

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE MARJORIE LOUISE
HAWORTH, also known as Marge
Haworth, also known as Marge Copp,

Debtor.

BAP No. WY-01-075

MARJORIE LOUISE HAWORTH, also
known as Marge Haworth, also known
as Marge Copp,

Bankr. No. 99-10085
Chapter 7

Appellant,

v.

RANDY ROYAL, Trustee,

Appellee.

ORDER OF DISMISSAL
November 7, 2001

Before PUSATERI, BOHANON, and MICHAEL, Bankruptcy Judges.

The matters before the Court are (1) the Memorandum [Response to this Court's Order to Show Cause Why this Appeal Should Not Be Considered for Dismissal as Interlocutory] ("Memorandum"), filed by Appellant Marjorie Louise Haworth, and (2) the Motion to Dismiss ("Motion"), filed by Appellee Randy Royal, Trustee.

The instant appeal is of a bankruptcy court order denying the Appellant's oral motion to dismiss her bankruptcy case. The bankruptcy court's order was entered September 13, 2001. The Debtor filed her notice of appeal on September 26, 2001.

This Court issued an Order to Show Cause Why this Appeal Should Not Be Considered for Dismissal as Interlocutory on October 3, 2001. In response to the

Order to Show Cause, the Appellant filed a Memorandum, which asserts that her bankruptcy estate has no creditors and that the order denying dismissal disposes of the Appellant's rights to retaining her property. The Appellee, Trustee Randy Royal, filed a Motion to Dismiss, arguing that the instant appeal is interlocutory and that it is untimely filed because it was filed more than ten days after entry of the order.

DISCUSSION

This Court has jurisdiction to hear appeals from final orders, final collateral orders, and, with leave of court, interlocutory orders. 28 U.S.C. § 158; *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 768 (10th Cir. BAP 1997). An order is final if it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Catlin v. United States*, 324 U.S. 229, 233 (1945); *Personette*, 204 B.R. at 768. The instant appeal involves a denial of a motion to dismiss. The order denying the motion to dismiss does not end the litigation on the merits. It is therefore not a final order. *John E. Burns Drilling Co. v. Central Bank*, 739 F.2d 1489, 1491 (10th Cir. 1984).

A final collateral order is one that “(1) conclusively determine[s] a disputed question that [is] completely separate from the merits of the action, (2) [is] effectively unreviewable on appeal from a final judgment, and (3) [is] too important to be denied review.” *Personette*, 204 B.R. at 768. In the instant appeal, the bankruptcy court's order denying dismissal does not determine a disputed question that is separate from the merits of the action. The Appellant has not established that the order is unreviewable on appeal from a final judgment on the merits or that the issue is too important to be denied review. *See John E. Burns Drilling*, 739 F.2d at 1492 (order denying dismissal can be reviewed in appeal from final judgment). The bankruptcy court's order is therefore not a final collateral order.

The bankruptcy court's order is an interlocutory order, which may be appealed to this Court only with leave of court. As this Court has stated:

Leave to hear appeals from interlocutory orders should be granted with discrimination and reserved for cases of exceptional circumstances. Appealable interlocutory orders must involve a controlling question of law as to which there is substantial ground for difference of opinion, and the immediate resolution of the order may materially advance the ultimate termination of the litigation.

Id. at 769. The Appellant has not shown that the instant appeal involves a controlling question of law or that the immediate resolution of the order denying dismissal would materially advance the ultimate termination of the litigation. This Court will therefore decline to grant leave to appeal the bankruptcy court's order.

Because the order denying dismissal is interlocutory, the time period to appeal the order has not begun to run. *Metz v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* 39 F.3d 1482, 1489 (10th Cir. 1994) (failure to take appeal from interlocutory order does not preclude raising issue on appeal from final judgment). The Trustee's contention that the notice of appeal is untimely is therefore incorrect. The appeal will nevertheless be dismissed for lack of jurisdiction.

CONCLUSION

Accordingly, it is HEREBY ORDERED that this appeal is DISMISSED.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By:

Deputy Clerk