

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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

ORDER TO SHOW CAUSE

In this case petitioners Douglas Stauffer Bell and Nancy Clark Bell seek our review, pursuant to section 6330(d)(1), of proposed collection activity by the Internal Revenue Service (“IRS”). As is explained in our orders of May 22, 2017 (ECF 56), and March 23, 2018 (ECF 67), we have jurisdiction to address the IRS's notice of determination (“NOD”) as to the notices of levy issued for tax years 2006 and 2007. Trial is set for August 6, 2018. However, we will order the petitioners to show cause (i.e., to explain in writing, in a document served on the Commissioner and filed with the Court) why we should not dismiss the petition on account of petitioners’ evident failure properly to prosecute their case in this Court.

Background

CDP hearing, petition, and notice of trial

In response to collection notices that the IRS issued to Mr. and Mrs. Bell, the Bells requested a “collection due process” (“CDP”) hearing before the IRS’s Office of Appeals (“IRS Appeals”). IRS Appeals sustained the proposed collection, and Mr. and Mrs. Bell filed their petition to commence this case in January 2010--more than 8 years ago. This case was originally scheduled for trial in March 2011 (see ECF 4).

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Three bankruptcy cases

However, the Bell filed a series of petitions in bankruptcy court that halted proceedings in this Tax Court case. Each was eventually dismissed because the Bells “failed to comply”. In particular--

First case. The first of these bankruptcy petitions was filed by Mr. Bell in January 2011; and as a result this Tax Court case was automatically stayed (see ECF 6, 7). The bankruptcy court issued an “Order of Dismissal” dated August 11, 2011 (ECF 8, Ex. A), that stated:

The court finds that Douglas Stauffer Bell Sr has/have failed to comply with the provisions of the confirmed chapter 13 plan or to obtain confirmation of a plan.

As a result, the stay was lifted, and proceedings in this case resumed. (See ECF 9.) The case was then scheduled for trial in May 2012. (See ECF 10.)

Second case. However, in November 2011 Mr. and Mrs. Bell filed a second petition in bankruptcy court (see ECF 12), and once again proceedings in this Tax Court case were stayed (see ECF 13). We take notice via PACER of the “Order of Dismissal” issued by the Bankruptcy Court for the Eastern District of North Carolina, in docket No. 11-08707, dated November 19, 2012 (ECF 61), which stated:

The court finds that Nancy Clark Bell and Douglas Stauffer Bell Sr has/have failed to comply with the provisions of the confirmed chapter 13 plan or to obtain confirmation of a plan.

As a result, the stay was lifted, and proceedings in this case resumed. (See ECF 17.) The case was then scheduled for trial in September 2013. (See ECF 18.)

Third case. However, in June 2013 Mr. and Mrs. Bell filed yet another petition in bankruptcy court (see ECF 20, Ex. A), and once again proceedings in this Tax Court case were stayed (see ECF 21). The bankruptcy court issued an “Order of Dismissal” dated February 24, 2016 (ECF 37, Ex. A) that stated:

The court finds that Douglas S. Bell Sr. and Nancy C. Bell has/have failed to comply with the provisions of the confirmed chapter 13 plan or to obtain confirmation of a plan.

As a result, the stay was lifted, and proceedings in this case resumed. (See ECF 38.) The case was then scheduled for trial at a session beginning May 22, 2017. (See ECF 39.)

May 2017 Tax Court hearing

When this case was called on May 22, 2017, the Court heard the Commissioner's motion to dismiss from the case, for lack of jurisdiction, the Bells' contentions as to a notice of lien issued by the IRS after the Bells had filed their petition as to notices of levy. The Bells admitted that, within the 30-day period after the issuance of the notice of lien, they did not file any new petition as to the notices of lien and did not make any filing in this levy-based case. The Court therefore indicated that the Commissioner's motion would be granted and that the case would proceed to trial on the levy issues, and the Court's written order (ECF 56) included such a ruling.

However, at the hearing Ms. Bell indicated her objection to that ruling and her desire to appeal it. In the following colloquy (ECF 58 at 43-46), the Court attempted to explain to Ms. Bell that an appeal was not then timely and to explain to her how to preserve her right to an eventual appeal after the entry of a decision in this case:

MS. BELL: I don't feel that I've been heard on the issue of the fraud that I believe was perpetrated [in the handling of the lien issues]. And I would very much like to get somebody to take a second look at your decision regarding your jurisdiction over the liens, because I believe that I didn't get heard on the allegation of fraud, and I told you there's a serious shell game going on here, and I haven't even touched on what I could show you here.

THE COURT: You certainly have the right to appeal my decision in the case I don't begrudge any Petitioner their right to appeal my decision.

MS. BELL: I feel really strongly –

THE COURT: The time for that [appeal] will not be now.

MS. BELL: Okay.

THE COURT: The time will be after I actually enter a decision in the case.

MS. BELL: Okay....

THE COURT: You're going to go ahead and cooperate on that piece of it [the levy issues remaining in the case]. And then maybe when that piece is resolved, even by agreement, and I'm ready to enter a decision and I'm ready to be done, you at that point will say, I feel like we're not done, so ... [addressing respondent's counsel] make sure that that agreement [of the parties] is reflected not in a stipulated decision document that waives the appeal rights of the Petitioners. But instead, it's done by a stipulation of settlement or some other document that enables me to enter a decision from which she can then appeal.

MS. BELL: I want that form [i.e., the "Notice of Determination Concerning Collection Action(s) Under Section(s) 6320 and/or 6330"] changed. I would like to try to pursue that. You know, I understand that you can't but it's very confusing for those of us out there trying to keep up with the IRS.

THE COURT: Thank you. So do you understand my point, that when you -- if and when you reach agreement on the matters that I have remanded, that you want to make sure that the documents you signed in this case don't accidentally waive your appeal rights.

MS. BELL: Okay. Thank you, Your Honor.

THE COURT: So I understand that you don't agree with my decision as to the liens, but you've heard it, and I'm now asking whether you want today to proceed to trial on the issues related to the levy, or whether you want me to remand the case to [IRS] appeals for you to do those things that we described?

MS. BELL: Yes, sir, I'd like for you to remand it on those things that you've described.

Remand order and continuance

Attempting to grant the Bells their wish, we provided in our order dated May 22, 2017 (ECF 56) that it was--

ORDERED that petitioner's oral Motion To Remand is granted and this case is remanded to respondent's Appeals Office for the purpose of affording petitioners a further administrative hearing pursuant to I.R.C. section 6330. It is further

ORDERED that respondent shall offer petitioners an administrative hearing at respondent's Appeals Office located closest to petitioners' residence (or at such other place as may be mutually agreed upon) at a reasonable and mutually agreed upon date and time, but no later than July 5, 2017.

Of course, such a remand in effect grants a continuance of trial.

Supplemental hearing before IRS Appeals

Pursuant to our remand order, a supplemental hearing before IRS Appeals evidently took place, but it did not seem to result in any partial or complete agreement on any of the issues in dispute. The IRS alleges, among other things, that IRS Appeals made the entirely routine request that the Bells provide financial information by completing Form 433-A, but that the Bells declined to do so. IRS Appeals issued a supplemental notice of determination dated August 18, 2017, which sustained the proposed levy for 2006 and 2007. (See ECF 59, 60.)

The case was then ripe to proceed to trial on the levy issues for 2006 and 2007.

Appeal

However, despite the Court's explanation at the hearing on May 22, 2017, the Bells then filed, on August 23, 2017, a notice of appeal to the U.S. Court of Appeals for the Fourth Circuit. (ECF 61.)

Consistent with our May 2017 explanation, the Court of Appeals dismissed petitioners' appeal as premature on January 22, 2018, and issued its mandate on March 16, 2018. (ECF 66.) Its per curiam opinion stated:

This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-46 (1949). The order the Bells seek to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we grant the Commissioner's motion to dismiss the appeal for lack of jurisdiction.

Pretrial order

We then held a telephone conference with petitioner Nancy Clark Bell and counsel for the Commissioner on March 22, 2018, to discuss further proceedings in this case. With the concurrence of the parties, we set this case for trial at a special session in Winston-Salem, North Carolina, to begin August 6, 2018. Our order (ECF 56) went on to state:

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. They are also encouraged to exhaust all possibilities of settlement of this case. It may be that respondent's counsel has the ability to include, in a settlement, issues that are outside our jurisdiction; and if that is the case, then it appears petitioners would be well advised to take advantage of that possibility.

If petitioners wish to seek the help of volunteers who assist self-represented taxpayers, they could attempt to contact North Carolina Central University School of Law (919-530-7166), Western North Carolina LITC (704-971-2622, 800-438-1254), or the North Carolina Bar Association Tax Court Pro Bono Program (410-703-5125). We do not endorse these volunteers but simply advise petitioners of their existence, and we do not warrant that any of these volunteers are available and willing to help. If petitioners wish to attempt to contact them, they should do so immediately, because delayed entry of counsel into this case will not be grounds for any continuance....

The Commissioner's status report

In response to the Court's order of May 31, 2018 (ECF 69), the Commissioner filed a status report on June 13, 2018, that provided detail about alleged attempts to communicate with the Bells and that summarized the status of the case as follows:

Since March 2018, petitioners have not been in contact with respondent's counsel and there has been no contact with undersigned counsel as of the date of the signing of this status report.

Discussion

If the Commissioner's status report is correct, then the inaction of the petitioners since our order of March 22, 2018 (ECF 56), is unsatisfactory. We regret to observe that that unsatisfactory approach would seem to be consistent with petitioners' dilatory handling of this case since filing it more than 8 years ago. Mr. and Mrs. Bell--

- three times achieved an automatic stay of this Tax Court case by filing bankruptcy cases that in all three instances were eventually dismissed because the Bells "failed to comply with the provisions of the confirmed chapter 13 plan or to obtain confirmation of a plan";
- induced this Court to remand the case to IRS Appeals for a supplemental hearing (thus delaying by months the trial of this case) but then evidently declined to provide the financial information necessary for a productive hearing; and
- pursued in this case--in disregard of this Court's previous explanation of the proper occasion to appeal an adverse decision--a premature and pointless appeal to the U.S. Court of Appeals that was dismissed for reasons consistent with this Court's explanation.

Our order of March 22, 2018 (ECF 56) was intended to provide the Bells with one last opportunity--and to spur them on--to provide information to the Commissioner's counsel in order to substantiate any contentions they may wish to make at trial or, in the alternative, facilitate a settlement of some or all of the issues remaining in this case. We took the extraordinary step of scheduling this case for trial at a special trial session, on a date that would give petitioners a 4-1/2-months-long opportunity to prepare for trial. It appears that so far they have ignored this opportunity.

It is therefore

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.

If this order or the Commissioner's recent status report includes errors, omissions, or distortions, then in their response to this order, the Bells may correct those.

If the Bells intend to give up and pursue this case no further, then in their response to this order, the Bells should so advise the Court.

But if 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 (at 202-521-0850) the Chambers Administrator of the undersigned Judge.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
June 14, 2018