

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 16, 2021

Lyle W. Cayce
Clerk

No. 20-20638
Summary Calendar

IN THE MATTER OF: CLEVELAND IMAGING; SURGICAL
HOSPITAL, L.L.C.

Debtor,

CHRISTOPHER L. QUINN, AS TRUSTEE FOR CI LITIGATION
TRUST,

Appellee,

versus

FADI GEORGE GHANEM,

Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-4083

Before DENNIS, CLEMENT, and HAYNES, *Circuit Judges.*

PER CURIAM:*

This appeal is the byproduct of several proceedings generated by Cleveland Imaging and Surgical Hospital, LLC's petition for relief under Chapter 11 of the Bankruptcy Code in 2014. *See In re Cleveland Imaging & Surgical Hosp. LLC*, No.14-34974 (Bankr. S.D. Tex. 2014). Cleveland Imaging received a license from the Texas Department of State Health Services in 2006. In 2011, it contracted with various unlicensed "free-standing emergency clinics ("FECs") that 'purported to treat asserted minor medical emergencies[.]'" Under these contracts, the FECs agreed to provide services to Cleveland Imaging's patients at their own facilities but billed the patients' insurance carriers as though the services were provided at Cleveland Imaging. These activities resulted in various lawsuits (both adversary and nonadversary bankruptcy proceedings). The lawsuit pertinent to this appeal was filed in 2019.

Christopher L. Quinn, Litigation Trustee for Cleveland Imaging, filed an adversary bankruptcy proceeding against several defendants, including Fadi George Ghanem. *See Quinn v. Moparty (In re Cleveland Imaging & Surgical Hosp. LLC)*, Ch. 11 Case No. 14-34974, Adv. No. 19-03566 (S.D. Tex. July 5, 2019). Appellant Ghanem was a part owner of Premier, one of the participating FECs. He was also a part owner of Cleveland Imaging. Following a pre-trial conference in the adversary proceeding, the bankruptcy court issued a report and recommendation, recommending that the district court withdraw the reference. On November 4, 2020, the district court did so.

While the adversary bankruptcy proceeding was pending, however, the underlying bankruptcy case (the nonadversary proceeding) culminated in

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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a settlement, which the bankruptcy court then approved pursuant to Rule 9019 of the Bankruptcy Code. After the bankruptcy court entered the settlement order, the Trustee filed a motion to dismiss the adversary proceeding with the district court. The district court granted the motion, entering the final dismissal on November 24, 2020. It was from *this* order that Ghanem took his appeal.

Despite appealing the district court's final dismissal order, Ghanem seeks reversal of the settlement order entered by the *bankruptcy court*. And, he has already attempted to appeal the settlement order before. Indeed, the district court reviewed and dismissed that appeal—which was filed under a different docket number—on February 8, 2021. No further appeal was taken from that dismissal order. Thus, we are now without jurisdiction to reach the settlement order. *See Smith v. Gartley (In re Berman-Smith)*, 737 F.3d 997, 1003 (5th Cir. 2013) (per curiam) (“[T]he failure to file a timely notice of appeal in the district court leaves the district court, and this court, without jurisdiction to hear the appeal.”). Ghanem cannot escape this fact by attempting to collaterally attack the settlement order through this appeal, which stems from the district court's dismissal of the *adversary* proceeding. *See, e.g., In re Stephen*, No. 15-CV-5542 (VEC), 2015 WL 13203927, at *4 (S.D.N.Y. Dec. 4, 2015) (“A bankruptcy court's approval of a settlement order that resolves litigation between parties is a final order[] and is entitled to full res judicata effect.” (internal quotation marks omitted)); *cf. id.* (collecting cases). Thus, we lack subject matter jurisdiction over this appeal.

APPEAL DISMISSED.