

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
:
BERNARD G. WILTFANG and : Case No. 86-146-C H
BERNADINE WILTFANG, d/b/a :
WILTFANG FARMS, : Chapter 7
:
Debtors, :
----- :
CARROL M. NEARMYER and :
CAROLYN NEARMYER, :
:
Plaintiffs, :
:
vs. : Adv. No. 86-0114
:
BERNARD G. WILTFANG and :
BERNADINE WILTFANG, d/b/a :
WILTFANG FARMS, :
:
Defendants. :
:

ENROLLED ORDER--MOTION TO AMEND FINDINGS OR
GRANT A NEW HEARING AND MOTION TO EXTEND TIME

On January 24, 1989, a telephonic hearing was held on Defendants' Motion to Make Additional Findings of Fact or Grant a New Hearing and Defendants' Motion to Extend the Time to File an Answer to Motion for Leave to Appeal.

Lawrence L. Marcucci appeared for the Plaintiff; Elizabeth A. Nelson for the Defendants.

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

FINDINGS OF FACT

1. On December 29, 1988, the Order sustaining Defendants' motion to strike the jury demand was sustained and the Order was filed on said date.

2. On January 10, 1989, Plaintiffs filed their Notice of Appeal from said order. Plaintiffs also filed their Request for Extension of Time to File Notice of Appeal and Motion for Leave to Appeal on the same date.

3. On January 13, 1989, the Court entered an Order granting Plaintiffs' Request for Extension of Time to File A Notice of Appeal.

4. Defendants filed their motion to make additional findings of fact and motion for extension of time on January 19, 1989.

CONTENTIONS

Defendants pray that the Court make additional findings of fact with regard to the issue of excusable neglect in connection with the Order of January 13, 1989, as provided in F.R. Bankr.R. 8002(c); that the Court alter the Order of January 13, 1989, and grant Defendants a hearing with regard to Plaintiffs' Motion for Extension of Time to File Notice of Appeal; and, that the Court grant Defendants an extension of time to file an answer to the motion for leave to appeal filed by the Plaintiffs.

DISCUSSION

Rule 8002(a) provides that a notice of appeal must be filed with the Clerk within 10 days of the date of entry of the judgment or order appealed from. If a notice of appeal is timely filed, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal is filed.

Rule 8002(c) provides that the Court may extend the time for filing the notice of appeal for a period not to exceed 20 days from the expiration of the prescribed time. A request made no more than 20 days after the expiration of the time may be granted upon a showing of excusable neglect, with certain prescribed conditions, none of which are applicable herein. Rule 9006(a) establishes how the 10 days is to be computed. In computing this period of time, the day of the act or event is not included but the last day is included, with enumerated exceptions. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays are excluded in the computation. The Rule 9006(a) computation applies to the Rule 8002(a) notice of appeal period. Matter of Rief, No. 87-1426-W, unpub. op., (Bankr. S.D.Iowa 5/12/88).

Eliminating weekend days, Plaintiffs' appeal period ran through and including Thursday, January 12, 1989.

Accordingly, Plaintiffs filed their notice of appeal within the rule period and the Order of January 13, 1989, granting Plaintiffs' Motion of Extension of Time Within Which to File a Notice of Appeal was excess.

Under Rule 8003(a), Defendants have 10 days after the service of the Motion for leave to appeal to answer. Plaintiffs filed and served their motion for leave to appeal on January 10, 1989. Under the Rule 9006(a) computation, Defendants' answer runs through January 25, 1989. Plaintiffs have no objection if Defendants are given an additional period of time, and an extension of time until and including January 30, 1989, is reasonable.

IT IS ACCORDINGLY ORDERED as follows:

(1) Defendants' motion to amend findings or make additional findings or alter amend judgment or for a new trial is overruled;

(2) Defendants' motion to extend the time to file an answer to Plaintiffs' motion for leave to appeal is sustained; and

(3) Defendants are granted until January 30, 1989, within which to file their answer in opposition to Plaintiffs' motion for leave to appeal.

Dated this 24th day of January, 1989.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE