered the Sale Order, the notices mailed to the Debtor by the Clerk of Court began being returned or refused. The envelopes were marked with hand-written notes stating "NOT refused / return to sender / cancellation protocol not proper, per DMM standard" or "I do not understand your intent / I do not recognize you" or variants thereof. At or around the same time, the Debtor began sending letters to the Court's chambers stating that the Court was committing criminal

³ The Debtor filed an appeal of the Sale Order on August 5, 2005 [Dkt. No. 150], which appeal was assigned Civil Action No. 4:05CV353 by the United States District Court for the Eastern District of Texas (the "First Appeal"). On September 15, 2005, the United States District Court for the Eastern District of Texas entered an order dismissing the First Appeal. [Dkt. No. 225.] At the hearing before this Court on November 8, 2005, the Debtor claimed to have filed an untimely appeal of the dismissal with the United States Court of Appeal for the Fifth Judicial Circuit.

acts, rejecting the Court's "offer of contract," and stating that she did not "recognize" the Court.⁴

Following entry of the Sale Order, the Debtor failed to vacate the Real Property. Accordingly, on August 24, 2005, Spectra, the Trustee and the Debtor's ex-husband filed an *Emergency Joint Motion for an Order: (A) Holding the Debtor in Civil Contempt; (B) Ordering Sanctions Against the Debtor; (C) Compelling Debtor's Compliance; (D) Granting Writ of Possession and Writ of Execution; and (E) Granting Assistance of United States Marshal* (the "First Emergency Motion"). [Dkt. No. 177.] On the same day, Spectra, the Trustee and the Debtor's ex-husband filed a *Motion for Approval of Amendments to (A) Farm and Ranch Contract, and (B) Order Granting Motion to Sell Bob Jones Road Property Free and Clear of Any and All Liens, Claims & Encumbrances and to Approve Sale Procedures* (the "Amendments Motion") to permit amendments to the sale contract necessitated by the Debtor's failure to comply with the Sale Order. [Dkt. No. 175.] The Court granted their request for an emergency hearing and set the First Emergency Motion and the Amendments Motion for hearing on August 29, 2005.

On August 29, 2005, the Debtor filed a request for continuance of the hearing on the Emergency Motion and the Amendments Motion. [Dkt. No. 191.] Although the hearing had already commenced when the continuance motion was filed, the Court

⁴ In particular, on August 1, 2005, the Court received a document signed by the Debtor and titled "OFFICIAL NOTICE/DEMAND by an American Sovereign!" [Dkt. No. 143.] The letter was directed to Judge Rhoades and stated that the jCourt did not have "geographical jurisdiction" over the Debtor. The letter further stated that Judge Rhoades was about to commit a criminal act by operating outside the bounds of the Court's authority.

In a second letter dated July 22, 2005 and received by the Court on August 29, 2005, the Debtor stated that she is "a Sentient, Competent, Native-Born, Texian, American-Sovereign without the STATE OF TEXAS and without the UNITED STATES (US, USA)." [Dkt. No. 190.] The Debtor repeatedly stated "I do not recognize you." The Debtor also described the Court as a "third-party debt collector," and she purported to reject the Court's "Offer of Contract."

granted the Debtor's request and reset the hearing for August 31, 2005, at the same time as the previously scheduled hearing on the Debtor's request for dismissal of the bankruptcy case. The Debtor arrived late to the rescheduled hearing, and she left before the Court concluded the hearing on the Amendments Motion and the Emergency Motion or reached the Debtor's motion to dismiss. At the conclusion of the hearing, the Court granted the Amendments Motion and the Emergency Motion (which including a finding that the Debtor was in civil contempt of this Court's prior orders) for the reasons stated on the record. However, in order to afford the Debtor an opportunity to be heard, notwithstanding her premature departure from the hearing, the Court continued the Debtor's request for dismissal until September 20, 2005. [Docket Entries dated 8/31/05.] The Debtor did not appear on September 20, 2005; accordingly, the Court denied the Debtor's motion to dismiss her bankruptcy case for failure to prosecute. [Docket Entry dated 9/20/05 and Dkt. No. 244.]⁵

On September 2, 2005, the Court entered an order (the "First Contempt Order") in which it found the Debtor in civil contempt of the Sale Order. [Dkt. No. 201.] The Court gave the Debtor an opportunity to purge herself of her contempt and instructed the Debtor to remove herself and her personal property and possessions from the Real Property by September 6, 2005. The Court also prohibited her "from interfering in any way, other than through lawful appeals of this Court's orders or other appropriate legal action, from

⁵ On July 26, 2005, the Debtor filed an objection to and appeal of the Court's "ruling of non-suit" regarding the dismissal of her case prior to the entry of any order by the Bankruptcy Court. [Dkt. Nos. 129-130.] On September 29, 2005, the Debtor filed an appeal of all rulings and orders of the Bankruptcy Court including the Court's ruling on the Debtor's motion to dismiss her case. [Dkt. No. 243.], which appeal was assigned Civil Action No. 4:05CV413 by the United States District Court for the Eastern District of Texas (the "Second Appeal"). On November 8, 2005, the United States District Court for the Eastern District entered an order dismissing the Second Appeal. [Dkt. No. 279.]

interfering with or obstructing any action ordered in the Sale Order or this Order.” First Contempt Order, ¶B.

Alleging that the Debtor had not only failed to comply with the First Contempt Order, but had taken affirmative actions in further contravention of the Sale Order, on October 27, 2005, Spectra filed an *Emergency Motion for an Order: (I) Holding the Debtor in Further Civil Contempt; (II) Canceling and Voiding Lis Pendenses; (III) Enjoining Further Filings of Lis Pendens and Liens by the Debtor and Compelling their Cancellation and (IV) Referring the Debtor for Criminal Contempt* (the “Second Emergency Motion”). [Dkt. No. 266.] Based on the testimony and evidence at the hearing on the Second Emergency Motion, which was held on November 8, 2005, and which the Debtor attended, the Court issued an *Order Finding Elizabeth Anne Rohr in Contempt of Court and Directing the United States Marshal to Take Custody of and Detain Elizabeth Anne Rohr Until Civil Contempt Is Purged* (the “Second Contempt Order”). [Dkt. No. 278.] In the Second Contempt Order, the Court found that the Debtor had violated and remained in contempt of the Sale Order and the First Contempt Order by (1) refusing to vacate the Real Property prior to September 6, 2005; (2) recording a *lis pendens* on or about September 13, 2005, in the real property records for Denton County, Texas, in which she claimed an interest in the Real Property; (3) filing a *lis pendens* on or about September 13, 2005, with the District Court for Denton County, Texas, in which she claimed an interest in the Real Property; and (4) filing an ex parte *Petition for Writ of Re-Entry* (the “Justice Petition”) in the Justice Court, Precinct Four, of Denton County on or about September 23, 2005.⁶ The Court directed the U.S. Marshal’s Service to take the

⁶The Court further found that the Debtor’s affidavit in support of the Justice Petition contained material omissions and misstatements of fact. In obtaining a writ of re-entry from the state court, the Debtor wholly

Debtor into custody and to detain her until she purged her civil contempt.

Pursuant to the Second Contempt Order, the Debtor was brought before the Court on November 15, 2005, for the Court to determine whether she had purged (or would purge) her civil contempt and, if so, to order her release. The Debtor had not purged her civil contempt and indicated no intent to do so in the future. On November 16, 2005, the Court entered an *Order Finding that Rohr has not Purged Civil Contempt, Ordering Further Confinement Until Civil Contempt is Purged, and Ordering United States Marshal to Produce Rohr for Further Proceedings* (the “Third Contempt Order”). [Dkt. No. 292.]

Recommendation

In accordance with 28 USC §157(a), the District Court has issued a standing order generally referring all cases under title 11 and all proceedings “arising under title 11” or “arising in” or “related to” a case under title 11 to the bankruptcy judges for the Eastern District of Texas. The District Court is authorized by 28 USC §157(d) to withdraw, in whole or in part, the reference as to any case or controversy “for cause shown.” *See* FED. R. BANKR. P. 5011(a) and 9033; *see generally* 1 NORTON BANKR. L. & PRAC. 2d §8:1 (discussing mandatory and permissive withdrawal from bankruptcy court to district court). In this case, based on the Court’s lack of authority to hear and determine criminal contempt matters, the Court recommends that the District Court *sua sponte* withdraw, in part, the reference pursuant to 28 U.S.C. §157(d) for the limited purpose of considering criminal contempt proceedings or additional civil contempt proceedings against Elizabeth Anne Rohr. *Cf: In re Moody*, 64 B.R. 594 (Bankr. S.D.

failed to mention, among other things, that she was in bankruptcy, that this Court had issued the Sale Order or that she had been held in contempt and ordered not to interfere with the sale of the Real Property.

Tex. 1986) (recommending withdrawal of the reference *sua sponte*); *Centrust Sav. Bank v. Love*, 131 B.R. 64, 66 (S.D. Tex. 1991) (stating that the proper method for transferring a case from a bankruptcy court to a district court is through a recommendation for withdrawal of the reference).

Signed on 11/22/2005

Brenda T. Rhoades MD
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE