

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2278

CHARLES WAKEFIELD and
MARTHA WAKEFIELD,

Plaintiffs-Appellants,

versus

SAFEGUARD BUSINESS SYSTEMS,
INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-91-2040)

(February 16 1994)

Before HIGGINBOTHAM and WIENER, Circuit Judges, and KAUFMAN*,
District Judge.

PER CURIAM:**

In this bankruptcy case, Plaintiffs-Appellants Charles and
Martha Wakefield appeal the summary judgment rendered by the

* District Judge of the District of Maryland, sitting by
designation.

**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should not be published.

district court in favor of Defendant-Appellee Safeguard Business Systems, Inc. (Safeguard). The judgment was based on various procedural and limitations grounds, including the Wakefields' lack of standing to pursue on appeal the claims belonging exclusively to the trustee in their bankruptcy proceedings.

We have carefully considered the facts and legal arguments advanced by counsel in their briefs to this court and in their oral arguments to this panel, and have reviewed the summary judgment record from the district court. We are satisfied thatSOas the trustee did not abandon the claims but rather substituted himself as plaintiff once the summary judgment briefing was completedSOthe claims in question belong exclusively to the trustee. As such, his decision not to appeal from the summary judgment or to join in the instant appeal brought by the Wakefields makes inescapable the conclusion that the subject claims were not validly appealed. See 11 U.S.C. § 541(a)(1); Dallas Cabana, Inc. v. Hyatt Corp., 441 F.2d 865, 868 (5th Cir. 1971) (noting that a debtor can only bring a suit that the trustee will not bring by petitioning the bankruptcy court for an order authorizing abandonment); Stutts v. Waldrop, 377 F.2d 275, 276 (5th Cir. 1967) (noting that the trustee is the party responsible for asserting rights of action "in the proper tribunal when necessary . . . for collection and preservation of the estate.").

As alone the Wakefields lack standing to prosecute this appeal, we conclude that in the absence of either an abandonment of the claims by the trustee or a prosecution of the appeal from the

summary judgment by the trustee, we have no jurisdiction to entertain this appeal. We need not, therefore, reach questions of statutes of limitation, res judicata, issue preclusion, compulsory counterclaim, or the like; rather, the appeal taken by the Wakefields alone must be and is therefore DISMISSED.