



In re Upland Partners

2008 | Cited 0 times | Ninth Circuit | January 4, 2008

NOT FOR PUBLICATION

MEMORANDUM¹

Submitted October 2, 2007²

Before: SKOPIL, BOOCHEVER, and LEAVY, Circuit Judges.

William Ellis appeals pro se the bankruptcy court's order deeming him to be a vexatious litigant and imposing a prefiling review requirement. The bankruptcy court has the authority to impose such a sanction. See *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003) ("The inherent sanction authority allows a bankruptcy court to deter . . . improper litigation tactics."); *In re Rainbow Magazine*, 77 F.3d 278, 284 (9th Cir. 1996) ("[B]ankruptcy courts have the inherent power to sanction vexatious conduct presented before the court."). The sanction is not "punitive" and therefore does not exceed the bankruptcy court's inherent authority. See *Dyer*, 322 F.3d at 1197.

Ellis received sufficient notice in the bankruptcy court's show cause order that incorporated by reference a prior order detailing Ellis's "improper, fraudulent and illegal behavior." Moreover, he was permitted to respond to the allegations before the court imposed the sanction. See *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1110 (9th Cir. 2005) (noting sanctions require only "notice and an opportunity to be heard"). Finally, the court's order was sufficiently "narrowly tailored." See *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). The bankruptcy court identified and discussed other alternatives, including a complete bar to any future filings, before selecting a sanction that would allow Ellis access to the court, but preclude him from filing frivolous papers. See *id.* at 1061 (noting prefiling order is narrowly tailored when it does not prevent filing but "merely subjects [pleadings] to an initial screening review by a district judge").

We are not unmindful that "pre-filing orders are an extreme remedy that should rarely be used." *Id.* at 1057. Nonetheless, we agree with the district court's reasoning in affirming the bankruptcy court's order that this case "presents the extreme circumstances in which an injunction against a vexatious litigant . . . is authorized to deter such conduct." Indeed, we also found it necessary to enter a prefiling order that requires Ellis to submit all "future notices of appeal" so that we may "review [his] submissions and determine whether they merit further review and whether they should be filed." See *In re Ellis*, No. 07-80057 (9th Cir. July 30, 2007) (unpublished order).



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AFFIRMED.

1. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.
2. The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

