

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 00-12712
Chapter 7

MARY GREEN HARTMAN

Debtor

MEMORANDUM

This memorandum deals with two motions filed by Dale F. Cook, Sr. Mr. Cook removed to this court a proceeding that was pending in state court. This court entered an order remanding the proceeding to state court. Mr. Cook filed a motion to reconsider the remand. At the same time he filed a motion for recusal, which applies to the entire bankruptcy case.

The removed proceeding is essentially a suit by the debtor, Ms. Hartman, against Mr. Cook. It was filed by Ms. Hartman's son, but according to the caption, he filed it on her behalf. The suit seeks to recover from Mr. Cook property that is alleged to belong to Ms. Hartman.

Mr. Cook filed one brief to support both motions. For convenience, the court sets out the entire substantive part of the brief:

With all due respect for the court, there is no jurisdictional basis for remand. The case cannot be remanded on equitable grounds. The Order was issued almost one month after removal. Equity requires prompt action by the Court. With no motion to remand being filed, and with so much time having passed, removal would be in violation of the

defendant's rights. The removal fee paid by the defendant would be a taking of property without due process and without just compensation, a violation of the U. S. Constitution.

The debtor has been in Bankruptcy Court for several years. She has approximately nine (9) orders of the Honorable Judge Stinnett on appeal, with Leonard Green, Clerk for the Sixth Circuit Court of Appeals apparently sitting on the appeal. Mr. Cook has a motion in the Sixth Circuit that Mr. Green has been sitting on since 1984. Mr. Green has also sat on an appeal involving development of a Sacred Native American Site.

Ms. Hartman filed the Chapter 7 case in June of 2000. The case was assigned to Judge Cook but was taken over by Judge Stinnett.

The debtor was sued by the Chapter 7 Trustee in an attempt to deny her discharge on the basis of fraud, as she had failed to list the sale of a certain piece of property. She had, however, listed the proceeds which she had received therefrom and the Court was fully aware of the sale. She underwent an ordeal which lasted over six months in the selling of the property, with various attorneys, mortgage companies, and title companies opposing her. Her son and sister were also sued. It appears that the Chapter 7 Trustee filed suit to aid and abet his associates in the wrongful taking of the debtor's property. A letter from said trustee prompted an investigation of property records which revealed property which would likely be of value to the creditors. Neither the Court nor the Trustee has showed any interest therein, although the fraud case is still pending.

The debtor's financial plight was initiated by the action of the U. S. District Court and its personnel, some of which are no longer with the Court. The debtor has been forced to litigate before the very judges with which she worked for so many years, a blatant violation of judicial ethics.

The frivolous fraud case caused the debtor severe additional stress which resulted in the extremely critical health situation of which she now faces. The debtor attempted to finalize the fraud case, due to the severe stress and ill effects it was having on her health, but The Honorable Judge Stinnett insisted that the debtor proceed in her defense, and she was denied a default judgment against her.

Judge Stinnett, who has played an active role in the maintenance of the frivolous suit against the debtor and whose judicial career is in jeopardy due to the rulings made against the debtor, is not qualified to remand this case which should be

handled with the rest of the debtor's matters which are before the Court. A Motion for Recusal is filed concurrently herewith.

The debtor has been placed in a position of peril and her life is presently in danger. The Honorable Judge Stinnett can not merely ignore this case and send it back to State Court, simply because he has an interest to protect.

Prima facie evidence has come forward to strongly indicate that at least one attorney firm who has been involved in litigation with the debtor in Bankruptcy Court is involved in the taking of terroristic action against the defendant, including harassing and terroristic phone calls.

Especially in this day and time, proper administration and operation of the Courts is a necessity.

The Remand Order being without jurisdiction is Illegal, Null, and Void and should be set aside.

As to remand, Mr. Cook makes the point that no motion to remand was filed.

The court can remand a removed proceeding without the filing of a motion for remand. *See, e.g., Texas Gulf Trawling Co. v. RCA Trawlers & Supply, Inc. (In re Cyclon Negro, Inc.)*, 260 B.R. 832 (Bankr. S. D. Tex. 2001); *Arkansas Department of Human Services Division of Medical Services v. Black & White Cab Co. (In re Black & White Cab Co.)*, 202 B.R. 977 (Bankr. E. D. Ark. 1996). Thus, the lack of a remand motion does not necessarily make the remand inequitable.

Mr. Cook argues that the remand was untimely because it came 29 days after the date of the removal. Neither the statute nor the rule contains a time limit on a motion to remand on any equitable ground. 28 U.S.C. § 1452(b); *Fed. R. Bankr. P.* 9027(d). Nevertheless, the timeliness of the motion is still relevant to whether it is equitable to remand the proceeding. *Billington v. Winograde (In re Hotel Mt. Lassen, Inc.)*, 207 B.R. 935, 939 (Bankr. E. D. Cal. 1997). In this case, the court remanded on its own motion, but the timeliness of the court's action should still be relevant to whether the remand was

equitable. In non-bankruptcy removals to the district court, the non-removing parties are allowed 30 days to file a motion to remand based on any ground other than subject matter jurisdiction. 28 U.S.C. § 1447(c). That is not 30 days to obtain a decision on remand, but 30 days just to file a motion for remand. Congress determined that 30 days to file a motion for remand was not such a long delay that remand would be inequitable. In any event, Mr. Cook has not pointed out how the passage of time has prejudiced him. Indeed, he has simply delayed Ms. Hartman's suit against him.

The court does not see any inequity to Mr. Cook as a result of the combination of facts – no motion to remand and the passage of time before the remand order.

Mr. Cook argues that the filing fee for removal is a taking of his property without due process. The Supreme Court dealt with a similar question in *United States v. Kras*, 409 U.S. 434, 93 S.Ct. 631, 34 L.Ed.2d 626 (1973). Mr. Kras argued that requiring an indigent person to pay the bankruptcy filing fee prevented him from obtaining a discharge of his debts in bankruptcy, and that was a denial of due process and equal protection. The Supreme Court disagreed.

Likewise, the constitution does not prevent the government from requiring a secured creditor to pay a filing fee for a motion to lift the automatic stay so that it can repossess its collateral. *Otasco, Inc. v. United States (In re South)*, 689 F.2d 162 (10th Cir. 1982). The court held that the fee did not violate due process and was not a taking of property without due process.

In the removed proceeding, Ms. Hartman alleges that Mr. Cook has possession of certain property belonging to her and she seeks to recover it. In the remand order, the court pointed out that the removed proceeding is irrelevant to the bankruptcy case. This removed proceeding does not involve a “fundamental right” as the Supreme Court has used that term. 3 Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 17.10 (1999). Furthermore, Mr. Cook cannot prove that he must litigate the issues *in this court*. The issues can be litigated in the state courts. Thus, the filing fee does not unduly burden Mr. Cook’s access to the judicial process for a determination of the issues involved in the removed proceeding.

The removal fee also does not involve any suspect classification. It appears to be based on the same governmental interests as the fee that was upheld in *Otasco* – generating revenue to operate the courts and discouraging unwise litigation. In this regard, a removal is essentially like the filing of an adversary proceeding, but it appears to require more work by the clerk’s office at its beginning than the filing of a complaint. *Fed. R. Bankr. P.* 9027 & 7001. The fee is a rational and reasonable means of recovering part of the cost of operating the court.

Mr. Cook seems to be upset that the removal fee will be lost – not refunded – if the proceeding is remanded. The need to pay a removal fee should cause a litigant to consider carefully the wisdom of removing a proceeding to this court. Mr. Cook made an unwise decision to remove the proceeding to this court since there is no good reason

for the proceeding to be in this court. Thus, the fee is also a rational and reasonable method of discouraging unjustified or unwise removals.

The court concludes that the removal fee does not violate due process or equal protection. Charging the fee does not amount to an unconstitutional taking of property without due process even though the fee will not be refunded as a result of the remand. *Kras*, 93 S.Ct. 631, 638–640; *Otasco*, 689 F.2d 162, 165–166; *see also Bankers Life and Cas. Co. v. Crenshaw*, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed.2d 62 (1988); *Oppenheimer v. Roth*, 468 F.2d 901 (9th Cir. 1972); *see generally* 3 Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 17.10 (1999).

Mr. Cook contends that the proceeding should be in this court with all the other matters concerning Ms. Hartman. The bankruptcy court is not a clearinghouse for all litigation involving the debtor. The court's opinion on remand pointed out that the removed proceeding is essentially irrelevant to Ms. Hartman's bankruptcy case. Mr. Cook's brief does nothing to change the court's mind.

Furthermore, Ms. Hartman's bankruptcy case appears to be winding down, as far as it concerns Ms. Hartman. The pending matters mostly involve Mr. Cook, not Ms. Hartman.

Finally, Mr. Cook attempts to tie the issues of remand and recusal together. To deal with this argument, the court must deal with the alleged grounds for recusal. The motion states that "Judge Stinnett has too much interest in and is under too much cronic influence to rule impartially in this matter."

The “cronie influence” allegation apparently arises from Ms. Hartman’s former employment with the district court clerk’s office in Chattanooga and an employment dispute she had with the clerk. According to the brief, the debtor’s financial problems were caused by her problems with the clerk’s office, and she was forced to litigate before the federal judges with whom she worked for so many years.

Ms. Hartman’s former employment with the district court clerk’s office and her employment dispute with the clerk can be taken as known facts, but by themselves they do not show prejudice or bias against her. Those facts could show just the opposite; they could show partiality in Ms. Hartman’s favor. Mr. Cook’s allegations of bias or prejudice are assumptions – conclusions without facts to back them up. As a result, they are not sufficient to require recusal. *General Aviation, Inc. v. Cessna Aircraft Co.*, 915 F.2d 1038, 1043 (6th Cir. 1990); *Ullmo ex rel. Ullmo v. Gilmour Academy*, 273 F.3d 671, 681 (6th Cir. 2001) *United States v. Enigwe*, 155 F.Supp.2d 365 (E. D. Pa. 2001); see also *United States v. Ramsey*, 871 F.2d 1365 (8th Cir. 1989); *United States v. Faul*, 748 F.2d 1204 (8th Cir. 1984); *Andrade v. United States*, 116 F.Supp.2d 778 (W. D. Tex. 2000).

The court has almost no idea exactly what Mr. Cook means by “too much interest in” Ms. Hartman’s case or the removed proceeding. As one fact that suggests a personal interest in the case, the brief states that “the case was assigned to Judge Cook but was taken over by Judge Stinnett.” Generally, one judge cannot take over another judge’s case. It might be possible for the chief judge to accomplish it, but Judge Cook is the chief bankruptcy judge for this district.

The brief also alleges that “Judge Stinnett . . . has played an active role in the maintenance of the frivolous suit against the debtor.” This apparently refers to the court’s refusal to allow a default judgment against Ms. Hartman on the trustee’s objection to discharge. Granting a default judgment against Ms. Hartman would have resulted in none of her debts being discharged. 11 U.S.C. §§ 727(a) and 524. Ms. Hartman filed a “Notice of Acceptance of Default Judgment” which stated her reasons for allowing a default judgment, but the reasons did not make sense to the court in light of the law. Adv. Proc. No. 00-1177, Docket No. 12. Ms. Hartman had previously filed a pleading alleging that the objection to discharge was part of some larger conspiracy aimed at causing problems for her and her family, though the proceeding appeared to be a run of the mill objection to discharge. Adv. Proc. No. 00-1177, Docket No. 8. As a result, the court was concerned that Ms. Hartman, as a *pro se* debtor, misunderstood the legal results of a default judgment denying her discharge. Ms. Hartman appeared at the hearing on the trustee’s motion for a default judgment. The court decided that a default judgment should not be entered against her. Ms. Hartman prepared for the trial and represented herself at the trial. The court ruled in Ms. Hartman’s favor on the discharge objection. These facts do not raise the slightest suspicion that the court denied the default judgment because of bias or prejudice against Ms. Hartman.

Mr. Cook’s brief also alleges bias or prejudice because Judge Stinnett’s “judicial career is in jeopardy due to the rulings made against the debtor.” This apparently relates to the earlier allegation regarding the number of appeals in Ms. Hartman’s bankruptcy cases. The court does not know whether all of Ms. Hartman’s appeals have

been decided, and as to any that have been decided, the court does not recall that any of its decisions were reversed. Suffice it to say that the court does not view the appeals as any more important than ordinary appeals. If appeals of earlier rulings are treated as making the bankruptcy judge biased or prejudiced against the appellant, then a party can create grounds for recusal of the bankruptcy judge simply by appealing an earlier ruling. This would give parties to bankruptcy cases an easy, though unethical, method of shopping for a different judge. Appeals of earlier rulings should not, by themselves, be treated as proof of bias or prejudice against the appellant. *Liteky v. United States*, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994); *In re Mann*, 229 F.3d 657 (7th Cir. 2000).

Mr. Cook could be arguing that his accusations of bias or prejudice automatically created bias or prejudice that requires recusal. The courts have held that this tactic will not justify recusal because it would allow a party to shop for a different judge simply by making unfounded allegations of bias whenever he disagrees with a ruling by the currently presiding judge. *In re Mann*, 229 F.3d 657 (7th Cir. 2000).

In summary, Mr. Cook's allegations do not show bias or prejudice or facts that would lead a reasonable person to question the court's impartiality. *Fed. R. Bankr. P.* 5004(a); 28 U.S.C. § 455. Furthermore, the allegations of bias or prejudice add nothing to Mr. Cook's argument that the removed proceeding could not be remanded on equitable grounds.

Finally, a dispute over remand of a removed proceeding is a core proceeding, even if the removed proceeding is non-core. In a removed proceeding, there are

essentially two separate disputes – whether the proceeding should be remanded and the removed proceeding itself. Of course, the nature of the removed proceeding is relevant to the question of remand. But the remand question does not involve deciding issues in the removed proceeding. Remand concerns the administration of the bankruptcy estate. Will a dispute be dealt with in the bankruptcy court or in another forum? 28 U.S.C. § 157(b); *H. J. Rowe, Inc. v. Sea Products, Inc. (In re Talon Holdings, Inc.)*, 221 B.R. 214 (Bankr. N. D. Ill. 1998); *SBKC Service Corp. v. 1111 Prospect Partners, L.P. (In re 1111 Prospect Partners, L.P.)*, 204 B.R. 222 (Bankr. D. Kan. 1996); *Roper v. American Health & Fire Ins. Co. (In re Roper)*, 203 B.R. 326 (Bankr. N. D. Ala. 1996); *Brizzolara v. Fisher Pen Co.*, 158 B.R. 761 (Bankr. N. D. Ill. 1993). The court's decision on Mr. Cook's motion

to reconsider will be treated by this court as a final order in a core proceeding; it will not be sent to the district court as a proposed opinion. 28 U.S.C. § 157(b), (c); *Fed. R. Bankr. P.* 9033.

Similar reasoning could be applied to the question of recusal, but it is not necessary in this situation. Mr. Cook's motion seeks recusal from the entire bankruptcy case. Thus, the dispute is not merely related to the bankruptcy case; it is central to its administration. It is a core proceeding. *In re Erchak*, 180 B.R. 466 (N. D. W. Va. 1994). Therefore, the court will not send its order denying recusal to the district court as proposed findings of fact and conclusions of law.

The court will enter an order accordingly.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

[entered 1-31-02]