IN THE COURT OF APPEALS OF IOWA

No. 9-125 / 98-0947
Filed April 30, 1999

AMY BENGTSON,

Plaintiff-Appellant,

vs.

KATHRYN PAEZ and MANUEL PAEZ,

Defendants-Appellees.

Appeal from the Iowa District Court for Page County, Keith E. Burgett, Judge.

Plaintiff appeals from the district court order granting defendants' motion for summary judgment on her personal injury claim. **AFFIRMED.**

Michael G. Reilly of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellant.

Robert J. Laubenthal and Thomp J. Pattermann of Smith Peterson Law Firm, Council Bluffs, for appellees.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Plaintiff appeals from the district court order granting defendants' motion for summary judgment on her personal injury claim. Plaintiff contends the district court erred in finding she was not the real party in interest and the suit was required to be brought in the name of her bankruptcy trustee. We affirm.

Amy Bengtson was injured in an automobile accident which occurred on December 30, 1994. On July 7, 1995, Bengtson filed for bankruptcy. She received a discharge on October 25, 1995. Deborah Petersen was named the trustee of the bankruptcy estate. On February 6, 1996, Petersen filed an application with the bankruptcy court to employ attorney Michael G. Reilly "to represent or assist the trustee in carrying out the trustee's duties." Said application was granted.

Bengtson filed a petition at law in her own name on October 29, 1996. Following discovery, defendants filed an amended answer on April 4, 1997, raising the bankruptcy issue. Defendants alleged any cause of action was an asset of the bankruptcy trustee and Bengtson was not the real party in interest. Bengtson filed a First Amended Petition at Law on May 2, 1997, which listed the trustee as an additional plaintiff.

On May 9, 1997, defendants served a Pre-Answer Motion to Dismiss and Motion to Quash alleging failure to properly serve original notice upon them. The district court set the matter for hearing on July 14, 1997. However, the trustee filed

a dismissal without prejudice on June 30, 1997. Therefore, the hearing never took place.

Defendants filed a motion seeking summary judgment on July 17, 1997, which was denied on August 11, 1997. A second motion seeking summary judgment was filed on March 5, 1998, following the taking of a deposition of Bengtson. The district court granted the second motion in an order dated March 27, 1998. The district court found that Bengtson was not the real party in interest and lacked standing to pursue the suit in her own name. Bengtson appeals.

I. STANDARD OF REVIEW. The district court's grant of summary judgment is reviewed for errors at law. *Hayward v. P.D.A., Inc.*, 573 N.W.2d 29, 31 (Iowa 1997); Iowa R. App. P. 4. We will uphold the grant of summary judgment when the moving party has shown there are no genuine issues of material fact and the party is entitled to judgment as a matter of law. *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). We review the record in the light most favorable to the party opposing the motion for summary judgment. *Id.*

II. REAL PARTY IN INTEREST. The district court concluded Bengtson was not the real party in interest. As such, the district court found only the trustee had standing to proceed on the claim unless it had been abandoned as an asset of the bankruptcy estate. We agree.

The petition was brought in the name of Bengtson personally. There was no reference whatsoever in the petition to the existence of either a bankruptcy estate

or a bankruptcy trustee. Such information only became known to defendants in discovery. Thereafter, Bengtson amended the petition to include the trustee. Defendants resisted prior to any answer on the grounds of lack of notice. The matter was then set for hearing on this issue. Before it could be determined, the trustee dismissed her claim without prejudice.

Bengtson's personal injury claim became property of the bankruptcy estate pursuant to 11 U.S.C. section 541(1). *Folz v. BancOhio Nat'l Bank*, 88 B.R. 149, 150 (S.D. Ohio 1987). If a "cause of action exists on behalf of the estate, suit must be brought *exclusively* by the trustee of the estate." *McDonald v. Fairfield Pathologists, Inc.*, 580 N.E.2d 690, 692 (Ind. App. 1991) (citing *In re Couch*, 43 B.R. 56 (W.D. Ark. 1994)) (emphasis added). The bankruptcy court held that the bankruptcy debtor did not have standing to bring the action in his own name and, therefore, the action was dismissed. *McDonald*, 580 N.E.2d at 692; *see also Rice v. Adam*, 575 N.W.2d 399, 403-04 (Neb. 1998); *Bostanian v. Liberty Sav. Bank*, 61 Cal. Rptr. 2d 68, 71 (Ct. App. 1997).

This issue has been resolved by our court in *Bronner v. Exchange State Bank*, 455 N.W.2d 289, 290 (Iowa App. 1990). We concluded that the matter was a jurisdictional issue and the bankruptcy debtor did not have standing to bring the claim personally, and dismissal by the district court in a summary judgment proceeding was proper. We further concluded that claims such as these must be brought by the trustee and not the bankruptcy debtor unless abandonment of the claim has occurred. *Id.*

III. ABANDONMENT BY THE TRUSTEE. A bankruptcy debtor may sue in his or her own name if the evidence shows the trustee has abandoned the claim. *Bronner*, 455 N.W.2d at 290; *Folz*, 88 B.R. at 150; *Vickers v. Freyer*, 850 S.W.2d 10, 12 (Ark. Ct. App. 1993). Bengtson does not claim the trustee abandoned the claim. Instead, Bengtson alleges the trustee assigned the claim to her. The record in this case is devoid of any documentation or evidence whatsoever to support a claim of assignment. In addition, Bengtson does not provide any legal authority on the issue.[1] This claim is without merit.

We have carefully reviewed the claims of Bengtson and conclude the district court decision should be affirmed.

AFFIRMED.

[1] We do not, therefore, address the issue of whether an assignment has the same legal effect as an abandonment.

No. 98-0947. [9-125] BENGTSON v. PAEZ

Appeal from the Iowa District Court for Page County, Keith E. Burgett, Judge. **AFFIRMED.** Heard by Sackett, C.J., and Huitink and Mahan, JJ. Opinion by Mahan, J. (5 pages $2.00)

Amy Bengtson appeals the district court order granting defendants' motion for summary judgment on her personal injury claim. Bengtson was injured in an automobile accident which occurred on December 30, 1994. On July 7, 1995, Bengtson filed for bankruptcy and received a discharge on October 25, 1995. Bengtson filed this petition at law in her own name on October 29, 1996. The district court found Bengtson was not the real party in interest and lacked standing to pursue the suit in her own name. **OPINION HOLDS: I.** ***Real Party in Interest.*** Bengtson's personal injury claim became property of the bankruptcy estate pursuant to 11 U.S.C. section 541(1). This issue has been resolved in our court in *Bronner v. Exchange State Bank*, 455 N.W.2d 289 (Iowa App. 1990). We concluded that the matter was a jurisdictional issue and the bankruptcy debtor did not have standing to bring the claim personally, and dismissal by the district court in a summary judgment proceeding was proper. We further concluded that claims such as these must be brought by the trustee and not the bankruptcy debtor unless abandonment of the claim has occurred. **II.** ***Abandonment by the Trustee.*** Bengtson does not claim the trustee abandoned the claim; rather, she alleges the trustee assigned the claim to her. The record in this case is devoid of any documentation or evidence whatsoever to support a claim of assignment. In addition, Bengtson does not provide any legal authority on the issue. After careful review, we conclude the district court decision should be affirmed.