[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12867
Non-Argument Calendar

D.C. Docket No. 6:17-cv-01136-PGB,
Bkcy No. 6:15-bkc-03447-KSJ

CHITTRANJAN THAKKAR,

Plaintiff-Appellant,

versus

EMERSON NOBLE,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(January 9, 2019)

Before JILL PRYOR, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Chittranjan Thakkar seeks our review of the district court's decision to dismiss his appeal of a bankruptcy court order distributing approximately $200,000

to Emerson Noble, the trustee in the Chapter 7 bankruptcy cases concerning Nilhan Hospitality, LLC and Orlando Gateway Partners, LLC.[1] The district court dismissed Thakkar's appeal due to his failure to timely file an initial brief, in violation of Federal Rule of Bankruptcy Procedure 8018(a)(1). Thakkar argues that although Rule 8018(a)(4) provides that a court may dismiss an appeal "[i]f an appellant fails to file a brief on time," the district court abused its discretion because there was evidence that he had not abandoned the appeal and no indication of prejudice to the Trustee. Thakkar's initial brief was due on or before September 16, 2017. With no explanation or request for an extension of time, it remained unfiled some eight months later. After careful review, we hold that the district court did not abuse its discretion in dismissing Thakkar's appeal.

I

We must first address the question of our own jurisdiction. In a bankruptcy case, this Court's jurisdiction extends only to "final decisions, judgments, orders, and decrees." 28 U.S.C. § 158(d); *see also In re Walker*, 515 F.3d 1204, 1210 (11th Cir. 2008). Although a district court "may review interlocutory judgements and orders as well," we may not. *Walker*, 515 F.3d at 1210. And notwithstanding that "standards of finality under 28 U.S.C. § 158(d) are more relaxed than under 28 U.S.C. § 1291," *In re Boca Arena, Inc.*, 184 F.3d 1285, 1286 (11th Cir. 1999), the

[1] Thakkar manages both firms and filed both bankruptcy petitions, originally under Chapter 11. Both cases were converted to Chapter 7 liquidations in February 2016.

"[i]ncreased flexibility in applying the finality doctrine in bankruptcy does not render appealable an order which does not . . . completely resolve all of the issues pertaining to a discrete claim." *In re Donovan*, 532 F.3d 1134, 1136–37 (11th Cir. 2008) (quotation marks omitted).

We generally will not review an interlocutory appeal of a finding of civil contempt—which, as explained below, is what we have here. *Combs v. Ryan's Coal Co.*, 785 F.2d 970, 976 (11th Cir. 1986). Ordinarily, a party must wait until a final judgment or decree is issued before it may appeal. *Fox v. Capital Co.*, 299 U.S. 105, 107 (1936). But "[e]xceptions to the rule are plentiful." *Drummond Co. v. Dist. 20, United Mine Workers of Am.*, 598 F.2d 381, 383 (5th Cir. 1979). Seeking to define the limits of these exceptions, we have distinguished between "orders imposing a fine or penalty for contempt which may be avoided by the party purging himself of the contempt by complying with the order, and those in which a fine or penalty is imposed . . . that may not be avoided by some other form of compliance." *Combs*, 785 F.2d at 976. Only the latter are immediately appealable. "The key" in determining whether a civil-contempt order may be immediately appealed is thus whether the penalties imposed under the order are "conditional or subject to modification," or rather "noncontingent." *Id*. at 976–977 (quotation marks omitted). "The goal is to avoid the risk of disrupting a continuing, orderly course of proceedings below." *Id.* at 976 (quotation marks omitted).

The salient jurisdiction-related facts are these: The bankruptcy court's distribution order followed its decision to hold Thakkar in civil contempt for failing to supply certain documents to the Trustee. Thakkar was ultimately arrested for failure to comply with the court's order, and the court issued a bench warrant mandating that Thakkar remain in custody pending his satisfaction of eight conditions. The condition linked to this appeal required Thakkar to "[r]eimburs[e] the Trustee and the U.S. Marshal for all estimated professional costs incurred in obtaining the Debtors' financial and business records." Later finding "sufficient compliance . . . to at least temporarily purge the Court's finding of contempt," the bankruptcy court released Thakkar. The court nonetheless refused to return Thakkar's passport until he posted a $200,000 bond. The bond was to be returned to Thakkar "upon the re-surrender of [the] passport or by further court order."

Instead of following this procedure, but still pursuant to the original bench warrant, the Trustee filed and the bankruptcy court granted a motion to distribute the $200,000 to the Trustee as reimbursement for its fees and costs. The bankruptcy court's order specifically noted that the eight conditions detailed in its bench warrant "remain in full effect except to the extent provided in this Order."

The preliminary question before us is whether to treat the distribution of Thakkar's bond to the Trustee as an "order[] imposing a fine or penalty for contempt which may be avoided by the party purging himself of the contempt by

complying with the order," or rather an order "in which a fine or penalty is imposed . . . that may not be avoided by some other form of compliance." *Combs*, 785 F.2d at 976. We conclude that the bankruptcy court's order is best construed as the latter—and that Thakkar's appeal is therefore subject to our jurisdiction—because Thakkar cannot avoid this penalty via any *other* form of compliance. Even if Thakkar met the seven other requirements to (fully or permanently) purge the bankruptcy court's finding of civil contempt, he would still not complete the bench warrant's requirements unless he also "reimburs[ed] the Trustee." The order therefore cannot "be avoided by some other form of compliance." In addition, the bankruptcy court indicated that its bench warrant "remain[ed] in full effect except to the extent provided in this Order." This implies that although Thakkar may be liable in the future for further reimbursements, the disposition of his $200,000 bond is a settled matter—not "conditional or subject to modification."[2] As such, we have jurisdiction to reach the merits of the district court's decision to dismiss Thakkar's appeal.[3]

[2] We grant that if one construes the relevant penalty as all eight conditions in the bench warrant, or even just the reimbursement provision, then the bankruptcy court's order could be interpreted as still "subject to modification." We instead conclude that the $200,000 bond is sufficiently separable—it was not at the outset intended to satisfy the reimbursement requirement, after all—as to constitute a distinct, and individually final, determination. In brief, Thakkar is not going to see this money again. That appears sufficiently "final" to allow our review without any risk of disrupting the bankruptcy court proceedings.

[3] We also note that we may have jurisdiction over Thakkar's appeal pursuant to the doctrine of practical finality, also known as the *Forgay-Conrad* rule. *See Forgay v. Conrad*, 47 U.S. 201 (1848). The doctrine permits a court to review an interlocutory order that either (1) "decides the

II

We review a district court's decision dismissing a bankruptcy appeal for failure to prosecute for abuse of discretion. *In re Pyramid Mobile Homes, Inc.*, 531 F.2d 743, 746 (5th Cir. 1976). Under this standard, we will not overturn the district court's decision unless we find that the judge "fail[ed] to apply the proper legal standard or to follow proper procedures in making the determination, or ma[de] findings of fact that are clearly erroneous." *Birmingham Steel Corp. v. TVA*, 353 F.3d 1331, 1335 (11th Cir. 2003) (quotation marks and alterations omitted).

Federal Rule of Bankruptcy Procedure 8018(a)(1) provides that "[t]he appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically." The deadline for Thakkar was September 16, 2017. The Trustee filed its motion to dismiss

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right to the property in contest, and directs it to be delivered up by the defendant to the complainant," or (2) "directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution." *Id.* at 204; *see also* Atlantic Fed. Sav. & Loan Ass'n, 890 F.2d 371, 376 (11th Cir. 1989). In addition, the order must "subject[] the losing party to *irreparable harm* if appellate review is delayed until conclusion of the case." *In re F.D.R. Hickory House, Inc.*, 60 F.3d 724, 727 (11th Cir. 1995) (quotation marks omitted). We have little doubt that the distribution order "decide[d] the right to the property in contest." Yet neither party has briefed the applicability of practical finality, and it is unclear whether Thakkar has suffered irreparable harm. We therefore note, but do not rest our jurisdiction on, the application of this doctrine.

Thakkar's appeal on May 8, 2018. Thakkar never sought an extension or otherwise explained the delay during the intervening eight months.[4]

Thakkar now notes that under Rule 8018(a)(4), even if "an appellant fails to file a brief on time," the district court "*may* dismiss the appeal" (emphasis added). In identifying the principles that guide this exercise of discretion, we have held that dismissal for failure to meet the relevant deadline is not automatic. Instead, dismissal is only proper where "bad faith, negligence or indifference has been shown . . . [d]ismissal typically occurs in cases showing consistently dilatory conduct or the complete failure to take any steps other than the mere filing of a notice of appeal." *In re Beverly Mfg. Corp.*, 778 F.2d 666, 667 (11th Cir. 1985). The district court found that Thakkar's conduct was "at the very least, blatant negligence." It also noted that Thakkar had failed to comply with Rule 8018(a)(1) in three prior bankruptcies. Combined with the dilatory and uncooperative conduct that was the impetus for the order that Thakkar was challenging, we find that the district court did not abuse its discretion in dismissing this case on account of Thakkar's negligence or indifference in pursuing his appeal.

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[4] Thakkar's last submission to the district court (and the last entry on the docket) prior to the Trustee's motion to dismiss was a "Notice of Pendency of Related Actions" filed on September 13, 2017. Thakkar points out that he had "indicated to the Trustee that an appellate Brief would be filed, both via a phone call between counsel and in a pleading filed with the court." But that phone call occurred in late April 2018, and the pleading he refers to is his response to the Trustee's motion to dismiss—filed May 22, 2018.

Under an exception to the general rule precluding appellate review of contempt orders by a bankruptcy court, we find that we do have jurisdiction over this dispute, and that resolving it now does not risk "disrupting a continuing, orderly course of proceedings" before the bankruptcy court. *Combs*, 785 F.2d at 976. In light of Thakkar's consistently dilatory and uncooperative conduct, we find that the district court did not abuse its discretion in dismissing his appeal. Accordingly, we affirm.

AFFIRMED.