

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2436  
Summary Calendar

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In the Matter of: P.T. EICHELBERGER, JR., M.D.,

Debtor.

P.T. EICHELBERGER, JR., M.D.,

Appellant,

versus

W. STEVE SMITH,

Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA H 91 0128)

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(January 5, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

EDITH H. JONES, Circuit Judge:\*

In this appeal, Dr. Eichelberger, a Chapter VII debtor, challenges the district court's order declining to remove trustee W. Steve Smith from his involvement in this case. This court has no jurisdiction over the appeal, and we must dismiss.

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Eichelberger filed his motion to remove W. Steve Smith as trustee in bankruptcy court, alleging that Smith should be removed for cause pursuant to 11 U.S.C. § 324 because he failed to evaluate creditors' claims properly and committed perjury and made fraudulent misrepresentations in connection with a fee application. The bankruptcy court denied this motion without a hearing, and the district court, on appeal, held alternatively that Eichelberger had no standing to seek removal of the trustee, or there was no merit in the appeal.

In his appellee's brief, the trustee suggests with misgivings that we lack appellate jurisdiction under the rationale set forth in In re Delta Services Industries, 782 F.2d 1267 (5th Cir. 1986). Delta Services conducted an extensive review of the appealability of bankruptcy court decision, a matter initially governed by 28 U.S.C. § 158(d), and concluded that this court lacked jurisdiction over the appeal of an order appointing an interim trustee in a bankruptcy case. This court has jurisdiction only over appeals from final orders of the bankruptcy or district courts. The court advanced several reasons why the bankruptcy court's orders appointing the trustee and approving his employment of counsel were non-final. Delta Services, 782 F.2d at 1271-72. We agree with the trustee that those reasons are fully applicable in this case. First, the bankruptcy court may reconsider at any appropriate time its initial decision to deny removal of a trustee. Second, the court may exercise its supervisory power over the trustee to condition or prohibit his disposition of assets under 11

U.S.C. § 363. Third, a party who disagrees with the court's orders regarding the selection of trustee (or, in this case, his continued retention) may convince the district court to grant leave to file an interlocutory appeal.<sup>1</sup> Fourth, in extraordinary cases, the court may grant mandamus. Eichelberger has neither applied for a writ of mandamus in connection with the trustee's removal nor ask that the court treat their appeal as a petition for mandamus.

Eichelberger's response to this jurisdictional question is hopelessly confused. Eichelberger does not even cite, much less attempt to refute, Delta Services. Instead, Eichelberger employs a pastiche of irrelevant arguments concerning the merits of this appeal and several other appeals that Eichelberger has pending in this court and in the district court. We cannot fathom the purpose of Eichelberger's arguments, and we deplore Eichelberger's failure to address properly the question of appellate jurisdiction. Eichelberger is hereby advised that further attempts to obfuscate the issues in particular appeals will be fruitless and may result in the imposition of sanctions.

There being no reason for us to distinguish the appealability of the order in this case from that of the order in Delta Services, we conclude that this court lacks appellate jurisdiction. Eichelberger's appeal is DISMISSED.

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<sup>1</sup> In this case, Eichelberger filed no motion seeking interlocutory review by the district court, pursuant to 28 U.S.C. § 158(a). Because it is clear that the district court's order was non-final, we decide the case on the basis of our lack of appellate jurisdiction and therefore do not consider whether the district court also lacked jurisdiction because Eichelberger did not move for leave to take an interlocutory appeal to the district court.