UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. PR 98-073

In re: VINICIO MEDRANO-DIAZ,
Debtor.

VINICIO MEDRANO-DIAZ,
Plaintiff/Appellant,

V.

TERESA VAZQUEZ BOTET, ORLANDO R. GONZALEZ HERNANDEZ AND HIS WIFE JANE DOE AND THEIR CONJUGAL PARTNERSHIP COMPOSED BY THEM; PABLO YAMAMOTO; FRANCIS RIVERA DEGLANS AND HIS WIFE SUSAN ROE AND THE CONJUGAL PARTNERSHIP COMPOSED BY THEM,
Defendants/Appellees,

THE BUREAU OF THE LOTTERY OF PUERTO RICO THROUGH THE STATE
DEPARTMENT OF THE TREASURY OF PUERTO RICO,
Intervenor.

Appeal from the United States Bankruptcy Court
for the District of Puerto Rico
[Hon. Enrique S. Lamoutte, U.S. Bankruptcy Judge]

Before

QUEENAN, HILLMAN and FEENEY, U.S. Bankruptcy Judges.

Genaro Rodriquez Gerena, with whom Benito Gutierrez, were on brief for appellant.

Eli B. Arroyo for appellee.

Omar Cancio-Martinez for the Treasury Department for Puerto Rico, Intervenor.

May 21, 1999

PER CURIAM.

This appeal relates to the ownership of a valuable prepetition asset, an issue raised and resolved long ago. The asset, a $3.5 million lottery prize to be paid in 15 annual installments, arose from a ticket which Vinicio Medrano Diaz (Medrano) and Teresa Vazquez Botet (Vazquez) purchased on December 6, 1991. Medrano and Vazquez married on December 20, 1991 and divorced on November 13, 1992. Vazquez initiated an action in the Superior Court of Puerto Rico claiming a 50% share to the prize. While the case was pending, on December 27, 1992, Medrano filed a Chapter 11 petition with the United States Bankruptcy Court for the District of Puerto Rico. The case later converted to Chapter 7.

Medrano removed the Superior Court action to the bankruptcy court after he had filed in the bankruptcy court the underlying adversary proceeding seeking a declaratory judgment and damages. In 1995, the bankruptcy court ruled that Medrano and Vazquez each owned 50% of the winnings under Puerto Rican law. Final judgment issued following denial of Medrano's Rule 59 motion. Medrano Diaz v. Vazquez Botet (In re Medrano Diaz), 182 B.R. 654 (Bankr. D.P.R. 1995). On appeal, the district court and the First Circuit affirmed. See Diaz v. Hernandez, 121 F.3d 695 (1st Cir. 1997); Medrano Diaz v. Vazquez-Botet, 204 B.R. 842 (D.P.R. 1996).

On March 26, 1998, Medrano sought to reopen the ownership issue by filing with the bankruptcy court a motion under Rule

60(b). He asserted that a change of counsel and further review of the record had uncovered new grounds, not presented to or considered by any court, to challenge the prior orders. The asserted new grounds were: (i) the bankruptcy court's order is contrary to Puerto Rico law controlling the division of community property; and (ii) the order is void for lack of subject matter jurisdiction. The court denied the motion as a collateral attack on a final order. It later denied a motion for reconsideration. Undeterred, Medrano filed another motion for reconsideration. Ruling that principles of res judicata precluded review, the bankruptcy court denied the motion on August 3, 1998. Medrano appeals from this order.

DISCUSSION

A court enjoys broad discretion in disposition of a motion under Rule 60(b).[1] A decision under Rule 60(b) is reviewed on

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[1] Rule 60(b), made generally applicable in bankruptcy by Fed. R. Bankr. P. 9024, provides as follows:

> Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its

appeal for abuse of that discretion. Cotto v. United States, 993 F.2d 274, 277 (1st Cir. 1993). Appellate review of a court's denial of a Rule 60(b) request for relief from a judgment does not, however, implicate consideration of the merits of the judgment. Ojeda-Toro v. Rivera-Mendez, 853 F.2d 25, 28 (1st Cir. 1988). See also Rodriguez-Antuna v. Chase Manhattan Bank, Corp., 871 F.2d 1, 2 (1st Cir. 1989)(timely appeal from motion denying relief from judgment does not result in appellate review of the underlying judgment or resurrect expired right to contest merits of judgment).

Rule 60(b) lists grounds for relief from final judgment. While erroneous application of the law by the court may provide suitable grounds in some circuit courts for relief from judgment under the rule, see 12 James W. Moore, MOORE'S FEDERAL PRACTICE, § 60.41[4](3rd ed. 1998), the First Circuit has steadfastly rejected error on the merits as ground for relief under Rule 60(b). Silk v. Sandoval, 435 F.2d 1266, 1267 (1st Cir.), cert. denied sub nom., Silk v. Kleppe, 402 U.S. 1012, 91 S.Ct. 2189, 29 L.Ed.2d 435 (1971)(Rule 59 relief or appeal only available routes to correct erroneous application of law); see also Biggins v. Hazen Paper

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> operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.
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> FED. R. CIV. P. 60(b).

Co., 111 F.3d 205, 212 (1st Cir.), cert. denied, 118 S.Ct. 373 (1997); Hoult v. Hoult, 57 F.3d 1, 5 (1st Cir. 1995). Even if Medrano is correct in asserting that the bankruptcy court misapplied state property law, this falls outside the scope of relief available under Rule 60(b). Rodriguez-Atuna, 871 F.2d at 2(motion which asks to modify earlier disposition of case solely because of erroneous legal result, without more, does not invoke Rule 60(b)).[2]

Moreover, Rule 60(b) motions must be made "within a reasonable time, and for reasons under (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Fed. R. Civ. P. 60(b). Medrano's challenge of a bankruptcy court's order issued more than three years ago can only be viewed as untimely even when applying the most expansive definition of reasonable time. See, e.g. Scola v. Boat Frances, R., Inc., 618 F.2d 147, 154 (1st Cir. 1980) and the cases cited therein.

Medrano also seeks relief under Rule 60(b)(4), asserting that the judgment is void because the bankruptcy court was without subject matter jurisdiction. But the bankruptcy court had jurisdiction. Hoult, 57 F.3d at 6. The bankruptcy court has "exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property

[2] Similarly, the related principles of res judicata and law of the case provide additional hurdles to reconsideration of this final judgment. See e.g., Arizona v. California, 460 U.S. 605, 618 (1983).

of the estate." 28 U.S.C. § 1334(e). Included in the definition of property of the estate are "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is . . . under the sole, equal, or joint management and control of the debtor . . ." 11 U.S.C. § 541 (a)(2)(A). See also In re White, 851 F.2d 170, 171-72 (6th Cir. 1988); In re Teel, 34 B.R. 762, 763 (B.A.P. 9th Cir. 1983); In re Schweikart, 154 B.R. 616 (Bankr. D.R.I. 1993); In re Hohenberg, 143 B.R. 480, 484 (Bankr. W.D. Tenn. 1992). The bankruptcy court has exclusive jurisdiction over community property even where, as here, the debtor filed his bankruptcy petition subsequent to a divorce being granted but prior to the division of community property. In re Keller, 185 B.R. 796, 799-800 (B.A.P. 9th Cir. 1995).

The bankruptcy court therefore did not abuse its discretion. The order denying Medrano's Rule 60(b) motion is AFFIRMED.[3] Appellee's costs to be paid by Appellant.

SO ORDERED.

[3] Although the Department of Treasury appeared as an intervenor, its arguments are irrelevant to the disposition of this appeal.