

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MABEL FRANCES UFHEIL,

Plaintiff,

vs.

Case No. 09-4047-SAC

M. DEWEY BAIN, Esquire
and Trustee of Mabel Frances
Ufheil Trust of 1999,
KATHY LOUISE DANIEL BAIN,
JAMES L. BOEHM, and
BOEHM & BOEHM, CPAs,

Defendants.

MEMORANDUM AND ORDER

This case comes before the court on the plaintiff's response to the court's show cause order (Dk. 31), which required the plaintiff to show why her claims against defendants M. Dewey Bain and Kathy Louise Daniel Bain should not be dismissed for lack of prosecution.

In response, the plaintiff shows the court that bankruptcy proceedings involving these two defendants have been ongoing in another State, that the plaintiff has tried to insure that defendants' potential liabilities to the plaintiff were preserved in that forum, that settlement negotiations with M. Dewey Bain are ongoing, and that the plaintiff's desire is to work out a settlement rather than take a default judgment. In support of these assertions, plaintiff shows the court a letter from M. Dewey Bain in which that

defendant admits the following: 1) he used the plaintiff's trust funds without her knowledge to assist his personal business interests; 2) he depleted all of the plaintiff's savings to the extent there was no money left to pay for her residence or her other obligations; and 3) he is guilty of fraud, conversion, theft and/or breach of fiduciary duty. Dk. 31, Exh. 2.

The court finds additional support for the plaintiff's assertions in the acts of the defendant, M. Dewey Bain. On December 30, 2009, defendant M. Dewey Bain filed an "Entry of Appearance," which he signed, stating: 1) he represents himself, pro se; 2) he is currently a licensed attorney in the State of Texas; 3) he acknowledges and submits to the personal jurisdiction of the U. S. District Court of Kansas in this matter filed by the Plaintiff; 4) he does not intend to file an answer to the Complaint filed by the Plaintiff; 5) he realizes that this failure to file an answer to the Complaint may result in a default judgment being entered against him by the Court. Dk. 28. The court finds that the plaintiff has fully and sufficiently responded to its order to show cause, and that the plaintiff's case against the two remaining defendants, M. Dewey Bain Kathy Louise Daniel Bain, should not be dismissed for lack of prosecution.

Plaintiff has additionally noticed his voluntary dismissal pursuant to Fed.R.Civ.P.41(a)(1)(A) of defendant Kathy Louise Daniel Bain, a party who has not answered. Accordingly, this case shall proceed against the sole remaining defendant, M. Dewey Bain.

IT IS THEREFORE ORDERED that the Court's show cause order is fully satisfied.

Dated this 22nd day of January, 2010.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge