

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

ROY NUTTELMAN,

DEBTOR

ROY NUTTELMAN,

Plaintiff

vs.

STROMSBURG BANK,

Defendant

CASE NO. BK85-1062



MEMORANDUM OPINION RE REQUEST FOR AUTHORIZED
PAYMENT OF TRANSCRIPT SUPPORTED BY DEBTOR'S AFFIDAVIT

The debtor, Roy Nuttelman, requests an order authorizing payment by this Court of a transcript of the trial in this case, said transcript being required for an appeal of this Court's decision. Mr. Nuttelman relies on 28 U.S.C. Section 1915. He supports his request with appropriate affidavits and his statement that the appeal is taken in good faith.

28 U.S.C. Section 1915(b) contains the following language:

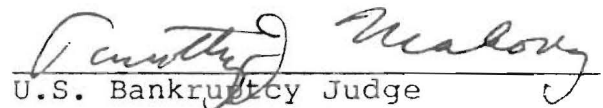
"In any civil or criminal case, the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the U.S. . . ."

According to the notes following Section 1915, the word "may" has repeatedly been interpreted as allowing the trial judge to exercise his discretion in deciding whether to authorize payment of the transcript. Further, the notes indicate that the court can refuse to permit a frivolous action to be filed in forma pauperis. The test for determining whether an action is frivolous appears to be whether the plaintiff can make a rational argument on the facts or the law.

Mr. Nuttelman is appealing the Court's decision not to find the defendant in contempt, and specifically criminal contempt. The law in this district was decided in the case of Fenstermacher vs. Irmer (Slip Opinion, District Court, District of Nebraska, CV86-0-16 dated September 10, 1986). In that case an order of this Court finding the defendant to be in contempt (criminal) was reversed and the District Court ruled that the Bankruptcy Court is without jurisdiction to impose an order for criminal contempt. Therefore, Mr. Nuttelman's appeal would appear to be frivolous on its face because this Court is without the power to take the action he requested. His request for an order for payment of the transcript should be and is denied.

DATED: October 6, 1986.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to:

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