

FILED	
DISTRICT OF NEBRASKA	
AT _____	M _____
JUN 30 1987	
BK 83-208	William L. Olson, Clerk
CV 86-0-835	Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:)	BK 83-208
)	CV 86-0-835
CARL R. NELSON,)	
)	ORDER
Debtor.)	

This matter is before the Court on appeal from an order of the Bankruptcy Court dated September 17, 1986, appointing a trustee to administer the debtor's reorganization under Chapter 11 of the Bankruptcy Code. Upon being informed in the premises, the Court finds that the decision of the Bankruptcy Court should be affirmed.

At the outset, the Court notes that the Bankruptcy Court's findings of fact are subject to the clearly erroneous standard, while its legal conclusions are subject to de novo review. In re Martin, 761 F.2d 472, 474 (8th Cir. 1985).

11 U.S.C. § 1104 authorizes the Bankruptcy Court to appoint a trustee in a case under Chapter 11 in the interest of creditors or for cause. The Bankruptcy Court found that cause existed to appoint a trustee in this case because of various actions taken by Nelson while operating as a debtor in possession. The Bankruptcy Court concluded from the evidence presented that Nelson (1) attempted to transfer a livestock brand owned by the estate to his son without approval by or notice to the Court; (2) attempted to convey real property owned by the estate without approval by the Court; (3) failed to explain the apparent disappearance of certain quantities of grain; (4) disposed of collateral without approval by the Court or permission from the secured party; (5) failed to

cash or deposit certain checks which belonged to the estate for nearly one year, and; (6) failed to adequately report to the Court, when ordered to do so, the actual disposition and location of certain collateral. At the hearing on this matter, Nelson failed to rebut any of these alleged improper activities. Instead, he unsuccessfully attempted to challenge the sufficiency of various documents executed in favor of the principle secured party, the Arcadia State Bank. Nelson failed to demonstrate in any manner an ability to manage the estate in an appropriate fashion, or a desire to discontinue activities harmful to the estate and its creditors.

The Court cannot find that the conclusions of the Bankruptcy Court in regard to Nelson's activities are clearly erroneous. The Court believes that, given the evidence presented, the Bankruptcy Court was well within its discretion in appointing a trustee to oversee and guide the orderly progression of Nelson's reorganization. Nelson's mismanagement of assets and failure to fully disclose requested information provide sufficient justification for the Bankruptcy Court's action. The decision of the Bankruptcy Court shall be affirmed.

Given this resolution of the issue, the Court shall deny Nelson's expedited motion (filing 17) for a temporary restraining order and his motion (filing 16) to consolidate as moot.

Accordingly,

IT IS ORDERED as follows:

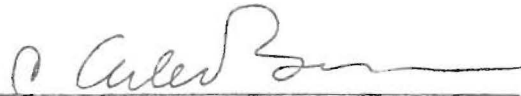
1. The decision of the Bankruptcy Court should be and hereby is affirmed.

2. The debtors' motions (filings 16 and 17) should be and hereby are denied as moot.

3. This action should be and hereby is dismissed.

DATED this 30th day of June, 1987.

BY THE COURT:



C. ARLEN BEAM, CHIEF JUDGE
UNITED STATES DISTRICT COURT