United States Bankruptcy Court
Western District of Wisconsin

Cite as: [unpublished]

In re Kurt Jaynes, Debtor
Bankruptcy Case No. 01-32642-7

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

August 3, 2010

Matthew J. Reilly, Cedar Rapids, IA for debtor.
Erin A. West, Murphy & Desmond S.C., Madison, WI for trustee.

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

Kurt Jaynes filed chapter 7 on May 4, 2001. He scheduled as an asset a potential cause of action for embezzlement committed by two other persons. The trustee determined that no assets were available to distribute to creditors and filed a "no asset" report. The case was closed on December 20, 2001. Two years later, Jaynes filed suit against the alleged embezzlers in state court and agreed to pay his attorney a 50% contingency fee.

This case then followed a torturous path between the bankruptcy and state courts. On February 8, 2007, the state court found that the bankruptcy trustee had abandoned Jaynes' embezzlement claims, leaving Jaynes free to pursue them. The trustee moved this court to reopen the bankruptcy case and rescind his no asset report. The motion was granted, but in an opinion dated July 18, 2007, this court gave preclusive effect to the state court's judgment. That is, this court held that the trustee had abandoned the claim.

Subsequently, the state court issued another order with findings of fact. Among those findings, the state court held that it had *not* intended to rule that the trustee abandoned the embezzlement claim. Given this new order, the trustee again moved to reopen the bankruptcy case and rescind his no asset report. This court granted the motion to reopen on September 16, 2008, and rescission was allowed on October 24, 2008. On December 29, 2009, I approved a stipulation settling the embezzlement suits. The stipulation provided that the cases would be dismissed in exchange for $22,000, all of which would be paid to the trustee for the benefit of the bankruptcy estate.

Jaynes's attorney filed an application for administrative expenses on April 6, 2010. The application seeks attorneys' fees of $22,000, which the pleadings indicate is a fraction of the actual costs and fees. The trustee objected.

Section 503(b)(3) provides that, after notice and hearing, there shall be allowed administrative expenses for:

> "(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—
>
> > (B) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;
> >
> > (D) a creditor . . . in making a substantial contribution in a case under chapter 9 or 11 of this title"

If a creditor is eligible under either (B) or (D), his attorneys fees are to be evaluated under § 503(b)(4). That section sets forth an additional test, allowing:

> "(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant"

Since Jaynes's attorney never sought court approval, his claim for expenses rests on his having made a "substantial contribution" to the case. Although his claim is comprised largely of attorneys fees, the reasonableness of those fees and the legitimacy of the expenses have not been seriously questioned by the trustee.

The Bankruptcy Code does not define what constitutes a "substantial contribution." In the absence of a clear definition, courts have examined whether the facts of a particular case show that an applicant has conferred an actual, demonstrable benefit on the debtor's estate. See, e.g., In re Sentinel Mgmt. Group, Inc., 404 B.R. 488 (Bankr. N.D. Ill. 2009); In re S.N.A. Nut Co., 186 B.R. 98 (Bankr. N.D. Ill. 1995). Mere participation in a case has been held insufficient to justify a claim. See, e.g., In re Summit Metals, Inc., 379 B.R. 40 (Bankr. D. Del. 2007).

If I were to allow this claim in its entirety, there would be no demonstrable benefit to the estate, since only Jaynes's attorney and the trustee would profit. I recognize, however, that the settlement proceeds were to some extent a product of time and effort expended by Jaynes's attorney. That benefit came at the cost of more time and effort expended by the trustee. This circuit has held, however, that a trustee is entitled to compensation only to the extent his efforts were proportionate to the assets potentially recoverable for the

estate. In re Central Ice Cream Co., 841 F.2d 732 (7th Cir. 1988). Where significant amounts of money are at stake, a trustee may be justified in spending time pursuing assets since "the time properly devoted to a case rises with the stakes." Id. But in a low-stakes case such as this, the circuit has denied payment for trustee's fees that simply suggest that "wheels spun to no good end." Id.

The estate will substantially benefit if half of the settlement proceeds are allocated to pay unsecured creditors. The remaining half of the proceeds may be divided evenly between Jaynes' attorney and the trustee. Although this will have the effect of yielding a lower recovery for the trustee than the Bankruptcy Code would otherwise provide, it is justified by the trustee's insistence on administering a meager amount of funds in this nine-year-old case.