

May 24, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-60483

JOHN E. SHAVERS; ET AL

Plaintiffs,

JASON EDWARD CARR,

Plaintiff-Appellant,

versus

GEORGE DALE, ETC; ET AL,

Defendants,

GEORGE DALE, Insurance Commissioner, State of Mississippi;
WILLIAM H. ELLSWORTH; ALEXANDER J. ELLSWORTH; ELLSWORTH, LEBLANC
& ELLSWORTH INC.; UNITED STATES FIRE INSURANCE COMPANY, A
Delaware Corporation,

Defendants-Appellees.

No. 05-60143

In the Matter Of: JOHN E. SHAVERS, Debtor

JOHN E. SHAVERS,

Appellant,

versus

UNITED STATES FIRE INSURANCE COMPANY; SHAVERS-WHITTLE
CONSTRUCTION INC.,

Appellees.

No. 05-60574

In the Matter Of: JOHN E. SHAVERS, Debtor

B.G. PERRY,

Appellant,

versus

DEWAYNE MURRAY, Trustee; UNITED STATES FIRE INSURANCE Co.,
Appellees.

Appeals from the United States District Court
for the Southern District of Mississippi, Jackson Division

Before GARWOOD, DAVIS and GARZA, Circuit Judges.

PER CURIAM:*

This appeal includes three consolidated cases related to the bankruptcy of John E. Shavers. The Shavers involuntary bankruptcy was originally filed in the Bankruptcy Court for the Eastern District of Louisiana. After the Louisiana bankruptcy court entered an order of relief under Chapter 11, it transferred the case to the Bankruptcy Court for the Southern District of Mississippi, because a related civil case had been removed to that jurisdiction. When Shavers appealed the order of relief, the Louisiana district court transferred the appeal to the district court for the Southern District of Mississippi. The

* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Mississippi district court affirmed the order of relief. Shavers appeals from that order in Case No. 05-60143.

Based on our review of the record, the district court properly affirmed the order of relief. Shavers' argument that he is not an eligible debtor under 11 U.S.C. § 109 is without merit. Entry of the bankruptcy court's order before Shaver filed an answer to the involuntary petition did not violate Shavers' rights as he had a full opportunity to present his case in the trial of his motion to dismiss the involuntary bankruptcy petition.

The district court also properly rejected Shavers' argument that the court was without jurisdiction over the appeal because of the transfer of the case from Louisiana to Mississippi. The Louisiana Bankruptcy Court issued the order to transfer the case to the Mississippi Bankruptcy Court on November 4, 2003, on the same day the order was entered granting Chapter 11 relief. Shavers appealed the order granting Chapter 11 relief on November 10, 2003. Shavers' notice of appeal immediately transferred jurisdiction over the case from the bankruptcy court to the Louisiana District Court. 10 Collier on Bankruptcy ¶8001.04. The Louisiana District Court clearly was within its authority to transfer the appeal to the Mississippi District Court where related proceedings were ongoing. See 28 U.S.C. § 158(a) and 28 U.S.C. § 1412. Although there is some confusion in the electronic records of the Louisiana District Court as to which

notice of appeal filed by Shavers was docketed and transferred to the Mississippi District Court, the two district courts that have examined the record have concluded that Shavers' appeal of the Chapter 11 order is the appeal that was docketed in the Louisiana District Court, and transferred to the Mississippi District Court where it was heard and decided and then appealed to this court. See Memorandum and Order, entered by the Mississippi District Court on February 1, 2003. See also Order and Reasons, entered by the Louisiana District Court on January 5, 2006.¹ We agree. Accordingly, we affirm case No. 05-60143 on the basis of the district court's Memorandum Opinion and Order Affirming Order of Bankruptcy Court entered on February 1, 2005.

Case no. 04-60483 is the appeal from the district court's denial of a motion to remand the civil case related to the Shavers Bankruptcy that had originally been filed in Mississippi state court. An order denying a motion to remand is not reviewable by appeal or otherwise. 28 U.S.C. § 1334(d). Accordingly, we dismiss case no. 04-60483.

Case No. 05-60574 is an appeal from an order of the Mississippi bankruptcy court ordering B.G. Perry to appear for an examination. The Mississippi district court properly held that

¹ The January 5, 2006 order of the Louisiana District Court was entered after Shavers' notice of appeal from the Chapter 11 Order was re-docketed in the Eastern District of Louisiana. Judge Africk found that Shavers' appeal had previously been docketed, transferred to the Mississippi Court and decided. That order is presently on appeal to this court before another panel under docket no. 06-30106.

it was not a final order and dismissed for lack of jurisdiction.

28 U.S.C. § 158(d)(2)(A). Accordingly, we affirm case No. 05-

60574.

Case No. 05-60143, AFFIRMED.

Case No. 04-60483, DISMISSED.

Case No. 05-60574, AFFIRMED.