

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

J. MICHAEL MORRIS, Trustee,

Appellant,

v.

Case No. 15-1024-JTM

ARK VALLEY CREDIT UNION and
JEFFREY KENT GRACY,

Appellees.

MEMORANDUM AND ORDER

Before the court is appellant J. Michael Morris's Motion to Extend Time to File Initial Brief (Dkt. 3). This case is an appeal of Bankruptcy Case No. 13-11917-7. As discussed below, appellant's Motion is granted.

I. Background

Appellant filed a notice of appeal in this case on January 19, 2015. (Dkt. 1, at 2). A notice of appeal, including the bankruptcy court's Memorandum and Opinion and docket sheets, was docketed on January 21, 2015. (Dkt. 1). On February 2, 2015, appellant filed his Designation of Items to be Included in the Record with the bankruptcy court pursuant to Bankruptcy Rule 8009(b)(1) and ordered a copy of the trial transcript pursuant to Rule 8009(a)(1). (Dkt. 3, at 1). The bankruptcy record on appeal was docketed on March 13, 2015, but did not include a copy of the transcript. (Dkt. 4). The transcript has not yet been docketed in this appeal. Appellant now seeks

clarity on the issue of when the briefing schedule is triggered. (Dkt. 3, at 2). He moves to extend his briefing deadline to 30 days from when the transcript is docketed. *Id.*

II. Legal Standard

“The time limits specified in Bankruptcy Rule [8018(a)] for filing briefs shall apply in appeals to the District Court unless the court fixes different limits in a specific case on its own motion or the motion of a party in interest.” D. KAN. RULE 83.8.10(b)(2) (referencing old Rule 8009(a), now Rule 8018(a)); FED. R. BANKR. P. 8018(a).¹

“[A] notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.” FED. R. BANKR. P. 8002(a).² “The appellant must file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal” within 14 days after the notice of appeal becomes effective. FED. R. BANKR. P. 8009(a)(1). Within the 14 days allotted for filing the designation of items to be included in the record, the appellant must order from the reporter “a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or . . . file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript.” FED. R. BANKR. P. 8009(b)(1).

“[W]hen the record is complete, the bankruptcy clerk must transmit to the clerk of the court where the appeal is pending either the record or a notice that the record is

¹ The Federal Rules of Bankruptcy Procedure were significantly amended in 2014, effective December 1, 2014. The current District of Kansas Rules, effective March 17, 2014, reflect the pre-amendment Bankruptcy Rules.

² Time to file notice of appeal may change as provided in subdivisions (b) and (c), which do not apply here. FED. R. BANKR. P. 8002(a)(1).

available electronically.” FED. R. BANKR. P. 8010(b). A transcript of proceedings below is part of the record to be transmitted if ordered by the appellant. FED. R. BANKR. P. 8009(a)(4).

“The appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically.” FED. R. BANKR. P. 8018(a)(1). The briefing schedule in Rule 8018 begins on the date the district court indicates on the docket and notifies parties that the record has been received. FED. R. BANKR. P. 8010(b) and advisory committee’s note.

III. Analysis

Here, the bankruptcy court issued its opinion on January 6, 2015. (Dkt. 1-1). Appellant timely filed a notice of appeal with the bankruptcy court on January 19, 2015. (Dkt. 1, at 2). Appellant timely ordered a transcript of the bankruptcy court proceedings pursuant to Rule 8009(b) on February 2, 2015. (Dkt. 4-13, at 8). The transcript has not yet been transmitted to and docketed in this court. The record on appeal is thus incomplete. The briefing schedule under Rule 8010 will begin only when a copy of the transcript is docketed and electronically available in this court. Appellant will have 30 days from such time to file his initial brief in this appeal.

IT IS ACCORDINGLY ORDERED this 2nd day of April, 2015, that Appellant’s Motion to Extend Time to File Initial Brief (Dkt. 3) is GRANTED.

s\ J. Thomas Marten
J. THOMAS MARTEN, JUDGE