



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 18, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No.: 21-11982-MKN
)	Chapter 7
TERRY LEE WIKE,)	
)	
Debtor.)	Date: June 28, 2023
)	Time: 2:30 p.m.
)	

ORDER REGARDING MOTION FOR SANCTIONS AND ORDER HOLDING THE STATE BAR OF NEVADA IN VIOLATION OF THE PROTECTION AGAINST DISCRIMINATORY TREATMENT UNDER 11 U.S.C. § 525(a), AND REQUEST FOR INJUNCTIVE RELIEF¹

On June 28, 2023, the court heard the Motion for Sanctions and Order Holding the State Bar of Nevada in Violation of the Protection Against Discriminatory Treatment Under 11 U.S.C. § 525(a), and Request for Injunctive Relief (“Sanctions Motion”), brought by the above-referenced debtor. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On April 19, 2021, Terry Lee Wike (“Debtor”) filed a voluntary Chapter 7 petition along with his schedules of assets and liabilities. (ECF No. 1). A Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline (“Bankruptcy Notice”) was issued, initially scheduling a meeting of creditors for May 19, 2021, and a deadline of July 19, 2021, for interested parties to

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 object to the Debtors' Chapter 7 discharge or to object to the discharge of a particular debt.
2 (ECF No. 6). The case was assigned for administration to Chapter 7 bankruptcy trustee Lenard
3 E. Schwartzer ("Trustee").

4 On May 20, 2023, the Trustee filed his Chapter 7 Trustee's Report of No Distribution.
5 (ECF No. 13).

6 On July 20, 2021, Debtor received his Chapter 7 discharge. (ECF No. 14).

7 On July 23, 2021, a final decree was entered and the Chapter 7 case was closed. (ECF
8 No. 16).

9 On April 5, 2023, an order was entered reopening the case. (ECF No. 20).

10 On April 19, 2023, the instant Sanctions Motion was filed along with an attached
11 Declaration of Terry L. Wike. The motion was noticed to be heard on June 28, 2023. (ECF Nos.
12 22 and 23).

13 On June 12, 2023, the State Bar of Nevada ("State Bar") filed opposition ("Opposition")
14 to the Sanctions Motion. (ECF No. 30).

15 On June 22, 2023, the Debtor filed his reply ("Reply") to the Opposition. (ECF No. 34).

16 On June 26, 2023, Debtor filed another reply to the Opposition ("Second Reply"). (ECF
17 No. 36).

18 On June 28, 2023, Debtor filed a Reply to Correct the Record by Resubmitting Exhibits
19 to Motion for Sanctions.² (ECF No. 37).

20 DISCUSSION

21 Debtor asserts that the State Bar is attempting to collect the costs of certain bar
22 disciplinary proceedings that were assessed before he filed his Chapter 7 petition. He maintains
23 that his personal liability for those cost assessments were discharged. Despite the discharge,
24 Debtor asserts that the State Bar continues to seek recovery of those cost assessments as a
25 condition to his reinstatement to the practice of law. By imposing such a condition of
26 reinstatement of his law license, Debtor asserts that the State Bar is engaged in discrimination
27 prohibited by Section 525(a). That provision provides in pertinent part as follows:

28 _____
² Six exhibits are attached to the document and will be referenced as "Debtor Exhibit."

1 “[A] governmental unit may not deny, revoke, suspend, or refuse to renew a
2 license ...or similar grant to, condition such a grant to, discriminate with respect
3 to such a grant against,...solely because such bankrupt or debtor is or has been a
4 debtor under this title...”

5 11 U.S.C. § 525(a). In response, the State Bar maintains that the cost assessments were a “fine,
6 penalty or forfeiture” within the meaning of Section 523(a)(7) and therefore were not discharged.
7 In other words, because the assessments were not discharged, there is no prohibited
8 discrimination.

9 There is no dispute that the Southern Nevada Disciplinary Board (“Board”) issued a
10 recommendation to the Supreme Court of Nevada (“Nevada Court”) for a limited suspension of
11 the Debtor from the practice of law. There is no dispute that on October 8, 2020, the Nevada
12 Court entered an Order of Suspension (“Suspension Order”) that imposed a more severe
13 suspension, and also required the Debtor to pay the costs of the disciplinary proceeding. See
14 Debtor Exhibit 5. There is no dispute that the Debtor voluntarily commenced his Chapter 7
15 proceeding on April 19, 2021. There is no dispute that the Board subsequently issued a
16 recommendation to the Nevada Court to reinstate the Debtor to the practice of law. There is no
17 dispute that on February 24, 2022, the Nevada Court entered its Order of Conditional
18 Reinstatement (“Reinstatement Order”). See Debtor Exhibit 6. There is no dispute that the
19 Nevada Court adopted the Board’s recommendation to reinstate the Debtor. There is no dispute
20 that, over the Debtor’s objection, the Nevada Court also adopted the Board’s recommendation to
21 condition the reinstatement on Debtor’s payment of the costs of the previous disciplinary
22 proceeding.³

23 In reaching the latter conclusion, the Nevada Court specifically stated:
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25
26 ³ There is no apparent dispute that the costs for the prior disciplinary proceeding were
27 \$21,138.15, and that the Reinstatement Order also requires the Debtor to pay the costs of the
28 reinstatement proceeding. The cost breakdown for the prior disciplinary proceeding appears in
Debtor Exhibits 3 and 4. While both the Debtor and the State Bar use a figure of \$21,138.15,
compare Sanctions Motion at 3:11 with Opposition at 4:10-11, the total of the figures in Debtor
Exhibits 3 and 4 is \$20,138.15. That discrepancy does not change the outcome in this matter.

1 “We conclude that [reinstatement may be conditioned] regardless of whether the
2 cost assessment in the discipline order was discharged in bankruptcy. The
3 primary purposes of attorney discipline are to promote an attorney’s
4 rehabilitation, deter misconduct, and protect the public...As such, the
5 recommended condition of reinstatement does not run afoul of 11 USC § 525
6 because its purpose is not to penalize Wike for having obtained a discharge of his
7 debt.”

8 Reinstatement Order at 3. (Emphasis added.)

9 After the Nevada Court issued the Reinstatement Order on February 24, 2022, the Ninth
10 Circuit Court of Appeals heard arguments on April 12, 2022, in Kassas v. State Bar of
11 California, 49 F.4th 1158 (9th Cir. 2022).⁴ The circuit panel held that an obligation to reimburse
12 a state bar disciplinary fund is not excluded from discharge under Section 523(a)(7), but that an
13 obligation to pay the costs associated with the attorney discipline proceedings is excluded from
14 discharge under Section 523(a)(7). Id. at 1166.⁵ Even if the three-judge panel in Kassas did not
15 overturn the three-judge panel decision in Taggart, however, the language in Section 525(a) does
16 not support a finding of prohibited discrimination.

17 Indeed, a refusal to renew a license or actions to condition a license is prohibited only if
18 the governmental unit takes such steps “solely because such bankrupt or debtor is or has been a
19 debtor under this title.” In this instance, the original Suspension Order required the Debtor to
20 pay the costs of the disciplinary proceeds before he ever commenced the Chapter 7 proceeding.
21 The payment requirement under the Suspension Order clearly was not imposed because the
22 Debtor was or is a debtor in bankruptcy. The subsequent Reinstatement Order also was not
23 based on whether the Debtor was in bankruptcy. As explained by the Nevada Court, the
24

25 ⁴ Debtor substantially relies on the circuit’s prior decision in State Bar of California v.
26 Taggart, 249 F.3d 987 (9th Cir. 2001), which was superseded by the decision in Kassas. Neither
the Debtor nor the State Bar mention the Kassas decision in their written arguments.

27 ⁵ Because the costs associated with the attorney disciplinary proceeding were not
28 discharged, the conduct of the State Bar also did not violate the discharge injunction arising
under Section 524(a)(2).

1 requirement to pay the costs of the disciplinary proceeding is “to promote an attorney’s
2 rehabilitation, deter misconduct, and protect the public.” In other words, neither the Suspension
3 Order nor the Reinstatement Order were entered **solely** because of the Debtor’s bankruptcy
4 status. Under these circumstances, the actions of the State Bar as authorized by the Nevada
5 Court⁶ do not violate Section 525(a).⁷

6 **IT IS THEREFORE ORDERED** that the Motion for Sanctions and Order Holding the
7 State Bar of Nevada in Violation of the Protection Against Discriminatory Treatment Under 11
8 U.S.C. § 525(a), and Request for Injunctive Relief, brought by the above-referenced debtor,
9 Docket No. 22, be, and the same hereby is, **DENIED**.

10
11 Copies sent via CM/ECF ELECTRONIC FILING

12 Copies sent via BNC to:
13 TERRY LEE WIKE
14 11120 FOREVER SUNSET COURT
15 LAS VEGAS, NV 89135

16 ###
17
18

19 _____
20 ⁶ No suggestion is made that the Reinstatement Order entered by the highest court of
21 Nevada would be susceptible to collateral attack in the bankruptcy court or in any other federal
22 court. The “Rooker-Feldman” doctrine would bar such an attempt by any of the parties to that
23 proceeding. See, e.g., Cogan v. Trabucco, 2022 WL 17081241, at *3-4 (D. Nev. Nov. 18, 2022)
24 (The Rooker-Feldman doctrine “stands for the relatively straightforward principle that federal
25 district courts do not have jurisdiction to hear de facto appeals from state-court judgments.”).
Thus, whatever may be the Nevada Court’s interpretation of its Supreme Court Rule 120 or any
other interpretation of the purpose of the requirement to pay the disciplinary costs, is not subject
to review by this court. Whether the Debtor could seek review of either order by the United
States Supreme Court also is not before this court.

26 ⁷ Because the actions of the State Bar do not violate the anti-discrimination provisions of
27 Section 525(a), it is unnecessary to address whether the court can or should attempt to enjoin the
28 actions of the State Bar. Compare Middlesex County Ethics Committee v. Garden State Bar
Association, 457 U.S. 423 (U.S. 1982) (abstention applied by federal court in attorney’s
challenge to state disciplinary proceeding).