

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

DOUGLAS STAUFFER BELL &)	
NANCY CLARK BELL,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1973-10 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

By an Order and Decision issued on July 5, 2018 (Doc. 72), this Court made absolute its Order to Show Cause issued on June 14, 2018 (Doc. 71) and entered decision in this case pursuant to section 7459(a). Nonetheless, on August 6, 2018, petitioner Nancy Clark Bell appeared in Winston-Salem, North Carolina, at the special trial session for which this case had been scheduled (before the case was resolved by our Order and Decision). The Court permitted her to be heard. During that hearing, Ms. Bell advanced arguments that we construe as the Bells’ motion for reconsideration and their motion to vacate the Order and Decision entered on July 5, 2018. We will deny the Bells’ motions for the reasons set forth below.

Background

In December 2009 the Office of Appeals of the IRS issued to the Bells a “Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330”. The Bells petitioned this Court on January 25, 2010, and asked us to review that determination.

More than eight years later--after a history previously recounted in our Order to Show Cause and our Order and Decision (Docs. 71 & 72) that we do not repeat here--we issued an order on March 23, 2018, setting this case for trial at a special session in Winston-Salem, North Carolina, beginning on August 6, 2018. (Doc.

67). Our order stated: “The parties now have more than four months before trial to work on this case. They are admonished to begin promptly and to communicate and cooperate in this work.” Also on March 23, 2018, we issued our standing pretrial order, which stated:

[A]ny documents or materials which a party expects to use ... if the case is tried, but which are not stipulated, shall be identified in writing and exchanged by the parties at least 14 days before the first day of the trial session [i.e., July 23, 2018]. The Court may refuse to receive in evidence any document or material that is not so stipulated or exchanged....

On May 31, 2018, hoping to assure compliance with our prior orders and to assure preparation of the case for trial, the Court ordered the parties to file a joint status report (or separate reports). (Doc. 69). In compliance with that order, on June 13, 2018, the Court received a status report from the Commissioner (Doc. 70), which detailed the Commissioner’s numerous attempts to contact the Bells since March 2018, and the Bells’ alleged failure to communicate with the Commissioner. The Court did not receive a status report from the Bells.

On June 14, 2018, we issued an Order to Show Cause (Doc. 71), which explained that if the Commissioner’s June 13, 2018, status report was correct, “then the inaction of the petitioners since our order of March 22, 2017 (Doc 56), is unsatisfactory.” Accordingly, the Court:

ORDERED that, no later than June 28, 2018, petitioners shall show cause (i.e., shall explain in writing) why this Court should not dismiss their case for failure to prosecute.

That Order to Show Cause required that the Bells advise the Court if they planned to give up their case. In the alternative, the Court provided a last opportunity to the Bells and stated that:

[I]f instead the Bells do intend to bring this case to trial, then there may still be time for them to change their approach, cooperate with their opponent, and prepare the case for trial--if they commence immediately and work diligently from now until trial. If that is their intention, then their response to this order should so state, and their response should include a detailed description of the first steps that they have already taken after receiving this order.

If it would be helpful to the Bells for the Court and the parties to have a telephone conference, then they may consult with the Commissioner's counsel and initiate that conference by calling ... the Chambers Administrator of the undersigned Judge.

The Court did not receive any response from the Bells (written or otherwise) to the Court's Order to Show Cause. Therefore, on July 5, 2018, the Court issued its Order and Decision (Doc. 72), making absolute its Order to Show Cause and entering decision pursuant to section 7459(a) so that "the IRS may proceed with the collection of petitioners' Federal income tax for 2006 and 2007 as described in the 'Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code' dated December 23, 2009."

On the morning of August 6, 2018, the date that the Bells' now-closed case had been calendared for trial, and a month after the Court had entered its Order and Decision, Ms. Bell appeared in the courtroom in Winston-Salem, where another trial was ongoing. The Commissioner's attorney assigned to this case was absent from the courtroom (appropriately, since decision had been entered in the case), was at her work station 30 miles away in Greensboro, North Carolina, and immediately drove to Winston-Salem to appear in this case. During a break in the proceedings in the other case, the Court called the Bells' case and heard from Ms. Bell. She stated that she wanted to have her trial and that she had documents with her--documents, however, that she had not previously identified or exchanged with her opponent. Ms. Bell made comments that we construe as petitioners' oral motion for reconsideration and their oral motion to vacate the Court's Order and Decision entered on July 5, 2018.

Discussion

August 6, 2018, was the last day that the Bells could file a motion for reconsideration under Rule 161 or a motion to vacate the Court's decision under Rule 162. (The thirty-day deadline to file these motions would have expired on Saturday, August 4, 2018; but under Rule 25(a)(2)(B), the period ran until the next Monday, i.e., August 6.) The Bells' oral motions were therefore timely.

We allowed Ms. Bell to be heard on August 6 and gave her a final opportunity to explain why petitioners had failed to comply with our order of March 23, 2018 (Doc. 67) and our Order to Show Cause (Doc. 71). However, Ms. Bell failed to provide the Court with any credible explanation for their failure to

comply with the Court's orders. It seems clear that she either failed to read the orders altogether or that she simply did not undertake to comply with them. It is again true, as we previously stated in our Order to Show Cause, that "the inaction of the [Bells] since our order of March 22, 2018 (ECF 56), is unsatisfactory. We regret to observe that [this] unsatisfactory approach ... seems to be consistent with [the Bells'] dilatory handling of this case since filing it more than 8 years ago." Even if it is true that on August 6 Ms. Bell had documents on hand that are relevant to this case, we would not have permitted her to rely on documents that petitioners had failed to identify and exchange with their opponent, in disregard of our standing pretrial order. Ms. Bell stated no grounds that would warrant the vacating of our decision.

At the August 6 hearing, Ms. Bell asked questions about appealing this Court's decision. It is not our place to advise her. However, we note the following truisms: The period for filing an appeal in this case is "90 days after the decision of the Tax Court is entered." I.R.C. section 7483; see also Tax Court Rule 190(a). Decision was entered July 5, 2018 (see Doc. 72), and the 90-day period would expire October 3, 2018. However, Rule 13(a)(1)(B) of the Federal Rules of Appellate Procedure provides: "If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion"--i.e., from the date of this order. By so stating, we do not imply that such an appeal would have any merit.

For the foregoing reasons, and for cause more fully appearing in the transcript of the proceeding on August 6, 2018, it is

ORDERED that petitioners' oral motion for reconsideration pursuant to Rule 161 and their oral motion to vacate the Court's decision pursuant to Rule 162 are both denied.

(Signed) David Gustafson
Judge

Dated: August 16, 2018
Washington, D.C.