UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

In re: LAURA T. REIS, Debtor. --- LAURA T. REIS, Appellant, v. GREGORY M. GARVIN, acting U.S. Trustee, Appellee.	Case No. 1:23-cv-00279-BLW **MEMORANDUM DECISION**

INTRODUCTION

The debtor, Dr. Laura T. Reis, appeals from the bankruptcy court's order finding her ineligible to proceed under Subchapter V of Chapter 11 of the United States Bankruptcy Code. For the reasons explained below, the Court will affirm.

BACKGROUND[1]

Before she attended medical school, Dr. Reis held a master's degree in community addictions counseling and worked as a treatment coordinator for a

[1] The parties are familiar with the background in this case and largely agree with the Bankruptcy Court's factual summary. *See* ER 2-5. Accordingly, for ease of reference, the Court will simply reproduce the relevant portion of the Bankruptcy Court decision here, with some modifications.

juvenile detention facility. In that job she primarily helped juveniles and their families transition back into the community. Having worked in that job for numerous years, she decided that medical school would offer her the ability to care for people in a more complex manner and to provide a higher level of care, and she also believed a medical degree would increase her income. She did not own a business before entering medical school, nor did she have any existing student-loan debt.

Between 2005 and 2009, Dr. Reis attended medical school at the West Virginia School of Osteopathic Medicine. She relied on student loans for educational and living expenses during her medical school years. In total, she incurred about $320,000 in student loans. As of the petition date, Dr. Reis indicated that her student-loan debt totaled $645,869.89. When she took out the loans and began her medical studies, Dr. Reis knew she would first complete a residency upon graduating but did not know where or for whom she would be working afterward. She received a degree and a medical license and immediately thereafter completed a three-year residency in Florida. Following completion of her residency, Dr. Reis did not return to the employment she had before entering medical school. Instead, she moved to Connecticut and worked for a hospital for a year. She contracted meningitis and spent time as a patient at Johns Hopkins due to that illness. Thereafter, Dr. Reis took a job in Iowa, again working for a hospital,

and after practicing there for a year, she was asked to sign a new contact which she refused to sign, and her employment was terminated.

In 2015, Dr. Reis moved to Boise and worked for Saltzer Health in Nampa. She later worked for Primary Health Medical Group. From 2012 to 2022, she was unable to work from time to time due to health issues, including auto-immune issues and complications from having Covid-19 three separate times. She underwent eight hospitalizations during that time and had to stop working for a month or two on several occasions.

Despite her health concerns, in August 2021, Dr. Reis opened her own practice. The practice closed on October 15, 2022, due in part to unfortunate timing, as the launch of her practice occurred during the Covid-19 outbreak in the United States and Idaho. In addition, since 2021, Dr. Reis has been providing medical services via a virtual practice called Home Health which offers men's health advice unrelated to her brick-and-mortar operation. Near the time her business closed, Dr. also began working as an adjunct professor at the Idaho College of Osteopathic Medicine. Dr. Reis testified that the illness she has suffered, and continues to struggle with, along with the Covid-19 outbreak that damaged her practice, are what has hampered her ability to make a better living as a physician.

Dr. Reis has used her medical school training since graduating and has

worked continuously as a doctor except when she physically or medically could not. Until 2020, when her first LLC was established and her practice opened,[2] all of her employment, including before she went to medical school, was as an employee for companies not operated by the Debtor, including her work as an adjunct professor.

In November 2022, debtor filed a bankruptcy petition under Subchapter V of Chapter 11. This was her second bankruptcy petition. She filed her first bankruptcy petition in October 2018. In that petition, which was filed under Chapter 7, Dr. Reis indicated that her student-loan debt of $632,723 was primarily consumer debt, although she testified that she had no discussions with her then-bankruptcy counsel about that classification.

PROCEDURAL HISTORY

In February 2023, the trustee objected to Dr. Reis's election to proceed under Subchapter V. The bankruptcy court issued a written order sustaining the objection, after having concluded that Dr. Reis did not meet the statutory definition of a "debtor" as that term is defined in 11 U.S.C. § 1182. Additionally, while the Subchapter V eligibility issue was pending, the bankruptcy court conducted a hearing on the confirmation of Dr. Reis's proposed plan of reorganization. The

[2] The factual record is not entirely clear on when, precisely, debtor opened her first practice. The bankruptcy court's factual summary indicates that Dr. Reis opened her practice in 2021, but elsewhere the opinion states that Dr. Reis established her first LLC *and opened her practice* in 2020. *See* ER at 3, 4. The Court simply notes this discrepancy, however, as it does not affect the legal analysis.

parties generally conceded that all impediments to plan confirmation other than the Subchapter V eligibility question had been resolved. Given that scenario, the bankruptcy court continued the confirmation hearing until the eligibility question had been resolved. Thereafter, the bankruptcy court sustained the trustee's objection and denied confirmation of the debtor's plan. This appeal followed.

STANDARD OF REVIEW

District courts review bankruptcy court decisions in the same manner as would the Ninth Circuit. *See, e.g. In re George*, 177 F.3d 885, 887 (9th Cir. 1999). The Court reviews questions of statutory interpretation and the bankruptcy court's conclusions of law de novo. *Jones v. U.S. Trustee*, 736 F.3d 897, 899 (9th Cir. 2013). Mixed questions of law and fact are generally reviewed de novo, though they may be reviewed under the more deferential, clear-error standard "depending on the nature of the inquiry involved." *Aspen Skiing Co. v. Cherrett (In re Cherrett)*, 873 F.3d 1060, 1066 (9th Cir. 2017) (citation omitted). Factual findings are reviewed for clear error. *Id.* Factual findings are clearly erroneous if they are illogical, implausible, or without support in the record. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010). If the bankruptcy court's factual findings are plausible in light of the record viewed in its entirety, this Court may not reverse it even if might have weighed the evidence differently. *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985); *Husain v. Olympic Airways*, 316 F.3d 829, 835

(9th Cir. 2002). Further, if the bankruptcy court's factual findings are based on inferences from undisputed facts, those findings are nonetheless subject to clear-error review. *See United States v. Nuñez*, 852 F.3d 141, 144 (9th Cir. 2017); *see also IRS v. Canada (In re Canada),* 574 B.R. 620, 638 (N.D. Tex. 2017) (applying clear-error standard where the bankruptcy court's finding was "a factual inference made from the undisputed basic facts").

ANALYSIS

1. The Bankruptcy Court Issued a Final, Appealable Order

The Court must first determine whether it has jurisdiction. The trustee says the Court does not, based on its argument that the bankruptcy court issued a non-final, interlocutory order when it denied confirmation of Dr. Reis's plan based on its underlying conclusion that she was ineligible for relief under Subchapter V. Dr. Reis, on the other hand, says the focus of this appeal is on the order concluding she is ineligible to proceed under Subchapter V—not the follow-on order denying plan confirmation. She argues that the earlier order is appealable because the eligibility determination is a distinct procedural unit, inside the umbrella of the bankruptcy case, which has been finally resolved. The Court agrees with the debtor.

The concept of finality is straightforward in general civil litigation: a district court's decision is "final" for purpose of appeal when the action is terminated and there is nothing left for the court to do but execute the judgment. *See generally*

Ritzen Grp., Inc. v. Jackson Masonry, LLC, 589 U.S. 35, 37 (2020). This bright-line rule does not apply in bankruptcy, however, where the concept of finality is more flexible and pragmatic. *See, e.g., Linton v. Colpo Talpa, LLC (In re Linton),* 631 B.R. 882, 891 (B.A.P. 9th Cir. 2021). In recent years, the Supreme Court has handed down two decisions that guide application of this flexible finality requirement: *Bullard v. Blue Hills Bank*, 575 U.S. 496 (2015) and *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35 (2020).

Bullard held that a bankruptcy court order rejecting a proposed confirmation plan was not final because that order did not conclusively resolve the relevant "proceeding." 575 U.S. at 502. Rather, because the bankruptcy court had rejected the proposed plan with leave to amend, there remained the possibility of amended or new proposals. In that context, *Bullard* explained that only plan confirmation, or case dismissal, "alters the status quo and fixes the rights and obligations of the parties." *Id.* "Denial of confirmation with leave to amend, by contrast, . . ." leaves the "parties' rights and obligations . . . unsettled," and therefore could not be deemed "final." *Id*. at 503.

Ritzen applied *Bullard's* analysis to a bankruptcy court order denying relief from the automatic stay. *Ritzen* determined that the appropriate "proceeding" was the stay-relief adjudication—which occurred both before and separately from the claim-resolution proceedings. 589 U.S. at 43. Because filing a stay-relief motion

triggered "a discrete procedural sequence, including notice and a hearing," the Court concluded that "a discrete dispute of this kind constitutes an independent 'proceeding' within the meaning of 28 U.S.C. § 158(a)." *Id.* at 43-44. And when the bankruptcy court entered an order conclusively denying the motion, that order "ended the stay-relief adjudication and left nothing more for the Bankruptcy Court to do in that proceeding." *Id.* at 47. As such, the order in *Ritzen* was a final, appealable order.

Guided by *Bullard* and *Ritzen,* this Court will begin by asking two questions to determine whether the bankruptcy court issued a final, appealable order here: (1) Was the order entered in a distinct procedural unit within the larger bankruptcy case? and (2) Did the order "terminate" that distinct proceeding by completely resolving all substantive litigation within that proceeding? More broadly, the Court will ask whether the bankruptcy court's order "alters the status quo and fixes the rights and obligations of the parties … [or] alters the legal relationships among the parties." *Bullard*, 575 U.S. at 502, 506. "In a nutshell, a bankruptcy order is final "if it is both procedurally complete and determinative of substantive rights." *In re Jackson Masonry, LLC,* 906 F.3d 494, 499 (6th Cir. 2018)*, aff'd sub nom. Ritzen Grp., Inc. v. Jackson Masonry, LLC,* 589 U.S. 35 (2020).

Some examples of final bankruptcy court orders include: (1) orders "unreservedly" granting or denying relief from an automatic stay, *Ritzen*, 589 U.S.

at 38; (2) orders determining that a party violated the automatic stay, *Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1126-27 (9th Cir. 2016); (3) orders dismissing a Chapter 7 debtor's bankruptcy petition, *Jue v. Liu (In re Liu)*, 611 B.R. 864, 879 (B.A.P. 9th Cir. 2020); (4) orders approving a sale of estate property free and clear of the co-owner's interest, *Lyons v. Lyons (In re Lyons)*, 995 F.2d 923, 924 (9th Cir. 1993); (5) orders confirming a reorganization plan, *Pizza of Hawaii, Inc. v. Shakey's, Inc. (In re Pizza of Hawaii, Inc.)*, 761 F.2d 1374, 1378 (9th Cir. 1985); and (6) orders removing a bankruptcy trustee, *Dye v. Brown (In re AFI Holding, Inc.)*, 530 F.3d 832, 837 (9th Cir. 2008). Examples of interlocutory orders include: (1) orders denying confirmation of a plan with leave to amend, *Bullard*, 575 U.S. at 501; (2) orders granting a transfer of venue, *Donald v. Curry (In re Donald)*, 328 B.R. 192, 196-97 (B.A.P. 9th Cir. 2005); and (3) orders denying removal of a trustee, *SS Farms, LLC v. Sharp (In re SK Foods, LP)*, 676 F.3d 798, 802 (9th Cir. 2012).

There is a dearth of authority on whether an order sustaining a trustee's objection to a debtor's election to proceed under Subchapter V is a final, appealable order. The parties cite just two decisions: the Ninth Circuit Bankruptcy Appellate Panel's decision in *NetJets Aviation, Inc. v. RS Air, LLC (In re RS Air, LLC),* 638 B.R. 403 (B.A.P. 9th Cir. 2022), and a decision from this district in *In re Parkinson,* No. 4:21-cv-00043-DCN, 2021 WL 1554068 (D. Idaho Apr. 19,

2021). *In re Parkinson* is not helpful because the court did not wrestle with the finality issue. Instead, it assumed, without deciding, that the bankruptcy court's order sustaining an objection to the debtor's Subchapter V election was interlocutory. *See* 2021 WL 1555068, at *1 n.1 ("Because the Court is granting leave to appeal, it need not formally decide whether the appeal could also be taken as a matter of right").

In re RS Air is more helpful because the court squarely confronted the finality issue. In a short, unpublished opinion, the Ninth Circuit's Bankruptcy Appellate Panel held that resolving a creditor's objection to the Subchapter V election was part of the plan-confirmation process—meaning that the Subchapter V order was interlocutory. The BAP set forth its reasoning in a terse, two-sentence paragraph:

> Orders in bankruptcy cases qualify as 'final' when they definitively dispose of discrete disputes within the overarching bankruptcy case. The order on appeal is an interlocutory order since determination of whether a debtor qualifies for Subchapter V relief under 11 U.S.C. § 1182(1)(A) is part of the Chapter 11 confirmation process and as such, does not definitively dispose of a discrete issue within the bankruptcy case.

Order Denying Motion for Leave to Appeal and Dismissing Appeal as Interlocutory, B.A.P. Case No. NC-21-1053, at 2 (B.A.P. 9th Cir. May 26, 2021) (internal citations to *Ritzen* and *Bullard* omitted). Thus, *In re RS Air* dismissed the appeal, and the debtor moved forward as a Subchapter V debtor. (The creditor later

challenged the Subchapter V determination in second appeal, after the bankruptcy court had confirmed the debtor's plan. *See In re RS Air,* 638 B.R. at 408 n.3.

The Court respectfully disagrees with *In re RS Air.* In this Court's view, the Subchapter V eligibility determination is a discrete procedural unit that occurs before, and separately from, plan-confirmation proceedings. The trustee triggered this proceeding when he objected to Dr. Reis's Subchapter V designation. *See* Fed. R. Bankr. P. 1020(b). After that objection was on file, the debtor filed a written response, and the bankruptcy court conducted an evidentiary hearing on that discrete issue. The bankruptcy court then issued a separate, written decision that definitively disposed of the Subchapter V eligibility issue. Under the Supreme Court's rationale in *Ritzen,* this proceeding has the hallmarks of a "discrete procedural unit" that leads to a final, appealable order. Further, the entire outcome of this case will be affected, given that the Debtor will be pushed into proceeding as an ordinary Chapter 11 debtor, as opposed to under Subchapter V. Proceeding under Subchapter V offers many advantages over proceeding as a regular chapter 11 debtor, including "total plan exclusivity (including modifications) and no disclosure statement requirement; the ability to obtain a discharge on the effective date; and the inapplicability of the absolute priority rule." *In re RS Air,* 638 B.R. at 414. Under these circumstances, the Court concludes that the bankruptcy court issued a final, appealable order when it decided the Subchapter V eligibility issue.

The Court finds some tangential support for this conclusion in cases dealing with conversion orders. Those cases are instructive because even though the bankruptcy court did not entertain a motion to convert, the upshot of its order is that Dr. Reis will be pushed toward converting to a regular Chapter 11 case. Case authority on conversion orders is not entirely consistent. Most courts agree that orders converting a reorganization case *to* a Chapter 7 case are immediately appealable. *See, e.g., Rosson v. Fitzgerald (In re Rosson),* 545 F.3d 764, 770 (9th Cir. 2008), *overruled on other grounds by In re Nichols*, 10 F.4th 956 (9th Cir. 2021); *In re Cal. Palms Addiction Recovery Campus, Inc.,* 87 F.4th 734, 739–40 (6th Cir. 2023). As the Ninth Circuit has explained, "An order converting a case under another chapter to one under Chapter 7 determines finally the discrete issue to which it is addressed, *i.e.*, whether or not the case will be converted. Moreover, because a conversion to Chapter 7 takes control of the estate out of the hands of the debtor, it seriously affects substantive rights and may lead to irreparable harm to the debtor if immediate review is denied." *In re Rosson*, 545 F.3d at 770 (internal citations omitted). Courts are divided, however, as to whether orders converting cases *from* a chapter 7 case to other chapters are immediately appealable. *Compare Bannish v. Tighe (In re Bannish),* 311 B.R. 547, 548-49 (C.D. Cal. 2004) (conversion order appealable) *with Mason v. Young (In re Young),* 237 F.3d 1168, 1172-73 (order converting case from Chapter 7 to Chapter 13 not final until after

Chapter 13 plan confirmation). The Ninth Circuit has not weighed in on this particular question. On balance, though, this Court is persuaded by cases finding that conversion orders are immediately appealable. If a debtor is going to be vaulted into a different chapter of the bankruptcy code, with all the different rules that will apply, it makes sense to view such a motion as a distinct procedural unit that is finally resolved with the conversion order.

Finally, the Ninth Circuit's decision in *Aspen Skiing Co. v. Cherrett (In re Cherrett)*, 873 F.3d 1060, 1066 (9th Cir. 2017) provides additional tangential support for the Court's conclusion. There, a creditor moved to dismiss the debtor's Chapter 7 case based on an argument that the filing was abusive. The bankruptcy court denied the motion—which of course meant the case would move forward despite the creditor's argument that the debtor shouldn't be there in the first place. The Ninth Circuit concluded that the bankruptcy court's order was final, explaining that

> Section 707(b) creates a statutory gateway based on whether the case is abusive, and an order denying that motion to dismiss as abusive, in effect, finally and conclusively resolves the issue. If the denial of a § 707(b) motion to dismiss cannot be appealed immediately ..., the Chapter 7 proceedings would have to be completed before it could be determined whether the proceedings were abusive in the first place.

Id. at 1065 (quoting *McDow v. Dudley*, 662 F.3d 284, 289-90 (4th Cir. 2011)). At least some of the concerns in *In re Cherrett* are present here. In particular, the

Bankruptcy Rules create a gating mechanism by allowing the trustee or creditors to object to the debtor's election at the outset of the case. *See* Fed. R. Bankr. P. 1020(b). Further, as was the case in *In re Cherrett*, allowing an immediate appeal of the bankruptcy court's order serves policies of judicial efficiency and finality.

In sum, this Court concludes that the bankruptcy court's order denying Dr. Reis's Subchapter V election was a final, appealable order. Accordingly, the Court will proceed to the merits.

2. The Bankruptcy Court Did Not Err in Finding that Dr. Reis's Student-Loan Debt Did Not Arise from Commercial or Business Activities

The issue on appeal is whether the bankruptcy court erred in finding that Dr. Reis's student-loan debt did not arise from her "commercial or business activity." The starting point for the analysis is 11 U.S.C. § 1182(1)(A). Under that statute, a debtor seeking to proceed under Subchapter V of Chapter 11 must meet be "**[1]** a person **[2]** engaged in commercial or business activities . . . **[3]** that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount of not more than $7,500,000 (excluding debts owed to 1 or more affiliates or insiders) **[4]** *not less than 50 percent of which arose from the commercial or business activities of the debtor.*" 11 U.S.C. § 1182(1)(A) (emphasis added). Dr. Reis bore the burden of establishing she was eligible to proceed under Subchapter V. *In re RS Air,* 638 B.R. at 414, and the first three elements of Subchapter V eligibility (personhood,

being engaged in or commercial activities, and the debt limit) were not disputed. Rather, the issue below was whether Dr. Reis's student-loan debt arose from her commercial or business activities.

Before addressing the parties' substantive arguments, the Court will pause to clarify the appropriate standard of review. Dr. Reis says the issue on appeal is a statutory interpretation question, which would of course be subject to *de novo* review. The trustee, on the other hand, says this Court is simply being called upon to review the court's factual determination, which would mean that the clear-error standard applies. The Court agrees with the trustee because the bankruptcy court did not lay down a categorical rule that if a debtor incurred debts before opening a business, then those debts could never be categorized as having arisen from "commercial or business activities." To the contrary, the bankruptcy court envisioned scenarios in which antecedent debt could qualify as having arisen from commercial or business activities:

> The Court does not foreclose all debt which arises prior to a business opening, as supplies, product, and a space for the business often must be acquired prior to the actual opening, and there is the possibility that a debtor may open more than one business during his or her lifetime and incur debt in doing so.

ER 16. Further, after having clarified that point, the bankruptcy court explicitly stated that it was not announcing a *per se* rule that student-loan debt could never qualify as a debt arising from commercial or business activities. *Id.* Thus, the issue

on appeal is whether, as a factual matter, this particular debtor's student-loan debt arose from commercial or business activities. Or, more precisely, the issue is whether the bankruptcy court clearly erred in concluding that the debts did not arise from commercial or business activities. The Court will therefore apply the clear-error standard of review, although it would reach the same result on *de novo* review.

Turning to the substantive arguments, Dr. Reis is essentially arguing that the record below admits to just one factual finding—that the student-loan debt did indeed arise from commercial or business activity because she testified that she always wanted to have her own medical practice and that that plan was in place from the beginning of medical school. *See Opening Br.*, Dkt. 6, at 19 (citing ER 98-99). But, despite that testimony, there was plenty of other evidence in the record supporting the bankruptcy court's conclusion that Dr. Reis's student loans did not arise from commercial or business activity. The bankruptcy court summarized its analysis on this point as follows:

> The Court finds it germane that Debtor did not operate a private business before going to medical school and did not operate a business after obtaining her medical degree until more than a decade had passed. Rather, she was a student who hoped to gain employment following the conclusion of her studies and had aspirations of opening her own practice at some future time. When she began borrowing, Debtor did not have any specific opportunity in mind, nor did she have any employment lined up. After graduating in 2009 and completing her residency in 2012, she worked for four employers in

> three states before creating an LLC in 2020 and opening her practice in 2021.

Id. at 15. Given these facts, the bankruptcy court did not clearly err in determining that Dr. Reis's student loan did not arise from commercial or business activities. As the Supreme Court has observed, "where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985).[3]

CONCLUSION

For the foregoing reasons, the bankruptcy court's order sustaining the Trustee's Objection to the Debtor's Subchapter V election is **AFFIRMED.**

DATED: June 20, 2024

B. Lynn Winmill
U.S. District Court Judge

[3] Below, the bankruptcy court did not consider whether the student-loan debt was "consumer" debt. This Court, too, will forego that analysis, as it has upheld the bankruptcy court's finding that Dr. Reis's student-loan debt did not arise from her commercial or business activity.