

July 19, 2004

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

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

IN RE STEPHEN PAUL WALLACE,
doing business as River Oaks
Associates, doing business as Wallace
Investments, doing business as
Wallace Real Estate Company,

Debtor.

BAP No. NO-04-022

RONALD J. SAFFA, Individually and
as Successor Co-Trustee of the Lorice
T. Wallace Revocable Trust,

Bankr. No. 02-00073-M
Adv. No. 04-01038-M
Chapter 7

Plaintiff – Appellee,

v.

ORDER AND JUDGMENT*

STEPHEN PAUL WALLACE,

Defendant – Appellant.

Appeal from the United States Bankruptcy Court
for the Northern District of Oklahoma

Before McFEELEY, Chief Judge, CLARK, and BROWN, Bankruptcy Judges.

PER CURIAM.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

Defendant-Appellant/Debtor Stephen Paul Wallace (“Wallace”) appeals an Order Granting Motion for Preliminary Injunction entered on February 25, 2004 by the bankruptcy court for the Northern District of Oklahoma. Wallace argues that the bankruptcy court order should be vacated because he was not properly served; alternatively, he argues that the order is based on a void judgment. Plaintiff-Appellee, Ronald J. Saffa (“Saffa”) counters that this appeal should be dismissed because it is interlocutory or moot because a permanent injunction has now been entered. We agree with Saffa and decline to address the merits of this appeal for lack of jurisdiction.

I. Background

On September 13, 2001, Wallace filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court in the Western District of Oklahoma. Subsequently, the case was transferred to the United States Bankruptcy Court for the Northern District of Oklahoma. On June 2, 2002, the bankruptcy court entered an order converting the case to a case under Chapter 7. Patrick J. Malloy III was appointed to serve as the Chapter 7 trustee (“Trustee”).

On November 2, 2002, Saffa filed a proof of claim in the amount of \$600,000. The proof of claim was a general unsecured claim for damages as “a result of being sued by the Debtor in numerous, frivolous and meritless lawsuits.” No objection was filed with respect to this claim. Later, Saffa and the Trustee entered into a Settlement on Saffa’s claim that was approved by the bankruptcy court (“Settlement Order”). Under the terms of the Settlement Order, the estate released Saffa from any and all claims relative to any acts or omissions which occurred prior to the effective date of conversion of the case from Chapter 11 to Chapter 7 on June 2, 2002.

On December 30, 2003, Wallace filed a Complaint and a Petition for

Accounting against Saffa in the Circuit Court of DuPage County, Wheaton, Illinois. The Complaint relies on events that occurred prior to June 2, 2002.

On February 2, 2004, Saffa moved for a Preliminary Injunction and Request for Expedited Hearing to enforce the Settlement Order and for Wallace's continuing violation of the provisions of the automatic stay. Wallace did not file a responsive pleading, nor did he appear at the hearing on February 18, 2004. At the hearing, the bankruptcy court read into the record its findings of fact and conclusions of law, ruling that Wallace had violated the terms of the Settlement Order. On February 25, 2004, the bankruptcy court entered its "Order Granting Motion for Preliminary Injunction" ("PI Order"). The PI Order enjoined Wallace from filing any further civil actions against Saffa based on events that occurred prior to June 2, 2002 and ordered him to dismiss the civil action filed in DuPage County, Illinois.

This appeal timely followed.

On May 11, 2004, the bankruptcy court entered a Judgment, which found the following: 1) it had personal jurisdiction over Wallace because Wallace had been properly served; 2) Wallace had violated the automatic stay; 3) there were grounds for making the preliminary injunction a permanent injunction. The Judgment made the temporary injunction permanent and enjoined Wallace from filing any other lawsuits based on events prior to June 2, 2002. This Judgment is the subject of another appeal now before this Court as *Saffa v. Wallace (In re Wallace)*, NO-04-048.

II. Discussion

Before reaching the merits of an appeal, we must make an initial determination as to whether we have jurisdiction. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986). Under 28 U.S.C. § 158(a)(1) our review is limited to final judgments, orders and decrees. 28 U.S.C. §

158(a)(1). As an appeal of a preliminary injunction, this is an appeal of a non-final order. While those appealing non-final orders may be granted leave to proceed if they meet the tests established under 28 U.S.C. § 158(a)(3) or the collateral order doctrine, we need not explore whether the requirements of those tests are met here because this appeal on its face is moot, and on that basis, we do not have jurisdiction.

The Constitution authorizes federal courts to hear only “cases” or “controversies.” U.S. Const. art. III, § 2, cl.1. If there is no live case or controversy, then an appeal will be moot. *See Out of Line Sports, Inc. v. Rollerblade, Inc.*, 213 F.3d 500, 501 (10th Cir. 2000). A controversy is no longer “live” if the reviewing court cannot render “any effectual relief whatever.” *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). A party must seek that relief that is “capable of addressing the alleged harm.” *Nat’l Advertising Co. v. City and County of Denver*, 912 F.2d 405, 411 (10th Cir. 1990) (further quotation omitted).

Here, a permanent injunction has been entered. Because it has been supplanted by the permanent injunction, the temporary injunction is no longer in effect. As the permanent injunction is not before us in this appeal¹, there is no effectual relief we could offer that would redress the alleged harm.²

III. Conclusion

For the reasons set forth above, we conclude that we have no jurisdiction to address the merits of this appeal. The appeal is therefore DISMISSED.

¹ It will be considered separately, in appeal number NO-04-048, at a later date.

² In his brief, Saffa asks us to impose filing restrictions on Wallace. At this time, we find no grounds for such restrictions.