

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
)	
WENDELL C. BRUCE,)	
)	
Debtor.)	
)	
MICHELLE VIEIRA, TRUSTEE,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	CAUSE NO. 99-CV-350-WDS
)	
WENDELL C. BRUCE,)	BK NO. 97-41148
)	
Defendant,)	ADV. NO. 98-4033
)	
MIKE VICKERY and)	
DIANA L. VICKERY,)	
)	
Defendants-Appellees.))	

MEMORANDUM & ORDER

STIEHL, District Judge:

Before the Court is appellant Michelle Vieira's appeal from the bankruptcy court's denial of appellant's Complaint to Avoid Fraudulent Transfer of Property.

BACKGROUND

In 1995, debtor, Wendell C. Bruce, acquired certain funeral homes and other property attached to the funeral home business from William. Edwards for \$140,000. In order to facilitate the purchase, Bruce borrowed \$70,000 from the National Bank of Carmi. While under Bruce's ownership, business dropped. Additional operating funds of \$5,000 were required to keep the business going. In 1997, Bruce

sold the funeral homes for \$75,000 to appellees Mike and Diana Vickery.

Bruce subsequently filed for bankruptcy. Appellant, as Trustee in Bankruptcy, filed a Complaint to Avoid Fraudulent Transfer of Property in the Bankruptcy Court for the Southern District of Illinois, naming as defendants Bruce, and Mike and Diana Vickery.¹ The bankruptcy court found that Mike and Diana Vickery paid a reasonably equivalent value for the funeral homes purchased from Bruce, and denied appellant's complaint.

Appellant now argues: (1) that the record does not support the bankruptcy court's finding that Bruce did not convey the property with intent to defraud his creditors because Bruce received reasonably equivalent value for the property transferred; (2) that appellees violated various procedural and/or evidentiary rules, and consequently asks that the Court not consider the testimony of defense witnesses Jim Whetstone and Kevin Bragee; and (3) that the evidence presented by appellees at trial was not sufficiently persuasive to sustain the judgment, in that appellees based their case in large part on the testimony of Whetstone, a banker, and Bragee, a certified public accountant.

Because the Court's ruling on appellant's second argument will necessarily affect appellant's other claims, the Court will address this issue first. Appellant filed a motion for sanctions on the eve of trial, alleging various procedural and/or evidentiary violations, and asked that the bankruptcy court exclude from the trial defense witnesses Whetstone and Bragee. Appellant further objected at trial to the calling of these witnesses, incorporating by reference the grounds contained in the motion for sanctions, including, *inter alia*, appellees failure to timely disclose expert witnesses, failure to comply with discovery requests, and

¹Bruce failed to enter his appearance, and the bankruptcy court entered a default judgment against Bruce and in favor of appellant, leaving Mike and Diana Vickery as the only defendants.

refusal to engage in settlement discussions. The bankruptcy court did not rule on the motion for sanctions, but overruled, without explanation, appellant's objections to the calling of these witnesses at trial, and thereafter implicitly denied appellant's motion for sanctions by entering judgment for appellees in this case.

Appellant now asks that in reviewing the findings of the bankruptcy court, the Court not consider the testimony of Whetstone and Bragee, as their testimony should not have been admitted at trial. In support, appellant references the motion for sanctions and an affidavit detailing appellees' alleged egregious behavior. Appellees' brief response to this argument references neither affidavits nor other supporting evidence, and is little more than a bare denial of appellant's assertions.

Appellate review of the denial of a motion for sanctions is deferential. *See Gorbitz v. Corvill, Inc.*, 196 F.3d 879, 883 (7th Cir. 1999). The Court reviews a refusal to impose sanctions only for an abuse of discretion. *See AHP Subsidiary Holding Co. v. Stuart Hale Co.*, 1 F.3d 611, 620 (7th Cir. 1993). "However, the denial of sanctions with no explanation may constitute an abuse of discretion." *Id.* The Court may affirm a summary decision to refuse sanctions when the reasons for doing so are clear from the record. *See Dugan v. Smerwick Sewerage Co.*, 142 F.3d 398, 408 (7th Cir. 1998). Here, it does not appear from the record that the bankruptcy judge ever ruled on the motion for sanctions, much less gave reasons for his ruling. However, the bankruptcy judge did overrule appellant's objections to the testimony of Whetstone and Bragee, from which the Court infers that the motion for sanctions was, or would have been, denied. Consequently, the Court has no basis for determining whether the inferred denial constituted an abuse of discretion. Nor did the appellees illuminate this issue in their brief. Without additional information, the Court is unable to rule on this issue. Moreover, a ruling on this issue would substantially affect the outcome of the other issues pending on appeal.

Accordingly, the appeal is **DISMISSED** and this cause of action is **REMANDED** to the Bankruptcy Court for the Southern District of Illinois for a ruling, including reasons, on the motion for sanctions. In the event of a subsequent appeal to the United States District Court for the Southern District of Illinois, the case should be reassigned to this Court.

IT IS SO ORDERED.

DATED: March 24, 2000

/s/ William D. Stiehl
UNITED STATES DISTRICT JUDGE