

## In re Stangel

68 F.3d 857 (5th Cir. 1995)  
Decided Sep 12, 1995

No. 94-10916.

September 12, 1995.

Frank J. Stangel, Irving, TX, pro se.

Alvin Arthur Ohm, Internal Revenue Service, Dallas, TX, Dinah L. Bundy, U.S. Dept. of Energy, Tax Div., Dallas, TX, Gary R. Allen, Chief, Kenneth W. Rosenberg, Charles E. Brookhart, Gary D. Gray, Dept. of Justice, Tax Div., Washington, DC, for appellee.

Appeal from the United States District Court for the Northern District of Texas.

Before JOLLY, DAVIS and EMILIO M. GARZA, Circuit Judges.

---

PER CURIAM:

<sup>858</sup> The central issue in this appeal is whether Stangel timely filed his notice of appeal from <sup>\*858</sup> the bankruptcy court's final judgment and its orders denying his post-judgment motions for reconsideration. The district court dismissed Stangel's appeal in part and denied his remaining claims. We affirm.

### I.

In September 1993, Frank J. Stangel filed a petition for relief under Chapter 13 of the Bankruptcy Code. The Internal Revenue Service ("IRS") filed proofs of claims with the bankruptcy court totaling \$81,896.78. Although Stangel did not specifically object to the IRS's claims, he submitted a proposed repayment plan that did not provide for the IRS's claims. The bankruptcy court subsequently rejected Stangel's plan on the grounds that it failed to provide for the IRS's claims. The court ordered Stangel to obtain a hearing on his objection to the IRS' claims within 60 days or face dismissal of his case. Stangel failed to request a hearing within 60 days and, on September 29, 1993, the bankruptcy court entered an order dismissing Stangel's case.

Stangel filed two post-judgment motions challenging the bankruptcy court's September 29th judgment. The bankruptcy court denied both motions. Stangel then filed a notice of appeal with the district court. The timeliness of Stangel's notice of appeal turns on the dates of his post-judgment motions and the bankruptcy court's orders denying the motions:

- September 29: Bankruptcy court entered final judgment dismissing Stangel's case;
- October 6: Stangel served his first post-judgment motion requesting the bankruptcy court to reconsider its September 29th judgment;
- October 26: Bankruptcy court entered order denying Stangel's first motion;

— November 3: Stangel served his second post-judgment motion requesting the bankruptcy court to reconsider its October 26th order denying his first motion;

— November 18: The bankruptcy court entered order denying Stangel's second motion;

— November 26: Stangel filed a notice of appeal with the district court.

The district court concluded that Stangel's notice of appeal was untimely with respect to the September 29th final judgment and the October 26th order denying his first motion and dismissed this part of his appeal. The court then affirmed the bankruptcy court's November 18th order denying Stangel's second motion to reconsider. Stangel timely appealed.

## II. A.

[Federal Rule of Bankruptcy Procedure 8002\(a\)](#) provides that a notice of appeal in a bankruptcy proceeding must be filed "within 10 days of the date of the entry of the judgment, order, or decree appealed from."

However, Rule 8002(b) provides:

If a timely motion is filed by any party: (1) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) under Rule 9023 to alter or amend the judgment; or (3) under Rule 9023 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion.

Stangel contends his two motions for reconsideration tolled the appeals period under Rule 8002(b) until the bankruptcy court denied his second motion on November 18, 1983. He contends that his notice of appeal was therefore timely because it was filed within 10 days of the court's order denying the second motion. Although the government agrees that Stangel's first motion for reconsideration tolled the appeals period, it contends that successive motions for reconsideration do not toll the appeals period under Rule 8002(b). The government concludes that Stangel's notice of appeal was not timely because it was not filed within 10 days of the bankruptcy court's October 26th order denying Stangel's first motion for reconsideration. However, the government concedes that Stangel's notice of appeal was timely to obtain review of the bankruptcy court's  
859 November 18th order denying his second motion. \*859

Although there are no decisions in this circuit that directly address the effect of successive post-judgment motions under Rule 8002 (b), several cases address the effect of successive motions under [Federal Rule of Appellate Procedure 4\(a\)\(4\)](#). Because [Fed.R.App.P. 4\(a\)\(4\)](#) directly tracks the language of Rule 8002(b), courts typically look to decisions applying [Fed.R.App.P. 4\(a\)](#) as a guide to applying Rule 8002. See *In re Arrowhead Estates Development Co.*, 42 F.3d 1306, 1311 (9th Cir. 1994) (quoting *In re Brickyard*, 735 F.2d 1154, 1156 (9th Cir. 1984)).

This court has previously held that successive motions under [Federal Rule of Civil Procedure 59\(e\)](#) for reconsideration or rehearing generally do not toll the appeals period under [Fed.R.App.P. 4\(a\)\(4\)](#). In *United States v. One 1988 Dodge Pickup*, 959 F.2d 37, 39 (5th Cir. 1992), the court held that [Fed.R.App.P. 4\(a\)\(4\)](#) "does not embrace a second [Rule 59](#) motion that merely challenges the denial of the original [Rule 59](#) motion." Similarly, in *Charles L.M. v. Northeast Ind. Sch. Dist.*, 884 F.2d 869, 871 (5th Cir. 1989), the court held that a second motion for reconsideration did not toll the appeals period under [Fed.R.App.P. 4 \(a\)\(4\)](#) because "[t]he interest of finality requires that the parties generally get only one bite at the [Rule 59\(e\)](#) apple for the purposes of tolling the time for bringing an appeal." Although Stangel's second post-judgment motion purportedly

challenges the bankruptcy court's denial of his first motion, the motion merely repeats most of the arguments made in the first motion. Thus, Stangel's second motion is essentially a successive motion for reconsideration and, consequently, did not toll the appeals period under Bankruptcy Rule 8002(b).<sup>1</sup> We therefore conclude that the district court did not err in dismissing Stangel's appeal of the bankruptcy court's final judgment and its October 26th order denying Stangel's first motion for reconsideration.

<sup>1</sup> Bankruptcy Rule 9023 provides that "Rule 59 F.R.Civ.P. applies in bankruptcy cases under the [Bankruptcy] Code." A postjudgment motion for reconsideration or rehearing is generally considered a Rule 59(e) motion to alter or amend if it challenges the correctness of the judgment. *See Edward H. Bohlin Co. v. Banning Co.*, 6 F.3d 350, 353 (5th Cir. 1993).

## B.

We also agree that the district court did not err in affirming the bankruptcy court's denial of Stangel's second motion for reconsideration. Although motions for reconsideration or rehearing are typically treated as [Fed.R.Civ.P. 59\(e\)](#) motions, motions for reconsideration or rehearing served more than 10 days after the judgment are generally decided under [Fed.R.Civ.P. 60\(b\)](#).<sup>2</sup> *Harcon Barge Co. v. D G Boat Rentals, Inc.*, 784 F.2d 665, 669 (5th Cir. 1986). Rule 60 (b) provides for relief from a final judgment under the following circumstances:

<sup>2</sup> Bankruptcy Rule 9024 provides in pertinent part that "Rule 60 F.R.Civ.P. applies in cases under the Code. . . ."

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under [Rule 59\(b\)](#);
- (3) Fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; or
- (6) any other reason justifying relief from the operation of the judgment.

[Fed.R.Civ.P. 60\(b\)](#). The bankruptcy court's denial of a Rule 60(b) motion is reviewable under an abuse of discretion standard. *See Williams v. Brown Root, Inc.*, 828 F.2d 325, 328 (5th Cir. 1987).

Stangel's second motion fails to raise any of Rule 60(b)'s grounds for relief from the bankruptcy court's judgment. Rather, he merely repeats the arguments he made in his first motion for reconsideration. Denial of a Rule 60(b) motion that does not raise any of the grounds for relief cognizable under that rule, but which essentially repeats the arguments of a prior motion for reconsideration, is generally not an abuse of discretion.

<sup>860</sup> *See Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1202-03 (5th Cir. 1993); <sup>\*860</sup> *Colley v. National Bank of Texas*, 814 F.2d 1008, 1010 (5th Cir. 1987). We therefore conclude that the district court did not err in affirming the bankruptcy court's November 18th order denying Stangel's second motion for reconsideration.

AFFIRMED.