

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5681
Summary Calendar

In the Matter of: Robert L. Jensen and Martha S. Jensen
Debtors.

ROBERT L. JENSEN,
Appellant,

versus

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
UNION STATE BANK, ET AL.,
Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA-89-CV-719)

(November 1, 1993)

Before POLITZ, Chief Judge, DUHÉ and DeMOSS, Circuit Judges.

PER CURIAM:*

Robert L. Jensen, proceeding *pro se*, appeals the district court's denial of his motion for relief from judgment or alternatively for rehearing. Finding no error, we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Shortly after filing for Chapter 11 bankruptcy Jensen and his wife Martha sought, pursuant to 11 U.S.C. § 365, approval of his decision to reject his assignment of patent rights in a high frequency ventilator (HFV) to Texas Research, Inc. The bankruptcy court denied the motion. The Jensens filed a motion for relief from judgment which the bankruptcy court denied, except to clarify that its prior ruling concerned only the assignment of patent rights involving the HFV. The Jensens appealed the first order but not the second. The district court affirmed and we subsequently granted an intervenor's¹ motion to dismiss the appeal to this court for lack of an adequate record.

Undeterred, Jensen moved the district court for relief under Rule 60(b) of the Federal Rules of Civil Procedure from its affirmance of the bankruptcy court's denial of his motion to reject the assignment. The district court again denied relief. This appeal timely followed.

Jensen contends that the district court lacked jurisdiction to affirm the bankruptcy court's denial of his motion to reject the assignment because the bankruptcy court's order allegedly left numerous issues undecided and therefore the order was non-final.² If Jensen believed that the bankruptcy court had not addressed issues raised in his motion he should have said so at that time instead of appealing. Nonetheless, we will address the merits of

¹ The intervenor, Union Bank, held a security interest in the HFV.

² See 28 U.S.C. § 158(a).

the instant appeal because it involves a jurisdictional challenge.³

In support of his position Jensen points to the bankruptcy court's ruling on his first motion for relief from judgment. Explaining its ruling from the bench the bankruptcy court made clear that it was deciding only whether Jensen could reject his assignment of his patent rights in the HFV because that was the sole claim asserted in the motion. After reviewing the record before us we agree. We will not disturb the bankruptcy court's determination that no other claims were actually litigated. Jensen has provided us with no pertinent transcripts reflecting otherwise.⁴ We hold that the bankruptcy court decided the only matter before it in its original ruling denying the Jensens' motion to reject the assignment. Its order therefore was final for purposes of appellate review and the district court had jurisdiction to affirm it.

Our disposition of Jensen's finality argument moots his contention with respect to missing exhibits.

AFFIRMED.

³ **Sarmiento v. Texas Bd. of Veterinary Medical Examiners**, 939 F.2d 1242, 1245 (5th Cir. 1991) ("Due to the nature of the federal courts, a lack of subject matter jurisdiction may not be waived by the parties by consent, conduct, or even by estoppel.").

⁴ Fed.R.App.P. 10(b); **Bozé v. Branstetter**, 912 F.2d 801, 803 n.1 (5th Cir. 1990) (When the appellant does not provide a complete transcript of the record on appeal, "we necessarily limit the scope of our review to the available record.").