

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-30396
Summary Calendar

IN THE MATTER OF: JON F. TESSMER, Dr.,

Debtor.

JON F. TESSMER, Dr.,

Appellant,

VERSUS

DOCTOR'S HOSPITAL OF JEFFERSON, INC.,

Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-3361-F)

(November 23, 1994)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Creditor-Appellee Doctor's Hospital of Jefferson, Inc. (DHJ) sought declaratory relief in an adversary proceeding in bankruptcy court on a contract with Debtor-Appellant Jon F. Tessmer. The bankruptcy court denied motions to dismiss for failure to state a claim and for summary judgment and dismissed the complaint for lack of subject matter jurisdiction. The district court affirmed. Despite having the suit against him dismissed, Tessmer appeals

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

because the bankruptcy court did not dismiss the complaint on substantive grounds. We dismiss his appeal for lack of appellate jurisdiction.

FACTS

Tessmer, a doctor, contracted with DHJ to practice medicine there and become a member of DHJ's staff. Tessmer later filed for bankruptcy under Chapter 7 of the Bankruptcy Code and was discharged under § 727. Thereafter DHJ filed this declaratory action against Tessmer. It sought a determination that their contract was not part of the estate and that Tessmer was liable on the contract. Tessmer responded with a motion to dismiss contending that his obligations under the contract were discharged. DHJ moved for summary judgment on its Complaint.

The bankruptcy court found that the contract between Tessmer and DHJ was executory and for personal services. In accordance with Turner v. Avery, 947 F.2d 772, 774 (5th Cir. 1991), cert. denied, 112 S. Ct. 2966 (1992), the bankruptcy court determined that the contract was, therefore, not property of the estate. Because the contract was not property of the estate, the bankruptcy court determined that it had no jurisdiction over the contract. The court then denied both motions and dismissed the complaint for lack of subject matter jurisdiction. The district court affirmed.

DISCUSSION

Our jurisdiction stems from 28 U.S.C. § 158(c), which allows appeals of final judgments from the bankruptcy court via the district court. Appellate jurisdiction from final judgments is governed by 28 U.S.C. § 1291. The Supreme Court has limited a party's statutory right to appeal under § 1291 to judgments that

aggrieve the appealing party. Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326, 333 (1980). As the exception to this general rule, the party prevailing on the merits may nonetheless appeal from an adverse ruling collateral to the judgment. Id. at 334. The exception is not limited to whether the adverse ruling would support collateral estoppel in a subsequent suit. Id. Rather, the prevailing party has the right to ask for reformation of the judgment if an issue litigated was adjudicated. Id. at 335.

Tessmer does not have a right to appeal. He was not aggrieved by the bankruptcy court's dismissal of DHJ's suit for lack of subject matter jurisdiction. Tessmer argues that his obligations under the contract were discharged by operation of law. The collateral ruling exception is not applicable because the bankruptcy court did not reach the issue of dischargeability.² See Order and Reasons at 5 (E.D. La. June 16, 1994). Tessmer does not appeal the bankruptcy court's determination that the contract was not property of the estate. Because the bankruptcy court did not reach the issue of whether discharge affected the contract, we dismiss this appeal for lack of appellate jurisdiction.³

Appeal DISMISSED.

² The bankruptcy court held that it lacked jurisdiction over this contract. Of course, the court has jurisdiction to determine the dischargeability of particular debts, whether or not they arise from personal services contracts. 28 U.S.C. § 157(b)(2)(I) (1988). The Complaint in this case, however, sought a determination on liability; Tessmer asserted dischargeability merely as a defense.

³ The bankruptcy court should not have denied the pending motions when dismissing the complaint for lack of subject matter jurisdiction. If the court lacked jurisdiction, it had no authority to act upon the substantive motions before it.