United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 13, 2026
Thomas B. Plunkett, III
Clerk

No. 26-10012
Summary Calendar

IN THE MATTER OF HIGHLAND CAPITAL MANAGEMENT, L.P.,

Debtor,

THE DUGABOY INVESTMENT TRUST,

Appellant,

versus

HIGHLAND CAPITAL MANAGEMENT, L.P.; HIGHLAND CLAIMANT TRUST,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:25-CV-2579

Before RICHMAN, HAYNES, and GRAVES, *Circuit Judges*.

PER CURIAM:[*]

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Citing a lack of jurisdiction, the district court denied and dismissed Dugaboy Investment Trust's motion for leave to appeal the bankruptcy court's "Order Denying Fifth Motion to Recuse Judge." Dugaboy now appeals that dismissal. Because the district court did not err in determining it lacked jurisdiction, we affirm.

Highland Capital Management, L.P. was a hedge fund founded by James Dondero. In 2019, Highland filed for bankruptcy. Shortly after filing, the case was transferred from the District of Delaware to Chief Judge Jernigan in the Northern District of Texas on the basis that she was already familiar with the debtors having overseen bankruptcy cases involving other entities associated with Dondero. After the transfer, Dondero, as the principal of Dugaboy, repeatedly sought Chief Judge Jernigan's recusal from the case. These motions stemmed in part from the publication of two books by Chief Judge Jernigan, which Dondero claimed contained parallels to him and his business that demonstrated her bias against him. Dugaboy first raised these concerns in its third motion to recuse. We previously reviewed the third motion in connection with a writ of mandamus sought by Dugaboy and subsequently affirmed the district court's denial of the writ. *See Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466 (5th Cir. 2025) (per curiam).

Here, Dugaboy moved for the fifth time to have Chief Judge Jernigan recuse approximately a month after it appealed the bankruptcy court's approval of a settlement under Rule 9019 and the court declined to stay the approval.[1] She once again denied the motion. Dugaboy appealed to the district court. The district court dismissed the appeal and explained that it lacked jurisdiction "because (1) the appeal was not taken from a final order

[1] Additionally, the bankruptcy court issued an "Order Fixing Allowed Amount of Class 11 Interests" a month after Dugaboy filed the motion to recuse, but when Dugaboy appealed that motion, Dugaboy did not raise the recusal issue.

and (2) leave for an interlocutory appeal is not warranted." Dugaboy now appeals the district court's determination that the motion could not be merged with the prior Rule 9019 order and stay order, and therefore, the district court lacked jurisdiction.

Jurisdiction cannot be waived, and "federal appellate courts have a special obligation to consider not only their own jurisdiction, but also that of the lower courts." *Smith v. Gartley* (*In re Berman-Smith*), 737 F.3d 997, 1000 (5th Cir. 2013) (per curiam). "We review de novo whether a district court had jurisdiction over an appeal from a bankruptcy court." *Royal Street Bistro, L.L.C. v. Arrowhead Cap. Fin.* (*In re Royal Alice Properties, L.L.C.*), 159 F.4th 355, 359 (5th Cir. 2025).

The jurisdiction of district courts to hear appeals from bankruptcy courts is governed by 28 U.S.C. § 158. Under § 158, district courts have jurisdiction to hear appeals from bankruptcy court's "final judgments, orders, and decrees." 28 U.S.C. § 158(a)(1). If there is no final decision, then a district court may exercise jurisdiction over an interlocutory order only "with leave of the court." *Id.* § 158(a)(3). Here, Dugaboy does not challenge the district court's denial of leave to review an interlocutory order, rather Dugaboy contends that the district court should have merged the motion for recusal with a prior final order. Our analysis, therefore, will focus on whether the merger rule allows for interlocutory motions to recuse to merge into previous final decisions.

The general merger rule allows for interlocutory rulings to "merge into the final judgment and [become] reviewable on appeal from that judgment." *Elebute v. Village Cap. & Inv. L.L.C.* (*In re Elebute*), 127 F.4th 958, 959 (5th Cir. 2025) (citation modified); *see also* FED. R. BANKR. P. 8003(a)(4). Finality in the context of bankruptcy appeals is more flexible than when a case is initiated in a district court. *See Bartee v. Tara Colony*

Homeowners Ass'n (*In re Bartee*), 212 F.3d 277, 282 (5th Cir. 2000). Even under this flexible finality standard, however, a ruling on a motion to recuse is undoubtedly nonfinal and not appealable. *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 86 n.3 (5th Cir. 1992); *see also In re Corrugated Container Antitrust Litig.*, 614 F.2d 958, 960 (5th Cir. 1980); *Friendly Fin. Servs.-Eastgate Inc. v. Dorsey* (*In re Dorsey*), 489 F. App'x 763, 764 (5th Cir. 2012) (per curiam) ("The denial of a motion to disqualify is not an appealable final order under 28 U.S.C. § 1291, is not subject to the collateral order doctrine, and is not an appealable interlocutory order under 28 U.S.C. § 1292(a). Instead, a party must await final judgment to appeal a judge's refusal to recuse." (citation modified)). A denial of a motion to recuse can only be appealed when merged with a final decision.

There is no doubt that Dugaboy knew of the facts at issue and knew that they would need to be raised with a final order. In its opening brief, Dugaboy recognized that it knew after our review of its writ of mandamus that "Chief Judge Jerningan's failure to recuse might be reviewed on appeal in connection with a final order." Yet, Dugaboy failed to raise the facts again before any of the final orders that Dugaboy was subsequently a party to. Dugaboy does not explain why it failed to reraise the issue. Instead, Dugaboy only asserts that it need not "raise [recusal] in every brief or argument in response to judicial action." While Dugaboy did not need to raise the recusal issue in every brief where Dugaboy knew the motion to recuse needed to be raised in connection with a final order and waited until after an adverse final order to do so, Dugaboy did not act in a timely manner.

For the foregoing reasons, we AFFIRM the district court's decision.

United States Court of Appeals

FIFTH CIRCUIT
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November 13, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 26-10012 Dugaboy Investment v. Highland Capital
USDC No. 3:25-CV-2579

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

THOMAS B. PLUNKETT, III, Clerk

By: _____
Casey A. Sullivan, Deputy Clerk
504-310-7642

Enclosure(s)

Mr. Zachery Z. Annable
Mr. Michael J. Edney
Mr. John Michael Gaddis
Mr. Geoffrey S. Harper
Ms. Melissa Sue Hayward
Mr. Jordan A. Kroop
Mr. Jonathan F. Mitchell
Mr. John A. Morris
Mr. Jeffrey N. Pomerantz
Mr. Mark Stancil