

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)
)
William Collicott Mann and) Case No. 09-80494C-7D
Virginia Mathis Mann,)
)
Debtors.)
)

ORDER

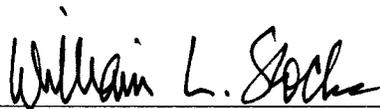
This case came before the court on November 9, 2009, for hearing upon a Motion for Leave to File Out of Time ("Motion") that was filed on behalf of Jihad Libbus. For the reasons that follow, the court has concluded that the Motion involves a matter that must be heard by the district court and, accordingly, declines to make a ruling on the Motion.

Mr. Libbus has appealed to the district court from orders entered by this court on September 30, 2009, granting the Trustee's application for approval of a settlement and approving the sale of real estate and transferring liens to proceeds of sale. Pursuant to Bankruptcy Rule 8006, Mr. Libbus was required to file a designation of items to be included in the record on appeal and statement of issues to be presented on appeal within 10 days after filing his notice of appeal. According to the Motion, Mr. Libbus filed the designation of items to be included in the record and statement of issues to be presented on appeal one day late as a result of technical problems related to gaining access to this court's electronic filing system. In the Motion, Mr. Libbus seeks

a one-day extension of time for the filing of the designation and statement required under Bankruptcy Rule 8006. While Bankruptcy Rule 8002(c)(1) permits the bankruptcy court to extend the time for filing the notice of appeal, no such authority is granted with respect to a motion to extend the time for filing the designation of items to be included in the record on appeal and the statement of issues to be presented on appeal. Bankruptcy Rule 8001(a) provides that an appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, "but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal." (Emphasis supplied). Under Rule 8001(a), it is the district court that is to decide what action is appropriate with respect to a failure to file the designation and statement required under Bankruptcy Rule 8006 in a timely manner, including whether to excuse a late filing. See Resolution Trust Corp. v. SPR Corp. (In re SPR Corporation), 45 F.3d 70, 74 (4th Cir. 1995) ("when a bankruptcy appellant is tardy in making a non-jurisdictional filing under Rule 8006, the district court must exercise its discretion under Rule 8001(a) in deciding whether or not to dismiss the appeal"). Accordingly, this court will decline to rule on the Motion and allow the Motion to be referred to the district court when the record on appeal is transmitted to the district court by the clerk of this court.

IT IS SO ORDERED.

This 20th day of November, 2009.

Handwritten signature of William L. Stocks in cursive script.

WILLIAM L. STOCKS
United States Bankruptcy Judge

PARTIES IN INTEREST

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