

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8416
Summary Calendar

EDWARD G. GARZA,

Plaintiff-Appellant,

VERSUS

KERRVILLE BUS COMPANY, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
(SA-92-CA-421)

(November 18, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Edward Garza, an Hispanic bus driver, appeals summary judgment and the award of attorneys' fees to the Kerrville Bus Company ("Kerrville") in his civil rights action. Because we agree with the district court that Garza lacks jurisdiction to pursue any

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

claim not listed as an asset in his bankruptcy proceeding, we affirm summary judgment. Furthermore, Garza lacks standing to challenge the award of attorneys' fees.

I.

Garza was employed as a bus driver for Kerrville. He alleges that during the time of his employment, he was subjected to racial and ethnic slurs by co-workers and managerial staff. In addition, he claims to have been denied opportunities for advancement as a result of selective announcements of new positions.

In 1985, Garza filed a complaint with the Equal Employment Opportunity Commission ("EEOC") against Kerrville. In 1987, he filed a voluntary petition in bankruptcy and was discharged under chapter 7 of the Bankruptcy Code. Garza finally received a right to sue letter from the EEOC in February 1992. That April, he filed suit, alleging employment discrimination.

Kerrville moved for dismissal or summary judgment on the basis of standing, limitations, and the absence of evidence. The magistrate judge concluded that Garza lacked standing to pursue his claims, having failed to disclose the claims as an asset in his personal bankruptcy proceeding post-dating the events that constituted the accrual of his claims. The magistrate judge recommended dismissal and an award of attorneys' fees against Garza for having pursued the claim despite notice of his lack of standing.

Overruling Garza's objection to the magistrate's recommendation and without mentioning the fact that Garza had successfully moved to reopen his bankruptcy estate, the district court concluded that Garza lacked standing to pursue his claims. Furthermore, the court found that Garza had failed to object to the recommendation that Kerrville be awarded attorneys' fees.

II.

A.

We review a grant of summary judgment de novo. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c).

Garza does not deny that he failed to list his claim on his bankruptcy petition and that therefore the claim became property of the bankruptcy estate. Burkett v. Shell Oil Co., 448 F.2d 59 (5th Cir. 1971) (per curiam). Garza maintains, however, that this court should stay the action until the bankruptcy trustee determines whether the claim will be abandoned or pursued by the bankruptcy trustee. But the automatic stay provisions of the Bankruptcy Code do not apply, as this is not a case involving a claim against the debtor or the estate. See, e.g., Freeman v. Commissioner of Internal Revenue, 799 F.2d 1091, 1092-93 (5th Cir. 1986).

Therefore, we agree with the district court that summary judgment was appropriate.

B.

Garza also challenges the award of attorneys' fees to Kerrville, although he failed to object at the district level. "This court generally declines to address issues not raised below unless the issue presents a pure question of law and to ignore it would result in a miscarriage of justice." Deshotels v. SHRM Catering Servs., Inc., 842 F.2d 116, 120 (5th Cir. 1988) (citation omitted). Accordingly, we will not disturb the district court's conclusion that Garza's continued prosecution of his case after he was put on notice that he lacked standing merits the award of attorneys' fees under 42 U.S.C. § 2000e-5(k).

AFFIRMED.