

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE:

CHRISTOPHER D. WYMAN,

Debtor.

Case No. 14-13451

Hon. Denise Page Hood

MICHELLE PICHLER,

Appellant,

v.

(Bankruptcy Case No. 12-32264)

(Adv. Proc. No. 12-03348)

MICHAEL A. MASON, TRUSTEE,

Appellee.

**ORDER DISMISSING APPEAL FROM BANKRUPTCY COURT
and CLOSING ACTION**

On September 5, 2014, Appellant Michelle Pichler filed a Notice of Appeal from the Bankruptcy Court. (Doc. No. 1) On October 14, 2014, the Court issued an Order to Show Cause Why This Case Should Not be Dismissed for Failure to Prosecute. Appellant Pichler filed a response indicating the Order to Show Cause should be dissolved and that the matter be remanded to the Bankruptcy Court for consideration of her Motion to Set Aside Default Judgment filed before the Bankruptcy Court. Appellee Trustee Michael A. Mason filed a reply indicating that

Appellant Pichler's response sets forth no reason as to why she did not file an appeal brief in this action.

Based on the parties' submissions, the Court finds that Appellant Pichler has no intention to prosecute her appeal at this time in light of the fact that she has filed further motions before the Bankruptcy Court. For that reason, the Court dismisses the appeal.

In addition, the Court dismisses the appeal because the entry of the default judgment appealed from is not a final order since not all of the claims have been adjudicated. Under 28 U.S.C. § 158(a)(1), district courts have jurisdiction over appeals from "final judgments, orders, and decrees" of bankruptcy courts. "For purposes of appeal, an order is final if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *In re Janna W. Cundiff*, 227 B.R. 476, 477 (6th Cir. BAP 1998). This is clearly not the case in this bankruptcy action. Appellant Pichler admittedly filed a Motion to Set Aside Default Judgment before the Bankruptcy Court. In addition, there are other claims in the underlying adversary proceeding which has not been adjudicated. (See, Case No. 14-13047, E.D. Mich.) This Court has no jurisdiction over the default judgment appealed from by Appellant Pichler since said default judgment does not end the litigation on the merits. The Court dismisses the appeal for this additional reason.

Accordingly,

IT IS ORDERED that the Notice of Appeal From Bankruptcy Court (**Doc. No. 1**) is DISMISSED for lack of prosecution and lack of jurisdiction. This action is designated CLOSED on the Court's docket.

IT IS FURTHER ORDERED that the Motion to Strike Issues and Items in Record on Appeal (**Doc. No. 6**), the Motion for Bond to Terminate/Modify Stay on Appeal (**Doc. No. 11**) and the Motion for Leave to File Surreply to DE 17 (**Doc. No. 18**) are MOOT.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: July 31, 2015

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 31, 2015, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager