UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

RALPH A. GREENWOOD,

Debtor.

Case No. 88-468
Chapter 7

ORDER--MOTION FOR SANCTIONS

On June 15, 1988, a hearing was held on the motion for abstention and the objection to abandonment of property and report of trustee in a no asset case. Charles L. Smith appeared on behalf of Debtor; John A. Jarvis appeared on behalf of the creditor, Wauneita McConnell; and Steven H. Krohn appeared on behalf of the creditor, Page County State Bank. Also appearing was C. R. Hannan, Chapter 7 Trustee.

After the Court overruled both motions by creditor Wauneita McConnell, Debtor's counsel orally moved for sanctions against creditor Wauneita McConnell's attorney, John A. Jarvis.

On October 18, 1988, a hearing was held on Debtor's Motion for Sanctions filed on September 2, 1988. Charles L. Smith appeared on behalf of Debtor; John H. Neiman appeared for John A. Jarvis (hereinafter "Jarvis") and Wauneita McConnell (hereafter "McConnell"); and, the Chapter 7 Trustee, C. R. Hannan, also appeared.

This is a core proceeding pursuant to 28 U.S.C.§157 (b)(2) A). The Court, upon review of the pleadings, evidence, arguments of counsel, and briefs, now enters its findings and conclusion pursuant to Fed.R.Bankr.P. 7052.

## FINDINGS OF FACT

1. On March 4, 1988, the Debtor, Ralph A. Greenwood, a/k/a Art Greenwood(hereinafter "Debtor"), filed a Chapter 7 petition.

2. On his Schedule A-3, Unsecured Claims Without Priority, Debtor scheduled Wauneita McConnell as having a judgment in the amount of $10,000.00. John A. Jarvis, attorney at law, was also listed on said schedule with the McConnell claim. Jarvis was McConnell's attorney at all times material herein.

3. McConnell commenced an action in Iowa District Court for Lucas County against Debtor and his then wife, Helen, in 1985. This action was to recover on a promissory note. McConnell recovered judgment against Art and Helen Greenwood on October 21, 1985, in the amount of $8,055.20 with interest and costs, including attorney's fees.

4. On March 10, 1988, this Court issued an order setting the §341(a) meeting for April 29, 1988, and the filing deadline for §§523(c)/727 complaints for June 29, 1988.

5. On April 28, 1988, Jarvis, as counsel for McConnell, signed and filed a motion requesting the Court to abstain and suspend all proceedings pursuant to 11 U.S.C. §305. In said motion Jarvis alleged that Debtor, Helen Greenwood, Debtor's ex—wife, McConnell, and Page County State Bank, one of Debtor's secured creditors, had been involved in litigation in the Iowa District Court and that negotiations continued whereby all the creditors' claims could be satisfied. Jarvis also alleged that this case was filed because of Debtor's "recalcitrance and bitterness at the

alimony and lien rulings from the State Courts which he sought to evade in favor of the preferential insider liens filed by the Page County State Bank." In addition, Jarvis recited that McConnell further objected to "a discharge for failure to explain loss of assets and for transfer or concealment of property previously stipulated to be $322,899.00."

6. The McConnell motion of April 28, 1988, further alleged that "[t]he interests of the Debtor and all the Creditors would be better served if the Court abstained from exercising its jurisdiction and suspend all proceedings."

7. Debtor scheduled unsecured claims without priority in the amount of $271,128.81. He scheduled assets in the amount of $505. 00.

8. Debtor scheduled his net monthly income at $1,699.53 with monthly expenses of $2,079.46, which included a monthly alimony or support payment in the amount of $1,287.66.

9. Debtor listed his occupation as automobile dealer and employed by Greenwood Motors, Inc., (hereinafter "Greenwood Motors"). Debtor stated that he owned all the stock in Greenwood Motors but declared the stock did not have any value because all the assets were pledged as collateral for debt which exceeded the value of the corporate assets.

10. The First Meeting of Creditors was held on April 28, 1988. Jarvis appeared for McConnell at said meeting and interrogated Debtor.

11. On May 5, 1988, Jarvis filed an Objection to Abandonment of Property and Report of Trustee in "No Asset" Case and Application for Hearing and Notice.

12. Trustee served his Notice and Report of Abandonment of Property on May 10, 1988, and filed the same on May 11, 1988. In said report, Trustee stated Debtor's stock in Greenwood Motors had no value as the debts of the corporation exceeded the value of the assets.

13. Upon notice and hearing the Court on June 15, 1988, overruled McConnell's motion to abstain and objection to the abandonment of the property by the Trustee.

14. On June 28, 1988, McConnell filed her complaint in Adversary No. 88-140, with the caption of Wauneita McConnell, Plaintiff v. Ralph A. Greenwood, a/k/a Art Greenwood, Defendant. McConnell alleged that Debtor knowingly and fraudulently in connection with his bankruptcy case made a false oath with regard to his assets and failed to explain satisfactorily any loss of assets or deficiency of assets to meet his liabilities.

15. Jarvis paid associated counsel $1,000.00 from his personal funds to file this complaint.

16. On July 20, 1988, Debtor served his motion to dismiss the complaint and filed the same on July 21, 1988. The basis of the motion was that McConnell alleged a violation of 11 U.S.C. §727 (a) (4) (A) without alleging any factual basis whatsoever and that the complaint set forth statutory language of 11 U.S.C.

§727 (a) (5) without stating any particulars and failed to state a claim.

17. Debtor's motion to dismiss was set for hearing on August 24, 1988.

18. Debtor was deposed by McConnell on August 3, 1988. Discrepancies were developed in the scheduled deficit net worth of Greenwood Motors but the difference was that the deficit net worth of Greenwood Motors was not as much as scheduled.

19. On August 23, 1988, McConnell dismissed the complaint and stated she had not had an opportunity to examine Debtor under oath with regard to his assets and an apparent loss in his assets. McConnell further stated that upon deposing Debtor she felt there were insufficient facts to support her complaint.

20. Jarvis's research on the law of abstention pursuant to 11 U.S.C. §305 was what he found in Am.Jur.2d and the U.S. Code Annotated. He looked up annotations under §305(a) but did not read the cases. He admitted that he did not know what he was doing when he filed the motion to abstain. Upon interrogation, Jarvis could give no legitimate reason as to how an abstention by the Bankruptcy Court would be in Debtor's best interest.

21. Jarvis prepared the objection to abandonment of property in a hurry. He did not know what Trustee knew about the case and did not know what information Trustee possessed. Jarvis did not know what inquiry had been conducted by Trustee. He made the allegations "subject to further investigation."

22. In attempting to collect the McConnell judgment in Iowa District Court, Jarvis required Debtor to appear on two occasions and show cause why he should not be held in contempt. On both occasions, the Iowa District Court held that McConnell had failed to establish reasonable grounds to find Debtor in contempt.

23. After Debtor filed his bankruptcy petition, Jarvis filed a "Petition for Satisfaction of Judgment and Order for Hearing" in the proceeding pending in the Iowa District Court. The petition purported to be against Greenwood Motors but upon Debtor's motion for stay the Iowa District court stayed all further proceedings until further order of that court.

24. Jarvis justified his pursuit of Debtor on the basis that it would be good for Debtor if he would pay his honest debts.

## DISCUSSION

Bankruptcy Rule 9011(a) provides:

> (a) Signature. Every petition, pleading, motion and other papers served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, statement of financial affairs, statement of executory contract, statement of intention, Chapter 13 Statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number. The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after a reasonable inquiry it is is well grounded in fact and is warranted by existing law

> or good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

A bankruptcy court has jurisdiction under this provision to assess sanctions against attorneys who violate the rule. In re Arkansas Communities, Inc., 827 F.2d 1219, 1222 (8th Cir. 1987). Under said rule, an attorney has an affirmative duty "to conduct a reasonable inquiry into the viability and verity of the pleading before signing it." In re Sheret, 76 B.R. 935, 936 (W.D. N.Y. 1987).

The Fifth Circuit has set forth four elements to consider in determining whether sanctions are warranted: 1) whether reasonable inquiry into the facts was made; 2) whether reasonable inquiry into the law was made; 3) whether the action was taken to harass, delay or increase unnecessarily costs of litigation; and 4) whether an attorney has met his or her continuing obligation to re—evaluate his or her litigation position. Thomas v. Capital Sec. Services, Inc., 812 F.2d 984, 989 (5th Cir. 1987). Sanctions are required

only if the entire pleading or motion is frivolous, not if one of the arguments supporting the pleading or motion is frivolous. Burull v. First Nat. Bank of Minneapolis, 831 F.2d 788, 789 (8th Cir. 1987). The question of whether meritless arguments combine to render the entire pleading or motion frivolous is a "matter for the court to determine, and this determination involves matters of judgment and degree." Id.

A subjective belief that the law and facts support a pleading is insufficient to avoid sanctions. Matter of Graves, 70 B.R. 535, 540 (N.D. Ind. 1987). Rather, the "formed after reasonable inquiry" language creates an objective standard. Id.; see Eastway Const. Corp v. City of New York, 762 F.2d 243, 253—54 (2nd, Cir. 1985); Indianapolis Colts v. Mayor & City Council, 775 F.2d 177, 181 (7th Cir. 1985). Finally, the Court notes the language of Rule 9011(a) is mandatory--sanctions "shall" be assessed if the rule is violated.

Upon Debtor's filing of his Chapter 7 petition, March 4, 1988, Jarvis filed the motion to abstain on April 28, 1988. This was the same date the §341 meeting was held. Jarvis was present at this meeting and did not develop any facts to support any of his then or subsequent allegations. Thereafter, and prior to August 3, 1988, Jarvis did not conduct a Rule 2004 Examination or engage in any discovery. Rather than attempt to independently learn about Debtor's present situation, Jarvis proceeded to file objections and pleadings, all without a factual basis. Jarvis failed to make

reasonable inquiry into the facts, although he had ample time to carefully investigate the facts.

In the case ***sub judice*** Jarvis did not have any facts indicating 1) Debtor was attempting to evade claims made against him; 2) Debtor had engaged in any activity which indicated an insider transaction; or 3) Debtor had transferred or concealed assets. This was true at the time Jarvis prepared the motion to abstain and at that time of the hearing on said motion. Jarvis testified he did not know what he was doing when he filed the motion to abstain.

Jarvis relies upon two cases to support his motion that the court abstain from excising jurisdiction and suspend proceedings. They are In re Evans, 8 B.R. 568 (Bankr. M.D. Fla. 1981) and In re Danehy Development Corp., 27 B.R. 727 (Bankr. S.D. Fla. 1983). The Evans case involved an involuntary Chapter 7 petition filed by the Debtor's former wife which the court characterized as a "rehash of a bitter domestic contest [concerning] a property settlement." Id. at 572. The Dahehy Development case involved a voluntary Chapter 11 petition filed by Debtor corporation in an effort to block Debtor's president's former wife's efforts to collect back alimony from Debtor's president. The court determined that neither the Chapter 11 proceeding nor the Bankruptcy Court were appropriate shelters for a husband being pursued by an angry ex—wife. Id. at 728.

Upon review of these cases, the Court concludes they do not provide any support for the Jarvis position that this Court should

abstain from exercising jurisdiction in this case. In the case ***sub judice*** Debtor's ex–wife has not even filed a claim. Debtor has scheduled his ex–wife as an unsecured creditor arising from a judgment in a dissolution of marriage proceeding. Debtor stated that the dissolution of marriage proceeding was still pending on appeal and that he had a current expense of $1,287.66 per month for payment of alimony or support payment. Although there may be marital issues pending in the state court, neither Debtor nor his ex–wife have attempted to resolve those issues in this Court. The Evans and Danehy Development cases do contain language indicating that neither case involved bonafide insolvency proceedings but rather were essentially extensions of bitter domestic contests. However, this Court is at a loss as to how either case is relevant to the issue of whether abstention is in the best interest of Debtor and the creditors.

The record is clear that Jarvis did not conduct a reasonable inquiry into the legal basis for the motion to abstain. In addition, Jarvis testified that he prepared the objection to abandonment of property in a hurry. He had no idea what investigation had been conducted by the Trustee or the basis for Trustee's decision. He did not have a factual basis for the allegations made in his objection to abandonment. Further, at the time Jarvis prepared the objection to abandonment he had no legal standards to support his claim. Finally, Jarvis could not provide any legal or factual basis for the claims set forth in the

Complaint. He alleged that Debtor fraudulently made a false oath about his assets without having any factual basis for the allegation.

The result of Jarvis's unreasonable actions undertaken to harass Debtor was to delay and increase unnecessarily the costs involved. Therefore, the Court concludes Jarvis's actions clearly violated Bankruptcy Rule 9011.

In addition to Bankruptcy Rule 9011, abuse of the judicial process is also governed by 28 U.S.C. §1927. Section 1927 provides that:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Section 1927 is "a weapon which the court may use in order to protect the judicial process from abuse, punish those who have abused it, seek to deter those who may abuse it, and provide relief for the party who has had to contend with the sanctioned party's multiple litigation." In re Trust Deed Center, Inc., 36 B.R. 846, 849 (Bankr. C.D. Calif. 1984).

Section 1927 requires a three-part analysis:

1. Whether there was a multiplication of proceedings by an attorney or other person;
2. Whether the conduct may be characterized as unreasonable and vexatious; and
3. Whether by reason of such conduct there is a resulting increase in the cost of the proceedings.

Shields v. Shetler, 120 F.R.D. 123, 127 (D.Colo. 1988).

In the case ***sub judice,*** the Court finds all three elements have been satisified. The filing of the motion to abstain and suspend all proceedings, the objection to abandonment of property, the filing of the complaint, and the petition for satisfaction of judgment in state court at the time of the stay, constituted a multiplication of the proceedings by Jarvis. As previously discussed, this conduct was unreasonable and constitutes vexatious conduct. Debtor was required to employ counsel to meet all of these multiple filings which has certainly increased the cost of the proceedings. In addition, Jarvis's conduct constitutes an abuse of the judicial process and placed an additional burden upon already burdened dockets. Therefore, the Court concludes Jarvis's conduct also violated 28 U.S.C. §1927.

As a final point, the Court finds there has been no showing that McConnell participated in nor caused any of Jarvis's conduct. As a result, the Court concludes sanctions for violation of Bankruptcy Rule 9011 and 28 U.S.C. §1927 will be imposed against Jarvis but not against McConnell.

## CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that John A. Jarvis's conduct violated Bankruptcy Rule 9011 and 28 U.S.C. §1927 and that Wauneita McConnell did not participate in nor cause any of his conduct.

IT IS ACCORDINGLY ORDERED as follows:

(1) Debtor's motion for sanctions is sustained as to John A. Jarvis but denied as to Wauneita McConnell.

(2) Debtor's prayer for an award of costs and attorney's fees incurred in responding to the motion for abstention, the objection to abandonment of property, the complaint objecting to discharge, and petition for satisfaction of judgment in state court, and the preparation and filing of the motion to dismiss and motion for sanctions is sustained; all other relief is denied.

(3) John A. Jarvis is liable for the research, preparation and hearing time involved in the above matters.

(4) Within twenty (20) days counsel shall confer in an effort to agree upon a reasonable amount to be paid by John A. Jarvis for said fees and costs. Upon agreement, Debtor shall report said fact to the Court and submit a proposed order for the Court's consideration and a proposed judgment for the Clerk's signature.

(5) If the issues cannot be resolved, Debtor shall report the status and an expedited hearing will be held to resolve the issues.

(6) Additional fees and costs may be awarded for any bad faith delay or failure to agree upon reasonable proposals to resolve this matter.

Dated this 4th day of May, 1989.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE