



SO ORDERED.

SIGNED this 27 day of April, 2011.


JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

**CATHERINE KOSLOVER
ELDON L. MZHICKTENO,**

Debtors.

**Case No. 10-40682
Chapter 7**

ORDER DENYING MOTION TO PROCEED WITHOUT PAYMENT OF FILING FEES

This matter comes before the Court on the Debtor Catherine Koslover's Motion to Proceed Without Prepayment of Fees¹ to prosecute an appeal. The subject appeal concerns an order dated March 7, 2011, in which this Court denied her motion to appoint bankruptcy counsel to assist her in prosecuting her bankruptcy case.² Although, as fully discussed in *In re Graves*,³ there is some

¹Doc. 102.

²The Court now finds that the same motion was filed in an Adversary Proceeding, Case No. 10-7043, Doc. 32, filed January 18, 2011. No order on that motion has been entered. In addition, the bases for denying this motion were fully set out on the record on January 26, 2011. *See also* Docket entry No. 85. To the extent the Court has any discretion to appoint counsel, even though there is no constitutional right to appointed counsel in civil actions such as this bankruptcy (*see Johnson v. Johnson*, 466 F.3d 1213 (2006)), the Court finds that with Debtor's extensive paralegal experience, she is able to present her case without counsel.

³2010 WL 1856053 (Bankr. D. Colo. 2010).

concern whether this Court has the authority to consider this motion because of the language in *In re Satterfield*,⁴ the Court finds that it does have the authority and jurisdiction to rule on the Motion pursuant to 28 U.S.C. § 1930(f)(2) or (3).

In order to succeed on a motion to waive filing fees, the appellant must show both a financial inability to pay the required filing fees, and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.⁵

ABILITY TO PAY

The Motion states that “[b]ecause of my financial status, I am unable to pay the fees and costs of this case. I have completed and am filing an Affidavit of Financial Status with this Motion.” That Affidavit provides that she receives only \$674/month for SSI, her son receives the same amount, and that they receive around \$60 in other assistance, not counting approximately \$1,200-\$1,500 in tribal per capita payments her incarcerated husband is entitled to receive on a quarterly basis. The motion also states that her expenses exceed her income or support, that she has health problems, that she is unemployed, and that her husband is incarcerated. The information provided does suggest that she does not have adequate funds to pay the filing fee, and the Court finds that she meets the first test for being allowed to proceed without payment of fees.

MERITS OF APPEAL

The appeal concerns an order denying appointment of counsel entered on March 7, 2011. Pursuant to Fed. R. Bankr. P. 8002(a), the appeal from that order was due no later than 14 days after

⁴337 Fed. Appx. 739, 740 (10th Cir. 2009) (holding that although Tenth Circuit precedent restricts bankruptcy courts and the bankruptcy appellate panel from granting relief under 28 U.S.C. § 1915, bankruptcy courts (not Bankruptcy Appellate Panels) do have authority to decide this issue under 28 U.S.C. § 1930), and relying on *Wallin v. Martel* (*In re Martel*), 328 Fed. Appx. 584, 585-86 (10th Cir. 2009)).

⁵*In re Musil*, 1991 WL 202858, 1 (10th Cir. 1991).

its entry, or by March 21, 2011. This appeal was filed April 26, 2011, well over a month after the time for appeal had expired. Because the Court does not believe the appellate court even has jurisdiction to consider this appeal, because it was untimely filed, it cannot find that there is a nonfrivolous basis for pursuing this appeal.

The Tenth Circuit Court of Appeals was faced with a similar issue in *In re Bush*.⁶ The Court noted that because the motion to proceed in forma pauperis had been filed in a case where the order to be appealed from was not appealable, it would dismiss the case, rather than considering the motion to proceed in forma pauperis, since “[t]he denial of leave to appeal in forma pauperis cannot transform an otherwise nonappealable order into an appealable one.”⁷ Similarly, because Debtor failed to appeal the order within 14 days, the order she has attempted to appeal is a final, non-appealable order, and thus she cannot prevail on the appeal. For that reason, the Court cannot find there is a nonfrivolous basis for this appeal, and must deny the motion to proceed without payment of the filing fee.

IT IS, THEREFORE, ORDERED that Debtor/Appellant’s motion to proceed without payment of filing or other fees is denied.

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⁶1994 WL 596762, 1 (10th Cir. 1994).

⁷*Id.*