NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 21, 2022*
Decided December 22, 2022

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 21-2442

BRIAN J. KELLY,
Debtor-Appellant,

v.

PETER FLATLAND HERRELL, et al.,
Appellees.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 20-cv-805-bbc

Barbara B. Crabb,
Judge.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

No. 21-2443

BRIAN J. KELLY & PAUL L. KELLY,
Plaintiffs-Appellants,

v.

BERNARD C. SEIDLING, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 20-cv-806-bbc

Barbara B. Crabb,
Judge.

O R D E R

For over 20 years, Brian Kelly has been embroiled in an involuntary Chapter 7 bankruptcy, which recently culminated in a final decree. He appealed to the district court, where he raised fraud by his creditors and various due-process violations. These challenges were rejected, and Kelly now appeals to this court (his third time doing so). His contentions on appeal are underdeveloped or unpersuasive, so we affirm.

We recount the procedural history that is necessary to this appeal but try not to repeat prior orders too much. *See generally Kelly v. Herrell*, 781 F. App'x 529 (7th Cir. 2019) (*Kelly II*); *Kelly v. Herrell*, 602 F. App'x 642 (7th Cir. 2015) (*Kelly I*). Three purported (and related) creditors initiated this involuntary bankruptcy proceeding against Kelly in 2002. In 2003, Kelly moved to dismiss the proceedings, alleging that one of the creditors—Midwest Financial, the alter ego of Bernard Seidling, a now-convicted fraudster—had a false claim that was acquired in bad faith. *See generally United States v. Seidling*, 737 F.3d 1155 (7th Cir. 2013) (affirming Seidling's convictions). The bankruptcy judge denied that motion. About 10 years later (and after much activity, including a dismissal that was later vacated), Kelly appealed. *Kelly I*, 602 F. App'x at 643–44. We determined that the decision was not reviewable at that time and observed that only one valid claim was needed to initiate an involuntary bankruptcy anyway. *Id.* at 647.

The proceeding continued, and the bankruptcy judge ordered the sale of Kelly's farmland in Dunn County, Wisconsin, to the Jerry Johnson Revocable Trust ("Jerry Johnson")[1] subject to all liens and encumbrances. Kelly appealed that Sale Order,

[1] Neither Jerry Johnson nor Bernard Seidling nor C&A Investments (another creditor, owned by Seidling's wife) filed briefs in this appeal, and none responded to

arguing that it was the product of multiple due-process violations. We affirmed the district judge's determination to the contrary. *Kelly II*, 781 F. App'x at 532.

The sale stalled nonetheless. Jerry Johnson failed to obtain title within the 90-day timeframe that the bankruptcy judge had set for its escrow agreement with the Chapter 7 Trustee. The U.S. Trustee sought an order that Jerry Johnson had abandoned the sale. And Kelly filed a "motion to dismiss" the case because Jerry Johnson had not finalized the purchase; he asserted that Jerry Johnson was a mere "alter-ego" of Seidling and claimed—again—that the bankruptcy had been initiated in bad faith. Seidling, who intended to be paid from the proceeds of the sale, objected and represented that Jerry Johnson intended to proceed with the purchase. Attorney James Sweet, representing Jerry Johnson, then entered an appearance and informed the court that Jerry Johnson had obtained title commitment. The U.S. Trustee withdrew its motion. Kelly later withdrew his motion to dismiss as well.

Kelly then began another flurry of activity. He moved for the bankruptcy judge to close the case, arguing that, under judicial estoppel, the judge should enforce the U.S. Trustee's position that Jerry Johnson had abandoned the property. Kelly, with his father Paul, also initiated an adversary proceeding against Seidling and others, alleging violations of the Wisconsin Organized Crime Control Act. WIS. STAT. § 946.83. And Kelly objected to Sweet's appearance and requested that the presiding bankruptcy judge recuse himself. Kelly asserted (in an affidavit and with a receipt) that Sweet, along with Sweet's spouse (now the chief federal bankruptcy judge in the district), had previously represented Kelly in the bankruptcy action. Kelly further contended that the presiding judge was communicating with the Chapter 7 Trustee out of court.

The bankruptcy judge rejected all of Kelly's objections and entered the final decree resolving the bankruptcy. The judge explained that because the debtor's interests were narrow, and Sweet's involvement was limited to informing the court that Jerry Johnson had obtained the title, Sweet's appearance was not detrimental to Kelly. The judge also denied the recusal motion, explaining that he had not engaged in any out-of-court conversations and that he was not close with the district's chief bankruptcy judge, Sweet's spouse, because the presiding judge was only a visiting judge. The judge saw no ground for deeming the sale abandoned based on statements in the U.S. Trustee's

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our order on May 31, 2022, to show cause why the appeal should not proceed without them. On June 30, 2022, we ordered the appeal to proceed.

since-withdrawn motion. And, finally, he dismissed the racketeering-based adversary proceeding (in which Kelly had asked for default judgment).

Kelly appealed to the district court, raising 22 issues, which the district judge divided into four categories: the alleged fraud, the requested disqualification of the bankruptcy judge and Sweet, the motion for judicial estoppel, and the purported due-process violations. The district judge rejected all arguments and affirmed.

Kelly now appeals these rulings. But we start by clarifying a separate issue we asked the parties to address: the status of Paul Kelly, Brian Kelly's father, with respect to these appeals. The answer is that Paul has no role in the bankruptcy appeal because, as we have previously explained, Paul's purported interest in his son's farm was not harmed by the Sale Order, which left all encumbrances intact. *Kelly II*, 781 F. App'x at 531 (citing *Kelly I*, 602 F. App'x at 645). On the other hand, Paul, with his son, initiated the adversary proceeding as a plaintiff and signed the notice of appeal in that case. No change in the captions is needed based on these clarifications.

On to (Brian) Kelly's arguments. We begin with what we think is the crux of his concern: fraud in the proceedings. Although Kelly points to circumstances that appear concerning or even suspicious, he waived his arguments by withdrawing his 2019 motion to dismiss and by failing to develop them here or in the district court.

First, Kelly argues, as he did in his motion to dismiss, that the sale of the farm was fraudulent because Jerry Johnson is another of Seidling's alter egos. The district judge concluded that Kelly waived this argument when he withdrew his 2019 motion to dismiss in the bankruptcy court and that, regardless, he did not have standing to challenge the identity of the buyer because, regardless of who purchased the farm, Kelly would lose possession. We agree on both scores. By withdrawing his motion to dismiss, Kelly did not give the bankruptcy judge the chance (after *Kelly II* allowed the sale) to rule on the propriety of a Seidling entity purchasing the farm, therefore waiving the argument. *See In re Veluchamy*, 879 F.3d 808, 821 (7th Cir. 2018). Even now on appeal, he does not explain why Jerry Johnson being the purchaser makes a difference as a matter of substantive law, *see* 11 U.S.C. § 363, or provides him with an "injury in fact" that is "fairly traceable" to the sale, *see In re GT Automation Grp., Inc.*, 828 F.3d 602, 605 (7th Cir. 2016). (And to the extent Kelly now asserts that Jerry Johnson could not legally purchase the property because of Seidling's criminal convictions or that a fraudulent signature was used on the sale agreement, those issues, while troubling, do not go to the bona fides of the petition, such that the proceeding should be dismissed.)

Second, Kelly renews his argument that Seidling fraudulently initiated the bankruptcy with false debts. The district judge concluded that Kelly waived this argument, too, when he withdrew his 2019 motion to dismiss. Because Kelly lost a motion to dismiss on this ground in 2003 but did not get a final judgment in the bankruptcy case until 2021, we are not so sure. But he did not provide any records from the 2003 decision either to us, FED. R. APP. P. 6(b)(2)(B), or the district court, FED. R. BANKR. P. 8009(a)(4). We therefore have nothing to review even if we could. Waiver aside, we note that Kelly alleges fraud based on Seidling's (admittedly troubling) history of criminal fraud, but he does not contend with our observation that even if Seidling's claim was fraudulent, it was not necessary to initiate the bankruptcy. *See Kelly I*, 602 F. App'x at 647. Other courts have entertained the argument that dismissal for fraud is possible nonetheless, *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328, 330, 333–35 (3d Cir. 2015), but Kelly simply ignores the issue. Even for pro se litigants, "we cannot fill the void by crafting arguments and performing the necessary legal research." *Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001).

We turn next to arguments that we can review, first relating to the district-court proceedings. Kelly argues that the district judge should have recused herself because she had ruled on his prior appeals in this litigation and had sentenced Seidling (too lightly, in Kelly's view) in a criminal matter. But decisions in prior proceedings are not a basis for recusal unless they display "deep-seated favoritism or antagonism," and nothing suggests such bias here. *Liteky v. United States*, 510 U.S. 540, 555 (1994). And despite Kelly's protestations about the nonrandom assignment of the district judge to his appeal, the assignment of related cases in the district court is governed by its Administrative Order 347(4). Kelly does not demonstrate that this was improper or that he has a right to a random assignment. *See Firishchak v. Holder*, 636 F.3d 305, 309–10 (7th Cir. 2011). Kelly next contends that the district judge violated his due-process rights by not addressing his every argument on appeal. But the district judge, after acknowledging that Kelly raised 22 "issues," merely categorized them by subject before addressing them. Kelly does not point us to any specific, unaddressed issue.

Kelly raises more procedural arguments: that his rights were violated when the bankruptcy judge allowed the farm sale to occur after 90 days had elapsed without the conditions met, and also when the judge allowed telephonic hearings. Like the district judge, we see no errors. Kelly fails to provide any authority that he was entitled to in-person hearings in the bankruptcy court, and the record establishes that he had an opportunity to participate in all proceedings either by phone or by written submission.

See Town of Castle Rock v. Gonzales, 545 U.S. 748, 756 (2005) ("The procedural component of the Due Process Clause does not protect everything that might be described as a 'benefit.'"). And his complaint about the 90-day disbursement timeline boils down to his dissatisfaction with the court excusing the delay. But litigants do not have due-process rights in the enforcement of judicial orders. *See id.* And Kelly's objections to the extension were fully aired and addressed.

Kelly next attacks various discretionary decisions by the bankruptcy judge but fails to meaningfully engage with the reasoning for them. He contends that his objection to Sweet's appearance had to be sustained because Wisconsin "require[s] attorneys not to represent two clients to the same lawsuit." Under Wisconsin Supreme Court Rule 20:1.9, a lawyer cannot represent parties in a proceeding against a former client when their "interests are materially adverse to the interest of the former client." *See also Watkins v. Trans Union, LLC*, 869 F.3d 514, 519 (7th Cir. 2017) (applying ethics code of the relevant state). Here, although the bankruptcy judge expressed confusion, the record establishes that Sweet and his firm previously represented Kelly in this bankruptcy proceeding. But the bankruptcy judge reasonably focused on Sweet's limited role in communicating on behalf of Jerry Johnson, the farm's purchaser. And, applying Wisconsin Supreme Court Rule 20:1.9, the district judge agreed with the bankruptcy judge that Sweet's limited role and Kelly's limited interest in the farm after the Sale Order meant that Kelly and Jerry Johnson did not have materially adverse interests. Because Sweet simply reported something Jerry Johnson already had done, we cannot say that the judges abused their discretion in reaching their conclusions. *See Watkins*, 869 F.3d at 518.

Kelly also attacks the bankruptcy judge's denial of his motion for judicial estoppel—his demand that the judge accept the U.S. Trustee's position that Jerry Johnson abandoned the sale. The bankruptcy judge did not abuse his discretion in denying that motion: as the district judge correctly concluded, the U.S. Trustee did not prevail in that view, which is a necessary condition of judicial estoppel. *See In re Knight-Celotex, LLC*, 695 F.3d 714, 721, 723–24 (7th Cir. 2012). Further, Kelly is trying to hold the U.S. Trustee's position against Jerry Johnson, not the U.S. Trustee.

Finally, the Kellys argue that they were entitled to a default judgment in the adversary case, but we are again faced with a waiver. Kelly did not raise this argument in his appeal to the district court nor in his opening brief in this appeal (though his father mentioned it in his "Statement of Interest"), so we will not consider it now. *See In re Sokolik*, 635 F.3d 261, 268 (7th Cir. 2011). Regardless of waiver, we note that

courts may, in their discretion, dismiss adversary proceedings after the underlying bankruptcy case has ended. *See Chapman v. Currie Motors, Inc.*, 65 F.3d 78, 80–82 (7th Cir. 1995) (citing 28 U.S.C. §§ 1334, 1367).

AFFIRMED