


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 09, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 21-15394-MKN
) Chapter 13
JOVAN PRENTICE BLANTON,)
)
Debtor.) Date: March 8, 2023
) Time: 2:30 p.m.
)

ORDER ON MOTION TO DETERMINE NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING, AND REHABILITATION’S CONTEMPT OF COURT PURSUANT TO 11 U.S.C. § 362 AND REQUEST FOR PUNITIVE DAMAGES, ATTORNEY’S FEES, AND SANCTIONS, AND DEMAND FOR TURNOVER¹

On March 8, 2023, the court heard the Motion to Determine Nevada Department of Employment, Training, and Rehabilitation’s Contempt of Court Pursuant to 11 U.S.C. § 362 and Request for Punitive Damages, Attorney’s Fees, and Sanctions, and Demand for Turnover (“Relief Motion”), brought in the above-captioned case. The appearance of debtor was noted on the record. No other appearances were made in connection with the Relief Motion After arguments were presented, the matter was taken under submission.

BACKGROUND

On November 18, 2021, Jovan Prentice Blanton (“Debtor”) filed a voluntary Chapter 13 petition along with his schedules of assets and liabilities (“Schedules”) and statement of financial

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “NRS” are to provisions of the Nevada Revised Statutes.

1 affairs. (ECF No. 1). The Chapter 13 proceeding was commenced by attorney Seth Ballstaedt
2 on Debtor's behalf. On his creditor Schedule "E/F," Debtor listed "Department of Employment,
3 Training and R, Po Box 2288, Carson City, NV 89702" ("DETR"). A Notice of Chapter 13
4 Bankruptcy Case ("Bankruptcy Notice") was issued, scheduling a meeting of creditors for
5 December 21, 2021. The Bankruptcy Notice also set a deadline of January 27, 2022, for
6 creditors to file proofs of claim as well as a deadline of May 17, 2022, for governmental units to
7 file proofs of claim. (ECF No. 8).

8 On October 19, 2022, Debtor filed the instant Relief Motion asserting that creditor DETR
9 has taken actions in violation of the automatic stay. The Relief Motion was filed on Debtor's
10 behalf by attorney David Krieger ("Krieger") while attorney Ballstaedt remained as Debtor's
11 counsel in the Chapter 13 proceeding. Attached to the Relief Motion is a declaration of Jovan
12 Prentice Blanton ("First Blanton Declaration"). A hearing on the Relief Motion was noticed for
13 November 23, 2022, and which was continued numerous times, including to March 8, 2023.
14 (ECF Nos. 67, 72, 73, and 89). Notice of the Relief Motion was served on DETR by first class
15 mail to the PO Box address listed in Schedule "E/F" as well as one additional address in Carson
16 City, Nevada. The latter address was specified by DETR as an address for bankruptcy noticing
17 on the "Register of Mailing Addresses of Federal and State Governmental Units" listed on this
18 court's website. (ECF No. 68).

19 DETR did not file any opposition to the Relief Motion, nor did it appear at the scheduled
20 hearings.

21 On October 27, 2022, an order was entered confirming Debtor's Amended Chapter 13
22 Plan Number 5. (ECF No. 71).

23 On January 1, 2023, attorney Krieger suffered a fatal heart attack.

24 On February 8, 2023, attorney Krieger's law partner, Matthew I. Knepper, Esq., filed a
25 motion to withdraw ("Withdrawal Motion") as the Debtor's counsel with respect to the Relief
26 Motion. The Withdrawal Motion was scheduled on shortened time to be heard alongside the
27 Relief Motion. (ECF No. 81 and 84).

1 On March 2, 2023, Debtor, in *pro se*, filed a supplemental declaration (“Second Blanton
2 Declaration”). (ECF No. 92).

3 On March 8, 2023, the court heard the Relief Motion as well as the Withdrawal Motion.
4 At the hearing, attorney Knepper, did not appear regarding the Relief Motion, but did appear
5 regarding the Withdrawal Motion. Despite the previous continuances, no appearance was made
6 on behalf of DETR. At the hearing, the court took both the Relief Motion as well as the
7 Withdrawal Motion under submission.²

8 DISCUSSION

9 On his property Schedule “A/B,” Debtor listed a claim against DETR for unemployment
10 benefits. That claim is property of the Chapter 13 estate under Section 541(a)(1). On his
11 Schedule “C,” Debtor asserted an exemption in the claim under NRS 21.090(1)(hh). No timely
12 objection to the exemption was raised and the claim is deemed exempt under Section 522(l).

13 There is no dispute that a final adjudication of the claim has never occurred despite the
14 Debtor’s efforts to convince DETR of his entitlement to unemployment benefits. Debtor’s
15 frustration in completing the unemployment claims process is not uncommon. For the Debtor,
16 proceeds of the unemployment claim would be important in making the payments required by his
17 confirmed Chapter 13 plan. Until Debtor’s claim to unemployment benefits is finally
18 adjudicated through the administrative process, however, DETR is not in possession of any funds
19 that are property of the Chapter 13 estate nor to any funds to which the Debtor’s exemption
20 applies. In other words, Debtor’s claim to benefits is not the same as the funds that may be
21 awarded if he succeeds on his claim.³ They are separate.

22 As a result, DETR’s failure, if any, to turnover funds to which the Debtor is not currently
23 entitled is not a violation of the automatic stay. If the Debtor ultimately prevails and DETR
24 withholds funds to which he becomes entitled, the funds arguably would be property of the
25

26 ² The Withdrawal Motion is the subject of a separate order.

27 ³ Moreover, this court has no authority to determine the validity of the unemployment
28 claim nor to compel DETR to resolve the claim.

1 Chapter 13 estate under Section 1306(a)(1) and Section 541(a)(7). At such time, relief may be
2 appropriate under Section 542. But not right now.

3 **IT IS THEREFORE ORDERED** that the Motion to Determine Nevada Department of
4 Employment, Training, and Rehabilitation's Contempt of Court Pursuant to 11 U.S.C. § 362 and
5 Request for Punitive Damages, Attorney's Fees, and Sanctions, and Demand for Turnover,
6 Docket No. 66, be, and the same hereby is, **DENIED**.

7
8
9 Copies sent via CM/ECF ELECTRONIC FILING

10 Copies sent via BNC to:
11 JOVAN PRENTICE BLANTON
12 PO BOX 81774
LAS VEGAS, NV 89180

13 ###
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28