** NOT FOR PRINTED PUBLICATION **

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CLOVIS PRINCE,	§	
	§	
Appellant,	§	
	§	CIVIL ACTION No. 4:16-CV-039
v.	§	
	§	U.S. Bankruptcy Court Case No. 09-43627
INTERNAL REVENUE SERVICE, et al.,	§	
	§	AFC
Appellee.	§	

MEMORANDUM OPINION ON APPEAL FROM BANKRUPTCY COURT

Clovis Prince, proceeding pro se, appeals a bankruptcy order dispersing $146,450 in

proceeds from the sale of 318 Covington Court, Murphy, Texas 75094 that was originally

designated as Mr. Prince's homestead exemption in a 2011 order to the Internal Revenue

Service. The IRS had filed a tax lien against the property prior to Mr. Prince's bankruptcy. Mr.

Prince argues multiple grounds for reversal. The court finds no error in the bankruptcy court's

rulings and affirms the judgment.

I. PROCEDURAL DEFECTS

First, in its brief, the IRS argues that Mr. Prince's appeal should be dismissed since he

failed to pay the required filing fee, the bankruptcy court having denied Mr. Prince's Motion to

Proceed in Forma Pauperis on appeal, and failed to designate a record for appeal pursuant to

Federal Rule of Bankruptcy 8009(a). (DOC. # 12); (Bankruptcy Proceeding, 09-43627, Dkt.

522). Mr. Prince responds by arguing that this court has previously determined he is indigent

and that since that determination he has become "flat broke!" (DOC. # 13, pg. 5). Further, Mr.

Prince has also asked the court to give him leeway in applying the procedural rules considering he is representing himself pro se.

While the court is inclined to be lenient when it comes to the filing fee, Mr. Prince has filed several pro se appeals both to this court, the Fifth Circuit, and the United States Supreme Court.[1] By now, he should be well aware of the requirements he must meet for filing an appeal. The court considered allowing Mr. Prince a chance to perfect his record but found that after reviewing the arguments he submitted in his brief, his appeal is completely meritless. The court concludes that it would be more expedient and less costly to simply address Mr. Prince's appeal on the merits without requiring Mr. Prince to designate a record. The court cites directly to the bankruptcy court's docket when necessary.

For this purpose, when the court cites to the record from another proceeding, it provides the general classification of that other proceeding, the proceeding's cause number, and the docket number used in that proceeding. The citation form "DOC." is used when the court is citing to its own appellate record.

The court has obtained a recording of the hearing from the bankruptcy court. That audio recording has been filed on the docket sheet. After listening to the recording, the court concludes that it does not affect the outcome of Mr. Prince's appeal. For this reason, the court has

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[1] This is a list of just a few of Mr. Prince's appeals:

1. *Prince v. Am. Bank of Tex.*, 4:11-CV-851, 2012 WL 3961218 (E.D. Tex. Sept. 10, 2012);
2. *In re Prince*, 548 F. App'x 262 (5th Cir. 2013), *reh'g denied*, 134 S. Ct. 2748 (2014);
3. *U.S. v. Prince*, 547 F. App'x 587 (5th Cir. 2013);
4. *Prince v. CMS Wireless LLC*, 4:11-CV-438, 2012 WL 1015001 (E.D. Tex. Mar. 22, 2012).

determined that requiring a transcript of the hearing would not be economical. The court does not reference the hearing in its Opinion.

II. BACKGROUND

On December 9, 2010, Mr. Prince was convicted of bank fraud, bankruptcy fraud, money laundering, and perjury. (Criminal Proceeding, 4:09-CR-161, Dkt. # 182). On March 9, 2012, Mr. Prince was sentenced to thirty years imprisonment, as well as several other concurrent prison terms. (Criminal Proceeding, 4:09-CR-161, Dkt. # 312). Mr. Prince was also ordered to pay $13,640,425.56 in restitution. (Criminal Proceeding, 4:09-CR-161, Dkt. # 312).

A month prior to his criminal trial, Mr. Prince filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code, which was assigned the case number 09-43627. Michelle Chow ("Trustee") was appointed the trustee of the bankruptcy estate. On September 1, 2010, the IRS filed its Proof of Claim in that proceeding. The IRS's claim was based on a tax lien it had filed in September of 2008 with the Collin County Clerk. On October 13, 2010, in response to three pro se motions filed by Mr. Prince requesting sanctions, the bankruptcy court issued a vexatious litigant order prohibiting Mr. Prince from filing motions for sanctions without the court's permission. (Bankruptcy Proceeding, 09-43627, Dkt. 142). On July 25, 2011, the bankruptcy court designated $146,450 of 318 Covington Court, Murphy, Texas 75094 ("Covington Court Property") as Mr. Prince's homestead exemption ("the 2011 decision"). (Bankruptcy Proceeding, 09-43627, Dkt. # 249). Mr. Prince appealed the 2011 decision to this court. (Bankruptcy Proceeding, 09-43627, Dkt. # 250). On September 11, 2012, the Honorable Marcia Crone affirmed the bankruptcy court's designation of Mr. Prince's homestead exemption. (Bankruptcy Proceeding, 09-43627, Dkt. # 361).

A little over three years after the 2011decision was affirmed, the bankruptcy court

ordered the Covington Court Property to be sold free and clear of all liens. (Bankruptcy

Proceeding, 09-43627, Dkt. # 471). That order included a statement that the IRS's lien on the

Covington Court Property shall attach to the net proceeds of the sale as well as the $146,450 in

exempt funds. (Bankruptcy Proceeding, 09-43627, Dkt. # 471). After the sale was completed,

both Mr. Prince and the IRS filed motions asking the bankruptcy court to disperse the $146,450

in exempt funds to them. (Bankruptcy Proceeding, 09-43627, Dkt. ## 488, 489). On December

15, 2015, the bankruptcy court held a hearing on Mr. Prince's and the IRS's motions. On

December 23, 2015, the bankruptcy court ordered that the exempt proceeds shall be dispersed to

the IRS. (Bankruptcy Proceeding, 09-43627, Dkt. # 512). On December 28, 2015, Mr. Prince

appealed this decision. (Bankruptcy Proceeding, 09-43627, Dkt. # 520).

III. DISCUSSION

A. Issues Presented

Mr. Prince raises six issues on appeal:

(1) Whether the IRS has waived its claim to the proceeds of the Covington Court sale by not taking action to enforce its lien prior to the designation of Mr. Prince's homestead exemption;

(2) Whether res judicata or collateral estoppel bars the IRS's claim to the Covington Court sales proceeds;

(3) Whether the IRS's claim should be barred based on a $5 million tax credit allegedly owed to C. Prince & Associates Consulting, Inc.;

(4) Whether Mr. Prince was prejudiced by the IRS's failure to provide its exhibits to Mr. Prince prior to the December 15th hearing;

(5) Whether the bankruptcy court abused its discretion by denying Mr. Prince's Motion to Present Documentary Evidence;

(6) Whether the Trustee had standing to object to Mr. Prince's request to disperse the Covington Court sales proceeds.

B. Standard of Review

The bankruptcy court's findings of fact are reviewed for clear error, while its legal conclusions and any mixed questions of law and fact are reviewed de novo. *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 583 (5th Cir. 2008). Since Mr. Prince's Motion to Present Documentary Evidence asked the bankruptcy court to consider additional evidence after making a final determination, the court reviews that Motion's denial for an abuse of discretion. *See Garcia v. Woman's Hosp. of Tex.*, 97 F.3d 810, 814 (5th Cir. 1996).

C. The IRS did not waive its claim to the Covington Court Proceeds.

Mr. Prince argues that the IRS waived its claim to the Covington Court Proceeds because it (1) failed to timely object to Mr. Prince's designation of Covington Court as his homestead; (2) failed to levy against the property to collect on its tax lien; and (3) failed to file an adversary proceeding.

First, Mr. Prince rightly states that creditors must dispute an exemption within thirty days of the creditors meeting. *In re Peres*, 530 F.3d 375, 377 (5th Cir. 2008). However, at least one bankruptcy court has concluded that the IRS does not have to object to a homestead exemption designation in order to make a claim against the sale proceeds of that homestead. *See In re Duncan*, 406 B.R. 904, 909–10 (D. Mont. 2009). This is because the Texas homestead exemption has no effect on a federal tax lien. *United States v. Rodgers*, 461 U.S. 677, 700–02 (1983). Further, properly filed tax liens are an express exception to the bankruptcy code's homestead exemption. 11 U.S.C. § 522(c)(2)(B). It would be senseless to require the IRS to

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