

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 91-8469

Summary Calendar

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JULIUS DREW, SR.,

Plaintiff-Appellant,

v.

ROSCO A. ANDERSON, Individually and as  
Anderson & White Bail Bonds, ET AL.,

Defendants-Appellants.

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Appeals from the United States District Court  
for the Western District of Texas  
W 90 CA 35

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(March 18, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:\*

Plaintiff-Appellant Julius Drew, Sr., appeals from the district court's decision dismissing his civil rights complaint for want of prosecution. Because Drew has no standing to

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

prosecute his complaint, and therefore no standing to challenge the dismissal of his complaint, we dismiss his appeal.

I.

Julius Drew, Sr., an unsuccessful state court litigant, filed this pro se civil rights suit in federal district court on February 20, 1990. In his federal complaint, Drew alleged that the opposing parties in the state court litigation, their attorneys, and the judge who presided over the state court litigation conspired to deprive him of federal rights in violation of 42 U.S.C. §§ 1983 & 1985. Specifically, Drew contended that (1) the opposing parties presented false information during discovery in the state court litigation and (2) the presiding judge ruled against him on various motions because of a conspiracy between the opposing parties and the presiding judge.

On March 12, 1990, almost a month after filing his federal complaint, Drew filed a notice of bankruptcy with the district court. The notice indicated that, on February 7, Drew had filed for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 701 et seq, in the Western District of Texas. The notice further indicated that a trustee, Marsha Kocurek, had been appointed to administer Drew's estate.

In response to the notice of bankruptcy, the district court stayed Drew's civil rights case for thirty days "in order for the trustee to intervene if the trustee desires." The district court

noted, however, that if the trustee did not intervene, "the case [would] be dismissed for want of prosecution." When the trustee did not intervene within the specified time period, the district court sua sponte extended the stay until June 29, 1990. The district court again warned that, "if the trustee has not intervened by that date, the case will be dismissed for want of prosecution."

The trustee never intervened or filed an appearance in Drew's civil rights case. Accordingly, on July 3, 1990, the district court dismissed Drew's complaint for want of prosecution. This appeal followed.

## II.

On appeal, Drew argues that, by dismissing his complaint, the district court acted "in violation of the bankruptcy laws." The dismissal was erroneous, he contends, because: "[1] under the bankruptcy laws all entities are stayed at the filing of the bankruptcy petition[;] . . . [2] after continuing to proceed with the case the Court denied the Plaintiff/Appellant the right to participate in the proceedings[;] . . . [and] [3] the Court considered all attempts of Plaintiff/Appellant to participate as moot." We do not address the merits of Drew's contentions, because we conclude, for the following reasons, that he does not have standing to prosecute this appeal.

When Drew filed his bankruptcy petition, his civil rights claims against the defendants in this case became part of the

bankruptcy estate. The Bankruptcy Code provides that, when a case is commenced under 11 U.S.C. § 301, 302, or 303, an estate is created. 11 U.S.C. § 541(a). The Code further provides that the bankruptcy estate is comprised of, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." Id. § 541(a)(1). The legislative history to section 541(a)(1) indicates that the definition of property of the estate is to be interpreted broadly, and includes causes of action existing at the time of the commencement of the bankruptcy action. See S. Rep. No. 989, 95th Cong., 2d Sess. 82, reprinted in 1978 U.S.C.C.A.N. 5787, 5868; H.R. Rep. No. 595, 95th Cong., 1st Sess. 367, reprinted in 1978 U.S.C.C.A.N. 5963, 6323; United States v. Whiting Pools, Inc., 462 U.S. 198, 205 n.9 (1983) (noting that scope of 541(a)(1) is broad and includes causes of action); In re MortgageAmerica Corp., 741 F.2d 1266, 1274 (5th Cir. 1983) (section 541(a)(1) is all-encompassing and includes causes of action); see also Burkett v. Shell Oil Co., 448 F.2d 59, 59 (5th Cir. 1971). Because Drew's civil rights claims existed at the time the bankruptcy action was commenced,<sup>1</sup> they became part of the bankruptcy estate.

Moreover, in a Chapter 7 case, it is the trustee and not the debtor who represents the estate. See 11 U.S.C. § 323. As

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<sup>1</sup> The underlying state court litigation, which forms the basis for Drew's instant civil rights claims, was filed in November 1987. As best we can tell from the record, the actions about which Drew complains--i.e., certain discovery responses and rulings--occurred sometime in 1989. Thus, the claims existed at the time Drew filed his bankruptcy petition.

representative of the estate, the trustee "succeeds to all causes of action held by the debtor at the time the bankruptcy petition is filed." Miller v. Shallowford Community Hosp., Inc., 767 F.2d 1556, 1559 (11th Cir. 1985) (citing 4 COLLIER ON BANKRUPTCY ¶ 541.10[5] (15th ed. 1985)). Therefore, once a trustee is appointed in a Chapter 7 case, only the trustee has the capacity to represent the estate and prosecute claims formerly belonging to the debtor. See Bauer v. Commerce Union Bank, 859 F.2d 438, 441 (6th Cir. 1988) ("It is well settled that the right to pursue causes of action formerly belonging to the debtor . . . vests in the trustee for the benefit of the estate"), cert. denied, 489 U.S. 1079 (1989). Unless the claims are either abandoned or administered in accordance with the Code, they remain the property of the estate. 11 U.S.C. § 554(d). And, absent such circumstances, the debtor has no standing to pursue the claims. Bauer, 859 F.2d at 441.

Accordingly, we hold that Drew lacks standing to prosecute his claims and this appeal from the district court's order dismissing his claims. Upon filing for bankruptcy, his then-existing civil rights claims became part of the bankruptcy estate. When the trustee was appointed, she became the representative of the estate and succeeded to Drew's civil rights claims. Because nothing in the record suggests that these claims were abandoned or administered in accordance with the Code, these claims remain the property of Drew's bankruptcy estate. As property of the estate, Drew's claims and this appeal may only be

prosecuted by the trustee. See Transload & Transport, Inc. v. American Marine Underwriters, Inc., 94 B.R. 416, 418-19 (E.D. La. 1988).

### III.

We conclude that, because Drew lacks standing to prosecute his civil rights claims against the named defendants, he also lacks standing to appeal the district court's order dismissing those claims. We therefore DISMISS Drew's appeal.