[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-12021

Non-Argument Calendar

In re: JOSEPH G. WORTLEY,

Debtor.

JOSEPH G. WORTLEY,

Plaintiff-Appellant,

versus

JAMES JURANITCH,
RICHARD TARRANT,
CHAD P. PUGATCH,
RICE PUGATCH ROBINSON SCHILLER, PA,
BARRY MUKAMAL,
Trustee, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:18-cv-61556-DPG

Before WILSON, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

Joseph G. Wortley appeals the district court's order affirming the bankruptcy court's final order and judgment in favor of Defendants-Appellees. Wortley asserts that the district court erred in affirming the bankruptcy court, which found that Appellees filed the Chapter 11 bankruptcy petition in good faith. After careful review, we **AFFIRM**.

I.

Factual Background

The facts of this case are well known to the parties at this point and are amply recounted in the district court's order. *See In re Global Energies, LLC*, 2022 WL 2276748, *1–3 (S.D. Fla. May 20, 2022). In short, Wortley, James Juranitch, and Richard Tarrant were business partners in Global Energies, LLC, a privately held corporation. Wortley invited Chrispus, Tarrant's corporation, to invest in Global Energies. Under the terms of the operating

agreement, in the event of a deadlock between Wortley and Juranitch, a majority vote was required to remove or elect managers and to enter a sale, liquidate, dissolve, or wind-up Global Energies.

At some point, Wortley and Juranitch reached an impasse, which put Global Energies in a deadlock and unable to continue operations. Tarrant and his financial advisor, Ron Roberts, extended offers to Wortley to restructure Global Energies and allow Wortley to keep a significant ownership interest, but he rejected the offers. Juranitch, Tarrant, and Roberts exchanged emails in which they developed a strategy to try to salvage Global Energies (Wortley referred to these emails as the "smoking gun" emails). Ultimately, they decided that Chrispus would file a Chapter 11 involuntary bankruptcy petition against Global Energies. The petition was filed on July 1, 2010.

Procedural Background

On October 7, 2010, Wortley moved to dismiss the bankruptcy case for being filed in bad faith, but he later withdrew his motion to dismiss. On November 30, 2010, the United States Bankruptcy Court for the Southern District of Florida approved the sale of Global Energies' assets to Chrispus. Wortley filed a second motion to dismiss for bad faith based on new evidence, which the bankruptcy court denied with prejudice after holding an evidentiary hearing.

Months later, during discovery in related state-court litigation, Wortley discovered the "smoking gun" emails and filed a motion for rehearing in the bankruptcy court based on newly

discovered evidence demonstrating bad faith (the Rule 60(b) motion).[1] The bankruptcy court denied the motion, and Wortley appealed to the district court. The district court affirmed, and Wortley appealed to this Court.

Finding that the bankruptcy court abused its discretion by applying the wrong legal standard to the Rule 60(b) motion, we reversed and remanded the case to the bankruptcy court with instructions. *See In re Global Energies, LLC*, 763 F.3d 1341, 1348 (11th Cir. 2014) (per curiam). Pursuant to our mandate, the bankruptcy court vacated its order denying Wortley's Rule 60(b) motion, granted the Rule 60(b) motion, vacated its order approving the sale of Global Energies' assets, and set Wortley's second motion to dismiss for rehearing.

In July 2015, Wortley filed an adversary bankruptcy proceeding against Tarrant, Jaranitch, Chrispus, Chad Pugatch, the Law Firm, and Plasma Power LLC. In July 2017, the bankruptcy court held an 11-day trial which addressed both the second motion to dismiss and claims from the adversary proceeding. On June 25, 2018, the bankruptcy court issued a 70-page final order, which denied the second motion to dismiss with prejudice. Final judgment was entered in favor of Appellees the same day.

Wortley appealed to the district court. In March 2019, the district court reversed and remanded after finding that the

[1] This motion sought relief under Federal Rule of Civil Procedure 60(b)(2) and (3) from the bankruptcy court's denial of the second motion to dismiss.

bankruptcy court failed to follow our mandate in *In re Global Energies*. In May 2019, Appellees appealed and petitioned this Court for a writ of mandamus. On December 16, 2019, we issued a Mandamus Order directing the district court to vacate its order remanding to the bankruptcy court, finding that the bankruptcy court did not deviate from our mandate during its proceeding on remand. *See In re Chrispus Venture Capital, LLC*, 2019 WL 13192053, *1 (11th Cir. Dec. 16, 2019). On May 20, 2022, the district court affirmed the bankruptcy court's final order and judgment. Wortley timely appealed.

II.

In bankruptcy cases, we act as a "'second court of review' and thus 'examines independently the factual and legal determinations of the bankruptcy court and employs the same standards of review as the district court.'" *In re Optical Technologies, Inc.*, 425 F.3d 1294, 1299–1300 (11th Cir. 2005) (quoting *In re Issac Leaseco, Inc.*, 389 F.3d 1205, 1209 (11th Cir. 2004)). We review the bankruptcy court's and district court's legal conclusions de novo, and we review the bankruptcy court's factual findings for clear error. *Id*. at 1300.

III.

On appeal, Wortley argues that the district court erred in affirming the bankruptcy court's final order. Specifically, Wortley challenges the bankruptcy court's finding that the Chapter 11 petition was filed in good faith. Wortley also argues that, pursuant to our mandate in *In re Global Energies*, the bankruptcy court should

have reimbursed his attorneys' fees and costs; dismissed the bankruptcy; awarded damages; required accounting and disgorgement; and ensured Appellees "do not profit from their misconduct."

The Appellees argue that the district court properly affirmed the bankruptcy court's final order and judgment because the bankruptcy court followed our mandate by holding an evidentiary hearing and—based on the law and evidence—correctly denied Wortley's claims of bad faith. We agree with the Appellees.

The Mandate

Before addressing the merits of Wortley's appeal, we turn first to our mandate in *In re Global Energies*. It is helpful to briefly summarize the law underlying appellate mandates:

> The [law of the case] doctrine is based on the premise that an appellate decision is binding in all subsequent proceedings in the same case unless the presentation of new evidence or an intervening change in the controlling law dictates a different result, or the appellate decision is clearly erroneous and, if implemented, would work a manifest injustice. A district court when acting under an appellate court's mandate, "cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon a matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded."
>
> . . .

> The mandate rule is simply an application of the law of the case doctrine to a specific set of facts.

Litman v. Massachusetts Mut. Life Ins. Co., 825 F.2d 1506, 1510–11 (11th Cir. 1987) (footnotes and citations omitted).

Here, the bankruptcy court conducted an 11-day trial, during which it considered Wortley's claims of bad faith based on the newly discovered evidence.[2] Over the course of the trial, the bankruptcy court "admitted over 200 exhibits into evidence, heard argument from the parties, and heard testimony from" 14 witnesses. *In re Global Energies, LLC*, No. 10-28935-RBR, 2018 WL 3121792, *1 (Bankr. S.D. Fla. June 25, 2018), *aff'd*, No. 10-BK-28935-SMG, 2022 WL 2276748 (S.D. Fla. May 20, 2022). The bankruptcy court concluded after the trial that this was a rare case in which deviation from a mandate was justified because the court was presented with new and substantially different evidence on remand. *Id.* at *33–35. At the original evidentiary hearing on Wortley's second motion to dismiss—which lasted one day—the bankruptcy court heard testimony from only two witnesses. Chrispus never presented any evidence or witnesses. At the trial, the bankruptcy court heard from 14 witnesses, considered significantly more evidence, and made more detailed factual findings. Thus, the bankruptcy court's finding of no bad faith after rehearing was appropriate in light of the

[2] The bankruptcy court held the trial and evidentiary hearing together and entered a duplicate opinion in the main bankruptcy case and adversary proceeding because the legal issues and factual findings were "intertwined in a manner that made any attempt at separation futile."

new evidence and witness testimony it was presented with. *See Litman*, 825 F.2d at 1512 ("[T]here are cases wherein a seemingly specific mandate such as an order for a new [hearing] may wind up with a different result on remand."); *Friedman v. Market St. Mortg. Corp.*, 520 F.3d 1289, 1294–95 (11th Cir. 2008) (recognizing an exception to the law of the case doctrine where "the evidence on a subsequent trial was substantially different").

Contrary to Wortley's assertions, our mandate did not establish factual findings in the underlying bankruptcy case. As we have stated numerous times, a court of appeals cannot find facts. *See, e.g.*, *United States v. Banks*, 347 F.3d 1266, 1271 (11th Cir. 2003) ("A court of appeals is not a fact finding body."); *United States v. Barnette*, 10 F.3d 1553, 1558 (11th Cir. 1994) ("It is not an appellate court's role to find facts."). Our mandate directed the bankruptcy court on remand to "conduct any hearings necessary in the exercise of all its powers at law or in equity and issue appropriate orders or writs." *In re Global Energies*, 763 F.3d at 1350. Importantly, we did not impose any remedies because we recognized "that Chrispus, Juranitch, Tarrant, and Pugatch have not had an appropriate hearing, which will be conducted before the bankruptcy court." *Id*.

In sum, the bankruptcy court complied with our mandate by holding an appropriate hearing, and its deviation in other respects was justified due to the presentation of new evidence.

The Bankruptcy Court's Findings

We now turn to the bankruptcy court's factual findings and legal conclusions over the course of the trial. On appeal, Wortley

asserts that "there was no conceivable basis in this record to find a 'good faith' petition" and that "the district court erred in adopting the [bankruptcy court's] reasoning that the petition was filed in good faith." Appellees argue that the bankruptcy court, after considering all the evidence, found that the petition was not filed in bad faith—rather, it was filed to break the deadlock and reorganize Global Energies.

A review of the bankruptcy court's final order shows there was ample evidence to support its finding that the petition was filed in good faith. The bankruptcy court heard testimony from Wortley, Tarrant, and Juranitch, "which resulted in three facially plausible versions of the same story regarding the breakup of Global Energies." *In re Global Energies*, 2018 WL 3121792, *31. Thus, the bankruptcy court made credibility determinations as to the witnesses and found that Tarrant and Juranitch were credible, but that "Wortley's testimony lacked any and all credibility." *Id*. The bankruptcy court thoroughly explained its credibility determinations for Wortley, Tarrant, and Jurantich. *Id*. at *32–33. As to Worley, the court found him "not a credible witness because his testimony was inconsistent, non-responsive, self-serving, confusing, and argumentative." *Id*. at *32. The court found the other witnesses credible because they were forthright when answering questions, thus the court gave substantial weight to their testimony. *Id*. at *33.

As to the filing of the Chapter 11 petition, the bankruptcy code does not define "bad faith." Thus, "courts have used different approaches to determine whether a petition was filed in bad faith."

Gen. Trading Inc. v. Yale Materials Handling Corp., 119 F.3d 1485, 1501 (11th Cir. 1997). Our circuit recognizes three tests: the improper purpose test, the improper use test, and the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure.

> Under the improper purpose test, "bad faith exists where the filing of the petition was motivated by ill will, malice or the purpose of embarrassing or harassing the debtor." . . .
>
> Under the improper use test, bad faith exists when a creditor uses a bankruptcy proceeding to accomplish objectives not intended by the Bankruptcy Code, such as taking over a debtor corporation and its assets. . . .
>
> Finally, under the test modeled on Rule 9011 of the Federal Rules of Bankruptcy Procedure, bad faith exists, where a filing party (1) fails to make a reasonable inquiry into the facts and the law before filing and (2) files the petition for an improper purpose. The first prong, reasonable inquiry, is an objective one.

In re Global Energies, 763 F.3d at 1349 n.5 (citations omitted).

In its final order, the bankruptcy court stated that it "failed to find any evidence that Chrispus filed the involuntary Chapter 11 bankruptcy petition in bad faither under the Eleventh Circuit's tests." *In re Global Energies*, 2018 WL 3121792, *37. The bankruptcy court found that the "primary purpose in filing the involuntary petition was to reorganize Global Energies and resolve the deadlock

between the primary members." *Id.* This finding was supported by witness testimony: "Tarrant testified that he wanted to reorganize Global Energies, keep Mr. Wortley involved, and make Mr. Wortley whole." *Id.* Tarrant further testified that he and Roberts "attempted to resolve the deadlock between the parties before and after the bankruptcy filing; the 'smoking gun' emails revealed an intent to reorganize; and the Trustee testified there was 'potential' to reorganize but a sale of the assets was the best outcome." *Id.*

Under the clearly erroneous standard—which is "highly deferential"—we must uphold "factual determinations so long as they are plausible in light of the record viewed in its entirety." *Underwriters at Lloyd's, London v. Osting-Schwinn*, 613 F.3d 1079, 1085 (11th Cir. 2010) (quotations and citation omitted). After reviewing the record and the bankruptcy court's thorough 70-page order, we are convinced that its factual findings were plausible. The bankruptcy court considered all the evidence that was presented during the trial, made plausible factual determinations, and applied the correct law to the bad faith claims.

Wortley appears to fundamentally misunderstand the function of our mandate in *In re Global Energies*. He repeatedly asserts that our mandate established that, based on the facts, the petition was filed in bad faith and that the bankruptcy court disregarded our mandate by not imposing sanctions on Appellees or awarding Wortley fees and costs. However, as explained above, our mandate instructed the bankruptcy court to hold a hearing and explicitly refrained from imposing remedies because Appellees had not

had an appropriate hearing. *In re Global Energies*, 763 F.3d at 1350. Based on the new evidence presented at trial, the bankruptcy court contextualized the "smoking gun" emails and ultimately determined that Chrispus did not file the Chapter 11 petition in bad faith. We see no reason to disturb the bankruptcy court's thorough and well-reasoned order.

We find no error in the bankruptcy court's factual findings or its legal conclusion that the Chapter 11 petition was filed in good faith. The district court properly affirmed the bankruptcy court's final order and judgment. Accordingly, we affirm.

AFFIRMED.