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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re CESAR MONTIEL PEREZ,	
	Debtor.

MAURICE GRAYTON,	
	Appellant,
v.	
UNITED STATES TRUSTEE	
	Appellee.

Case No.: 20-CV-1616 JLS (AHG)

ORDER GRANTING MOTION TO DISMISS APPEAL

(ECF No. 3)

Presently before the Court is Appellee United States Trustee Tiffany Carroll’s Motion to Dismiss Appeal (“Mot.,” ECF No. 3). Appellant Maurice Grayton (“Appellant” or “Mr. Grayton”), proceeding *pro se*, filed an Opposition to the Motion (“Opp’n,” ECF No. 7), and Appellee filed a Reply in support of the Motion (“Reply,” ECF No. 8). The Court decides this matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1). *See generally* ECF No. 5. Having carefully reviewed the Parties’ arguments and the relevant law, the Court **GRANTS** Appellee’s Motion to Dismiss.

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1 **BACKGROUND**

2 On January 3, 2020, the United States Trustee initiated an adversary proceeding
3 against Mr. Grayton in the United States Bankruptcy Court for the Southern District of
4 California. Mot. at 3; *see generally United States Trustee v. Grayton*, No. 3:20-ap-90002-
5 MM (Bankr. S.D. Cal.). The complaint alleges that Mr. Grayton “engaged in unfair,
6 deceptive, or fraudulent conduct and has violated each of the sub-sections of 11 U.S.C.
7 § 110[.]” Mot. at 3. “The complaint asserts that Mr. Grayton, who is not an attorney, has
8 acted as a bankruptcy petition preparer in connection with a case filed in the Bankruptcy
9 Court for the Southern District of California.” *Id.* at 4. Mr. Grayton filed an answer
10 alleging that he had acted under duress. *Id.* Mr. Grayton also invoked his Fifth and
11 Fourteenth Amendment rights and demanded a jury trial. *Id.* In addition to his answer to
12 the complaint, Mr. Grayton filed (1) a motion for summary judgment, (2) a request for
13 court appointed counsel, and (3) a demand for a jury trial. *Id.* at 2.¹

14 On August 11, 2020, the bankruptcy court entered three orders denying Mr.
15 Grayton’s motion for summary judgment, his request for court appointed counsel, and his
16 demand for a jury trial. *Id.* at 5; *see United States Trustee v. Grayton*, No. 3:20-ap-90002-
17 MM (Bankr. S.D. Cal.), (“Summary Judgment Order,” ECF No. 40), (“Right to Counsel
18 Order,” ECF 41), (“Jury Trial Order,” ECF No. 42).² In denying Mr. Grayton’s motion for
19 summary judgment, the court noted that “[Mr.] Grayton’s motion curiously admits that
20 many of the material facts alleged in the Complaint are disputed.” Summary Judgment
21 Order at 2. The court further noted that “the undisputed facts support the [United States
22 Trustee]’s claims.” *Id.* The court also found that “Bankruptcy Petition Preparers are not
23

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25 _____
26 ¹ Appellant only lists the order denying his motion for summary judgment on the cover sheet of his notice
of appeal, but he discusses all three orders in his Notice of Appeal. *Compare* “Notice of Appeal,” ECF
No. 1-3, *with* ECF No. 1 at 1. For the sake of completeness, the Court considers all three orders.

27 ² A court “may take notice of proceedings in other courts, both within and without the federal judicial
28 system, if those proceedings have a direct relation to matters at issue.” *Bias v. Moynihan*, 508 F.3d 1212,
1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

1 entitled to a jury trial,” Jury Trial Order at 1 (citing *In Gould v. Clippard*, 340 B.R. 861,
2 881–82 (M.D. Tenn. 2006); *In re Bascus*, 548 B.R. 742 (Bankr. S.D. Tex. 2016)), and
3 “[t]here is no Sixth Amendment right to counsel in civil cases,” Right to Counsel Order at
4 1 (citing *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty.*, 452 U.S. 18, 24–28 (1981)).

5 On August 20, 2020, Mr. Grayton filed a notice of appeal based on the bankruptcy
6 court’s denial of these three motions. *See generally* “Notice of Appeal,” ECF No. 1-3 at
7 1–8. This action is one of four appeals³ filed by Appellant in this District related to the
8 underlying bankruptcy action, which is still pending before the bankruptcy court. *See*
9 *generally* Docket of *United States Trustee v. Grayton*, No. 3:20-ap-90002-MM (Bankr.
10 S.D. Cal.). On October 20, 2020, Appellee filed the present Motion to Dismiss Appeal for
11 lack of jurisdiction. ECF No. 3.

12 LEGAL STANDARD

13 Federal district courts have jurisdiction over appeals of “final judgments, orders, and
14 decrees” of bankruptcy courts. *See* 28 U.S.C. § 158(a)(1). Generally, district courts lack
15 jurisdiction over appeals from interlocutory orders of bankruptcy judges except where the
16 district court grants leave to appeal under 28 U.S.C. § 158(a)(3).

17 A determination of whether an order is final or interlocutory is jurisdictional and
18 therefore can be raised sua sponte and reviewed de novo by an appellate court. *See In re*
19 *Bonham*, 229 F.3d 750, 760–61 (9th Cir. 2000); *In re Belli*, 268 B.R. 851, 853 (B.A.P. 9th
20 Cir. 2001). Denial of leave to appeal is left to the sound discretion of the court. *See In re*
21 *City of Desert Hot Springs*, 339 F.3d 782, 787 (9th Cir. 2003).

22 ANALYSIS

23 I. Appeal as of Right

24 Appellee argues that “[t]he United States Trustee’s lawsuit against Mr. Grayton is
25 not yet resolved; it remains open and pending.” Mot. at 8. In response, Appellant contends
26 that “[t]he order denying summary judgment is final and the appeal is not interlocutory.”
27

28 ³ *See* case nos. 3:20-cv-02152, 3:20-cv-02433, and 3:21-cv-00083.

1 Opp'n at 5. Appellant further argues that the bankruptcy court's denial of his request for
2 appointed counsel and denial of his demand for a jury trial are similarly final orders. *Id.* at
3 6, 14.

4 Under section 158(a)(1), parties may appeal to a district court "final" orders in
5 bankruptcy cases and proceedings "as of right." 28 U.S.C. § 158(a)(1); *see Ritzen Grp.,*
6 *Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 587 (2020); *Bullard v. Blue Bills Bank*, 575
7 U.S. 496 (2015). In the context of an adversary proceeding, an order is final if it would be
8 considered an appealable final order in an ordinary federal civil action under 28 U.S.C.
9 § 1291. *In re Belli*, 268 B.R. at 855 ("Finality for purposes of jurisdiction over 'as of right'
10 appeals under 28 U.S.C. § 158(a)(1) in adversary proceedings does not differ from finality
11 in ordinary federal civil actions under 28 U.S.C. § 1291."). Federal Rule of Civil Procedure
12 54(b) "controls the analysis of finality of judgments for purposes of appeal in federal civil
13 actions, including bankruptcy adversary proceedings." *Id.* (citing Fed. R. Civ. P. 54(b),
14 *incorporated by Fed. R. Bankr. P. 7054(a)*); *see Matter of King City Transit Mix, Inc.*, 738
15 F.2d 1065, 1066–67 (9th Cir. 1984) (applying Rule 54(b) in bankruptcy adversary
16 proceedings). If there is a Rule 54(b) certification, it is treated as a final order over which
17 appellate jurisdiction exists "as of right" under 28 U.S.C. § 158(a)(1).

18 However, the Ninth Circuit has held that "the fluid and sometimes chaotic nature of
19 bankruptcy proceedings necessitates a degree of jurisdictional flexibility." *In re Landmark*
20 *Fence Co., Inc.*, 801 F.3d 1099, 1102 (9th Cir. 2015). "Congress has long provided that
21 orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete
22 disputes within the larger case." *Howard Delivery Service, Inc. v. Zurich American Ins.*
23 *Co.*, 547 U.S. 651, 657, n.3 (2006) (internal quotation marks and emphasis omitted).
24 Section 158 provides the appellate court with jurisdiction over orders in bankruptcy cases
25 that alter "the legal relationships among the parties." *Bullard*, 575 U.S. at 506. Therefore,
26 to determine whether a particular order is final, the court examines "whether the
27 bankruptcy court's decision: '1) resolves and seriously affects substantive rights and 2)
28 finally determines the discrete issue to which it is addressed.'" *In re Gugliuzza*, 852 F.3d

1 884, 894 (9th Cir. 2017) (quoting *In re Perl*, 811 F.3d 1120, 1126 (9th Cir. 2016)). If
2 “further proceedings in the bankruptcy court will affect the scope of the order, the order is
3 not subject to review.” *In re Tech. Knockout Graphics, Inc.*, 833 F.2d 797, 800 (9th Cir.
4 1987) (quoting *In re 405 N. Bedford Dr. Corp.*, 778 F.2d 1374, 1377 (9th Cir. 1985)).

5 The bankruptcy court’s denial of Mr. Grayton’s (1) motion for summary judgment,
6 (2) request for appointed counsel, and (3) request for jury trial are not final orders that
7 Appellant may appeal as of right. *See Ortiz v. Jordan*, 562 U.S. 180, 188 (2011)
8 (“Ordinarily, orders denying summary judgment do not qualify as ‘final decisions’ subject
9 to appeal.”); *Wilborn v. Escalderon*, 789 F.2d 1328, 1330 (9th Cir. 1986) (holding order
10 denying appointment of counsel is not immediately appealable); *City of Morgantown, W.
11 Va. v. Royal Ins. Co.*, 337 U.S. 254, 255–59 (1949) (holding an order denying a demand
12 for trial by jury is not a final order and hence is not immediately appealable). A review of
13 the docket of the bankruptcy court proceedings reveals there has been no Rule 54(b)
14 certification in Appellant’s case. *See generally* Docket of *United States Trustee v. Grayton*,
15 No. 3:20-ap-90002-MM (Bankr. S.D. Cal.). Further, the bankruptcy court’s orders did not
16 adjudicate all the parties’ respective rights and liabilities. To the contrary, the summary
17 judgment order allowed the complaint to go forward in its entirety. *See Tennison v. City
18 & Cnty. of San Francisco*, 570 F.3d 1078, 1081 (9th Cir. 2009) (stating the Ninth Circuit
19 “generally do[es] not have jurisdiction over an interlocutory appeal from the denial of a
20 motion for summary judgment”); *see also Morgan v. Morgensen*, 465 F.3d 1041, 1044 (9th
21 Cir. 2006), *opinion amended on reh’g*, No. 04-35608, 2006 WL 3437344 (9th Cir. Nov.
22 30, 2006) (“Ordinarily, a district court’s interlocutory order denying a motion for summary
23 judgment is not immediately appealable[.]”). A denial of a motion for summary judgment
24 is appealable as a matter of right in limited circumstances, such as when a defendant’s
25 motion for summary judgment is based on qualified immunity, *see Morgan*, 465 F.3d at
26 1044; however, these facts are not present here. The bankruptcy court may revise or revisit
27 its findings in these orders as the case progresses.

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1 Therefore, the Court finds that the bankruptcy court’s orders denying Appellant’s
2 motion for summary judgment, request for appointed counsel, and request for jury trial are
3 not appealable as a matter of right. The Court now turns to whether to exercise its
4 discretion and grant interlocutory review.

5 **II. Interlocutory Appeal**

6 Appellant argues that “This Court Must Grant Discretionary Leave for Non
7 Interlocutory Appeal Here.” Opp’n at 16. Appellant contends that “[t]he Tentative Rulings
8 are questionable and are drafted in the manner that is not supported by the law.” *Id.* In
9 response, Appellee argues that these “were orders correctly denying unfounded motions,
10 improperly appealed by a bankruptcy petition preparer who continues to appeal orders of
11 the bankruptcy court as the complaint under 11 U.S.C. § 110 against him continues.” Reply
12 at 3 (footnote omitted).

13 If an order is not final, the district court has jurisdiction to hear an appeal of an
14 interlocutory order of a bankruptcy court if the district court grants leave to appeal. *See* 28
15 U.S.C. § 158(a); Fed. R. Bankr. P. 8002, 8004(a)(2)(b). In deciding whether to grant leave
16 to appeal under Section 158(a)(3), courts look to the analogous provisions of 28 U.S.C.
17 § 1292(b) governing review of interlocutory district court orders by the courts of appeal.
18 *See In re Belli*, 268 B.R. at 858; *In re Wilson*, No. BR 13-11374 AJ, 2014 WL 122074, at
19 *1 (N.D. Cal. Jan. 10, 2014). Therefore, leave to appeal a bankruptcy court’s interlocutory
20 order is appropriate where (1) there is a controlling question of law, (2) as to which a
21 substantial ground for a difference of opinion exists, and (3) an immediate appeal could
22 materially advance the ultimate termination of the litigation. *In re Cement Antitrust Litig.*
23 (*MDL No. 296*), 673 F.2d 1020, 1026 (9th Cir. 1981); *see also In re NSB Film Corp.*, 167
24 B.R. 176, 180 (B.A.P. 9th Cir. 1994) (“Leave to appeal should not be granted unless refusal
25 would result in wasted litigation and expense, the appeal involves a controlling question of
26 law as to which there is a substantial ground for difference of opinion, and an immediate
27 appeal would materially advance the ultimate termination of the litigation.”). Additionally,
28 “[i]nterlocutory appeals are generally disfavored and should only be granted where

1 extraordinary circumstances exist.” *In re Cameron*, No. C 13-02018 SI, 2014 WL
2 1028436, at *4 (N.D. Cal. Mar. 17, 2014).

3 As an initial matter, Appellant has not filed a motion for leave to appeal the
4 bankruptcy court’s interlocutory orders. *See* Fed. R. Bankr. P. 8004(a) (requiring a party
5 seeking to appeal an interlocutory order under 28 U.S.C. § 158(a)(3) to file with his notice
6 of appeal a motion for leave to appeal with certain required information). However, the
7 Court “may treat a notice of appeal as a motion for leave to file an interlocutory appeal.”
8 *In re Belice*, 461 B.R. 564, 572 (B.A.P. 9th Cir. 2011); *see also Balistreri v. Pacifica Police*
9 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988) (“This court recognizes that it has a duty to ensure
10 that pro se litigants do not lose their right to a hearing on the merits of their claim due to
11 ignorance of technical procedural requirements.” (citations omitted)).

12 Appellant argues that “there is an exceptional circumstance warranting discretionary
13 review,” Opp’n at 1; however, he does not articulate what that exceptional circumstance
14 is. He contends that the bankruptcy court’s denial of his motion for summary judgment
15 “was a clear error and an abuse of Discretion.” *Id.* at 2. Appellant alleges that “[t]he
16 Bankruptcy Court applied the wrong standard of review even after reviewing the material
17 facts,” and that “the record suggest [sic] that the Bankruptcy Court is also unwilling to be
18 fair.” *Id.* at 2, 6. Appellant also argues that he is constitutionally entitled to a jury trial.
19 *Id.* at 6.

20 Here, Appellant does not carry his burden to show that the orders meet the § 1292(b)
21 test. Appellant offers no argument as to how this appeal involves a controlling question of
22 law as to which there is a substantial ground for difference of opinion, and the existence of
23 such a question is not readily apparent to the Court from the interlocutory orders
24 themselves. Appellant argues his positions on the issues he wishes to appeal. *See generally*
25 Opp’n. However, none of this information is pertinent to the legal framework under which
26 this Court analyzes a motion for leave to file an interlocutory appeal. Granting leave to
27 appeal in this instance would waste judicial resources, increase litigation expense, and
28 would only serve to delay the ultimate termination of this action.

