

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHARON HASSAN,
Plaintiff,
v.
BLACKBURNE & SONS REALTY
CAPITAL CORPORATION,
Defendant.

Case Nos. 14-CV-04836-LHK
14-CV-05171-LHK

**ORDER DISMISSING CASES WITH
PREJUDICE**

Appellant ShaRon Hassan has filed notices of appeal from the United States Bankruptcy Court for the Northern District of California in two separate actions pending before this Court. The appeals are filed pursuant to 28 U.S.C. § 158(a) and Federal Rule of Bankruptcy Procedure 8001(a). For the reasons stated below, this Court hereby DISMISSES with prejudice the instant appeals for failure to prosecute.

I. BACKGROUND

Appellant Hassan filed two notices of appeal in this court appealing orders of the United States Bankruptcy Court for the Northern District of California in Appellant’s underlying bankruptcy case, Bankr. Case No. 13-5056. Appellant filed her first notice of appeal on October 30, 2014. Case No. 14-0486, ECF No. 1. Appellant’s first notice of appeal appeals the Bankruptcy Court’s September 30, 2014 order declaring Appellant a vexatious litigant; August 20, 2014 order granting Defendants’ motion for summary judgment; September 23, 2014 order granting

1 Defendant Brown’s motion to vacate Appellant’s entry of default; and September 30, 2014 order
2 denying Appellant’s motion to amend the complaint. *See id.* at 9. However, the Bankruptcy Court
3 has previously indicated that the first notice of appeal is timely only as to the Bankruptcy Court’s
4 September 23, 2014 order granting Defendant Brown’s motion to vacate Appellant’s entry of
5 default. *See* Bankr. Case No. 13-5065, ECF No. 383 (Bankruptcy Court’s order granting in part
6 and denying in part Appellant’s motion to extend time to file appeal-related documents). In the
7 underlying case and in her first notice of appeal, Appellant named the following defendants:
8 Blackburne & Sons Realty Capital Corporation, Blackburne and Brown Mortgage Company, Inc.,
9 Blackburne and Brown Mortgage Fund I, BBMCI Fund, Allen M. Krohn, Augusto C. Pasos, Jr.
10 and Julia M. Pasos Living Trust, Mark A. Singleton, Trustee of Singleton and Moore Medical
11 Corp. Pension Funds, Carlos E. Zozula, Michael F. Kiernan, Trustee of Michael F. Kiernan 1998
12 Revocable Trust, Howard C. Turnely, and Jane S. Turnely, Trustees of Turnely Trust, John
13 Baldwin, Robert Bloch, Ara M. Missakian and Nadya Missakian, Mike Del Campo and Lena Del
14 Campo, Robert R. Gault, Trustee of Gault Family Trust, James E. Reed Profit Sharing Plan and
15 Trust, David P. Shafer and Charlene N. Iran, Trustees of Shafer-Iran Trust, Western Laboratories
16 Medical Group Profit Sharing Plan and Trust FBO John E. Cleymaet, John E. Cleymaet, Jerry
17 Engle and Nora Engle, Trustees of the Restated Engle Family Trust, Ronald G. Burgess and Treva
18 A. Burgess, Trustees of the Burgess Family Trust, James Nerli and Daryl Nerli, Aldo I. Assali,
19 Ronald A. Floria, Jerry P. McDaniels, Jay Thomsen and L. Thomsen, Lawrence Thomsen, Trustee
20 of The Thomsen Special Needs Trust, Polycomp Trust Company, Custodian FBO John Cleymaet
21 IRA, Dennis D. Brown and Does 1 through 25. Case No. 14-4836, ECF No. 1.

22 Appellant filed her second notice of appeal on November 21, 2014. Case No. 14-5171,
23 ECF No. 1. The second notice of appeal appeals only the Bankruptcy Court’s September 23, 2015
24 order granting Defendant Brown’s motion to vacate Appellant’s entry of default, and names only
25 Dennis D. Brown as a defendant. *Id.*

26 Appellant had also appealed the Bankruptcy Court’s September 23, 2014 order vacating
27 the default against Defendant Brown to the Ninth Circuit’s Bankruptcy Appellate Panel (“BAP”).
28 *See* Case No. 14-5171, ECF No. 4. The BAP transferred Appellant’s appeal to this Court on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

March 9, 2015. *Id.*

Prior to Appellant’s filing of her notices of appeal in District Court, the Bankruptcy Court had already granted Appellant multiple extensions of time within which to file appeal-related documents, and put Appellant on notice that Appellant’s appeals were untimely as to all Bankruptcy Court orders other than the September 23, 2014 order granting Defendant Brown’s motion to vacate Appellant’s entry of default. *See* Bankr. Case No. 13-5065, ECF Nos. 383, 415. Nonetheless, Appellant took no action to prosecute either appeal for approximately six months after filing her notices of appeal. On May 6, 2015, this Court ordered Appellant to show cause why the cases should not be dismissed for failure to prosecute and failure to comply with the Rules of Bankruptcy Procedure and the Bankruptcy Local Rules. Case No. 14-4836, ECF No. 3. In both appeals, Appellant had failed to comply with Rule of Bankruptcy Procedure 8009, which requires appellants to file designations of record and statements of the issues within fourteen days of filing a notice of appeal.

Following this Court’s issuance of an order to show cause, Appellant both filed a response and appeared at the hearing. This Court thereafter vacated the order to show cause on May 27, 2015. Case No. 14-4836, ECF No. 6. This Court explicitly warned Appellant that she was to perfect the records in both cases by June 8, 2015. *Id.* Further, this Court cautioned Appellant both on the record at the hearing and in this Court’s subsequent order that failure to meet this deadline would result in a dismissal with prejudice for both actions. *Id.*

Appellant filed her designations of the record on appeal on June 4, 2015, over seven months after Appellant filed her first notice of appeal. Case No. 14-4836, ECF No. 9-1, at 1. Appellant’s designation lists the entire dockets of six bankruptcy cases filed by Appellant, and states that the record on appeal includes all docket entries, as well as “all exhibits attached and referred to in the pleadings or matters of record.” *Id.* Appellant’s designation of the entire docket in six bankruptcy cases has imposed a significant burden on the Clerks of both the Bankruptcy Court and the District Court. The Bankruptcy Court Clerk worked for months to forward the record to the District Court Clerk. As of August 25, 2015, at least 786 documents had been

1 transferred to the District Court and posted on the docket for Appellant’s two appeals. This Court
2 is skeptical that much of the designated record—including, for example, hundreds of pages of
3 certificates of service and mailing—has any relevance to Appellant’s appeals. Moreover, although
4 Appellant’s designation of the record on appeal was filed by the June 8, 2015 deadline set by this
5 Court for perfecting the record on appeal, Appellant’s statements of issues were filed on June 25,
6 2015, well after this Court’s June 8, 2015 deadline. *See* Case Nos. 14-4836, ECF No. 16; 14-5171,
7 ECF No. 14.

8 Finally, Appellant also designated twenty-seven transcripts to be included in the record on
9 appeal for both cases. Case No. 14-4836, ECF No. 9-4, at ECF p. 39; Case No. 14-5171, ECF No.
10 9-8, at ECF p. 41. Rule 8009(b)(1) of the Federal Rules of Bankruptcy Procedure requires an
11 Appellant to “order in writing from the reporter . . . transcript[s] of such parts of the proceedings
12 not already on file as the appellant considers necessary for the appeal, and file a copy of the order
13 with the bankruptcy clerk; or . . . file with the bankruptcy clerk a certificate stating that the
14 appellant is not ordering a transcript.” While Appellant designated twenty-seven transcripts,
15 Appellant neither ordered the transcripts nor filed a certificate with the Bankruptcy Clerk stating
16 that Appellant is not ordering transcripts. *See* Case No. 14-4836, ECF No. 37-1 (certificate of non-
17 readiness filed by Bankruptcy Clerk). Instead, on June 5, 2015, Appellant sought a waiver of
18 transcript fees for these twenty-seven transcripts that Appellant states are necessary for her
19 appeals. Case No. 14-4836, ECF No. 8. On August 25, 2015, this Court denied Appellant’s motion
20 to waive the transcript fees for the twenty-seven transcripts on appeal because Appellant had not
21 obtained the Bankruptcy Court’s certification that the appeals are not frivolous and present a
22 substantial question, as required by 28 U.S.C. § 753(f) for waiver of transcript fees. Case No. 14-
23 4836, ECF No. 41. This Court ordered that Appellant file within fourteen days a motion seeking a
24 certification from the Bankruptcy Court that Appellant’s appeals are not frivolous and present a
25 substantial question. *Id.* This Court expressly warned Appellant that “[f]ailure to move for
26 certification within fourteen days from [August 25, 2015] will result in a dismissal of both appeals
27

1 with prejudice.”¹ *Id.* at 4. Despite this Court’s clear warning that failure to meet this deadline
2 would result in dismissal of both actions with prejudice, Appellant failed to seek the Bankruptcy
3 Court’s certification by the September 8, 2015 deadline.

4 **II. LEGAL STANDARD**

5 A district court has the discretion to dismiss a matter for failure to prosecute. *Al-Torki v.*
6 *Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996). “[A] District Court may dismiss a complaint for
7 failure to prosecute even without affording notice of its intention to do so or providing an
8 adversary hearing before acting.” *Link v. Wabash R. Co.*, 370 U.S. 626, 633 (1962). When
9 dismissing a matter for failure to prosecute, a district court should weigh five factors: (1) the
10 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
11 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
12 their merits and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 F.2d 1421,
13 1423 (9th Cir. 1986).

14 **III. DISCUSSION**

15 This Court finds that on balance the five factors described above weigh in favor of
16 dismissal of Appellant’s appeals for failure to prosecute.

17 **A. The Public’s Interest in Expeditious Resolution of Litigation, and the Court’s 18 Need to Manage its Docket**

19 Courts typically review the first two factors—the public’s interest in expeditious resolution
20 of litigation, and the court’s need to manage its docket—in conjunction with one another “to
21 determine if there is unreasonable delay.” *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994). A
22 district court is accorded deference as to what constitutes “unreasonable delay” because “it knows
23 when its docket may become unmanageable.” *Id.*

24 Here, the instant appeals have been pending for nearly eleven months. Bankruptcy Rule

25 ¹Additionally, on August 27, 2015 this Court requested that the Bankruptcy Court determine
26 whether Appellants appeals were not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3), and
27 whether the appeals should be dismissed pursuant to Bankruptcy Local Rule 8007-1(c)(2) on the
28 ground that Appellant failed to perfect the appeals. Case No. 14-4836, ECF No. 42. As of the date
of this order, the Bankruptcy Court has not issued a determination on either question.

1 8009 requires an appellant to file with the Clerk and serve on the appellee a designation of items to
2 be included in the record and a statement of issues within fourteen days after filing a notice of
3 appeal. Fed. R. Bank. Proc. 8009. Despite the clear requirements of the Bankruptcy Rules, for the
4 first six months after Appellant filed her notices of appeal Appellant took no action to designate
5 the record, file statements of issues, or indeed to prosecute the appeals at all. Only after this Court
6 issued its order to show cause, did Appellant designate the record on appeal and file statements of
7 issues. When vacating the order to show cause, this Court ordered Appellant to perfect her record
8 on appeal by June 8, 2015, and warned Appellant that failure to meet the Court's deadline would
9 result in a dismissal with prejudice of both appeals. Despite this Court's clear warning, Appellant
10 untimely filed her statements of issues on June 25, 2015, well after the June 8, 2015 deadline.

11 Furthermore, Appellant's designation of the record on appeal included twenty-seven
12 transcripts, which Appellant had a duty to order from the reporter pursuant to Bankruptcy Rule
13 8009(b)(1). Appellant did not order the designated transcripts, and instead filed a motion seeking
14 waiver of the fees for ordering transcripts on appeal. *See* Case No. 14-4836, ECF No. 8. However,
15 because Appellant had not obtained a certification that the instant appeals are not frivolous and
16 present a substantial question from the Bankruptcy Court as required under 28 U.S.C. § 753(f) for
17 waiver of transcript fees, this Court denied Appellant's motion. Case No. 14-4836, ECF No. 41.
18 Accordingly, this Court ordered Appellant to move for such certification from the Bankruptcy
19 Court within fourteen days of August 25, 2015, and explicitly warned Appellant that failure to do
20 so "[would] result in a dismissal of both appeals with prejudice." *Id.* at 4. Appellant failed to move
21 for certification by the deadline of September 8, 2015.

22 Based on Appellant's dilatory conduct and failure to follow this Court's deadlines, this
23 Court finds that Appellant's delay has been unreasonable and warrants dismissal of this action.²
24 *See Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming denial for failure to

25 _____
26 ² This Court also notes that Appellant obtained from the Bankruptcy Court several extensions of
27 time within which to file appeal-related documents. Moreover, the Bankruptcy Court determined
28 that Appellant's appeals were untimely as to all Bankruptcy Court orders other than the September
23, 2014 order granting Defendant Brown's motion to vacate Appellant's entry of default. *See*
Bankr. Case No. 13-5065, ECF Nos. 383, 415.

1 prosecute where party, among other things, “disregarded repeatedly the deadlines set by the
2 district court.”); *In re Gruntz*, 582 F. App’x 735, 736 (9th Cir. 2014) (affirming dismissal of
3 bankruptcy appeal for failure to prosecute where appellants, despite repeated warnings from court,
4 failed to meet court-imposed deadlines).

5 Moreover, Appellant’s unreasonable delay and noncompliance has interfered with this
6 Court’s ability to manage its docket. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002)
7 (“It is incumbent upon the Court to manage its docket without being subject to routine
8 noncompliance of litigants”). Appellant took no action in either appeal for six months. When
9 Appellant did file a designation of the record on appeal in response to this Court’s order to show
10 cause, Appellant indiscriminately designated the entire dockets of six bankruptcy cases and
11 twenty-seven hearing transcripts. Case No. 14-4836, ECF No. 9-1, at 1. This led to months of
12 work by the Clerk of the Bankruptcy Court to transfer, as of August 25, 2015, at least 786
13 documents to the District Court. The Clerk of the District Court then had to post each of these
14 documents on the dockets for the instant two appeals. Many of these documents, such as hundreds
15 of pages of certificates of service and mailing, have no apparent relevance to Appellant’s appeals.
16 Court resources are limited. The duty of the court is “not [to] . . . guess at what part of the record
17 may be relevant.” *In re Morrissey*, 349 F.3d 1187, 1189 (9th Cir. 2003). “In order to give fair
18 consideration to those who call upon [them] for justice, [courts] must insist that parties not clog
19 the system.” *N/S Corp. v. Liberty Mut. Ins. Co.*, 127 F.3d 1145, 1146 (9th Cir. 1997); *see also In*
20 *re Ki Chang Park*, Case No. 12-0296, 2013 WL 414223, at *3 (W.D. Wash. Feb. 1, 2013)
21 (dismissing appeal for failure to prosecute based, in part, on designation of the record that was “so
22 broad as to be burdensome, unreasonable, and useless to either the Court or the Appellee.”).

23 Accordingly, for the reasons stated above, this Court finds that the above two factors
24 strongly weigh in favor of dismissal.

25 **B. Risk of Prejudice to Opposing Party**

26 “The failure to prosecute diligently is sufficient by itself to justify a dismissal, even in the
27 absence of a showing of actual prejudice to the [opposing party] from the failure.” *In re Eisen*, 31
28 F.3d at 1452. This is because “[t]he law presumes injury from unreasonable delay.” *Id.* Here, as

1 previously discussed, this Court finds that Appellant’s delay in these appeals has been
2 unreasonable, and therefore there is a presumption of prejudice. *See id.* Thus, this factor weighs in
3 favor of dismissal.

4 **C. Public Policy Favoring Disposition on the Merits**

5 “Public policy favors disposition of cases on the merits.” *Pagtalunan*, 291 F.3d at 643.
6 Thus, this factor generally counsels against dismissal. *Hernandez v. City of El Monte*, 138 F.3d
7 393, 399 (9th Cir. 1998).

8 **D. The Availability of Less Drastic Alternatives**

9 Before dismissing a matter for failure to prosecute, “it is not always necessary for the court
10 to impose less serious sanctions first, or to give any explicit warning.” *Valley Eng’rs Inc. v. Elec.*
11 *Eng’g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). However, “if the district court actually tries
12 alternatives before employing the ultimate sanction of dismissal,” then it is unnecessary for the
13 district court to explicitly discuss alternatives. *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 132 (9th
14 Cir. 1987). Moreover, “warning a [party] that failure to obey a court order will result in dismissal
15 can suffice to meet the ‘consideration of alternatives’ requirement.” *Id.*

16 Here, the dockets in both appeals and in the underlying bankruptcy case reflect a history of
17 Appellant’s continuous and repetitive failure to comply with the rules and orders of both the
18 Bankruptcy and District Courts. Even before filing her notices of appeal, Appellant failed to meet
19 many appeals-related deadlines in the Bankruptcy Court. *See* Bankr. Case No. 13-5065, ECF Nos.
20 383, 415. After Appellant filed her notices of appeal, Appellant failed to designate the record on
21 appeal and to file statements of issues for approximately six months until this Court issued an
22 order to show cause why the appeals should not be dismissed for failure to prosecute. *See* Case
23 No. 14-4836, ECF No. 3. When this Court vacated the order to show cause, this Court cautioned
24 Appellant that failure to meet the Court-imposed deadline to perfect the record would “result in
25 dismissal with prejudice of both actions.” Case No. 14-4836, ECF No. 6, at 1. Despite this
26 warning, Appellant did not file her statements of issues by the Court-imposed deadline.

27 Further, in this Court’s August 25, 2015 order denying Appellant’s request for waiver of
28 hearing transcript fees, this Court ordered Appellant to file by September 8, 2015 a motion for

1 certification from the Bankruptcy Court that Appellant’s appeals are not frivolous and present a
2 substantial question. This Court cautioned Appellant that failure to meet the Court-imposed
3 deadline to seek the required Bankruptcy Court certification would “result in a dismissal of both
4 appeals with prejudice.” Case No. 14-4836, ECF No. 41, at 4. Although Appellant was on notice
5 that failure to comply with the September 8, 2015 deadline would result in dismissal of her
6 appeals with prejudice, Appellant failed to move for certification from the Bankruptcy Court by
7 the September 8, 2015 deadline. For the reasons stated above, this Court finds that this factor
8 weighs in favor of dismissal.

9 Although the public policy favoring disposition on the merits weighs against dismissal, this
10 Court determines that the public’s interest in expeditious resolution of litigation, the court’s need
11 to manage its docket, the risk of prejudice to appellees, and the availability of less drastic
12 alternatives all weigh in favor of dismissal. This Court finds that the four factors that weigh in
13 favor of dismissal outweigh the single factor against dismissal.

14 **IV. CONCLUSION**

15 For the reasons stated above, this Court **DISMISSES** with prejudice the instant appeals for
16 failure to prosecute. The Clerk shall close both files.

17 **IT IS SO ORDERED.**

18 Dated: September 9, 2015



19 _____
Lucy H. Koh
United States District Judge