

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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VINOD SHARMA, M.D.,

Plaintiff-Appellant,

v

PETER T. MOONEY, ESQ., PATRIC A.  
PARKER, ESQ., SIMEN FIGURA & PARKER,  
P.L.C., DANIEL J. RITTMAN, ESQ. and SCOTT  
HOPE,

Defendants-Appellees,

and

GENESEE COUNTY SHERIFF'S  
DEPARTMENT and MICHAEL GAYLORD,

Defendants.

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Before: Whitbeck, C.J. and Sawyer and Saad, JJ.

PER CURIAM.

This appeal involves an action filed by plaintiff Vinod Sharma, M.D., against defendants-appellees, attorneys Peter T. Mooney, Patric A. Parker, their law firm Simen Figura & Parker (SFP), attorney Daniel J. Rittman, and Genesee County Sheriff's Deputy Scott Hope, in which plaintiff alleged that defendants wrongfully obtained and enforced a writ of execution. The writ of execution stemmed from a prior breach of contract lawsuit against plaintiff by defendant Michael Gaylord, wherein Gaylord obtained a money judgment against plaintiff. Plaintiff now appeals from three separate orders of the circuit court that granted defendants-appellees (hereinafter defendants) summary disposition of plaintiff's complaint, and we affirm.<sup>1</sup>

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<sup>1</sup> Plaintiff contends that the circuit court had subject matter jurisdiction to consider the state law tort claims that he raised in his complaint. We agree that the state tort claims within plaintiff's complaint plainly fall within the broad scope of the circuit court's subject matter jurisdiction. Const 1963, art 6, § 13; *LME v ARS*, 261 Mich App 273, 279; 680 NW2d 902 (continued...)

## I

Plaintiff argues that the circuit court erred when it ruled that he lacked standing to bring any of the three counts of his complaint because the legal claims contained therein belong to the trustee in plaintiff's bankruptcy proceedings. Whether a party has legal standing to assert a claim constitutes a question of law that this Court considers de novo. *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001). This Court also reviews de novo a trial court's summary disposition ruling. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When considering a motion brought pursuant to MCR 2.116(C)(5), an appellate court must review the pleadings, admissions, affidavits and other relevant documentary evidence to determine whether as a matter of law the plaintiff lacked the capacity to bring the lawsuit. *Edgewood Development, Inc v Landskroener*, 262 Mich App 162, 165; 684 NW2d 387 (2004); *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003).

Plaintiff filed for bankruptcy. Federal bankruptcy law provides that any property owned by a debtor, including causes of action, become part of the bankruptcy estate. Accordingly, after a bankruptcy petition is filed, a debtor, like plaintiff here, loses standing to pursue these causes of action, because they are part of the bankruptcy estate. Only the bankruptcy trustee has standing to pursue these claims, unless the trustee takes affirmative steps to abandon them and remove the claims from the bankruptcy estate. Here, plaintiff's claims against defendants are part of the bankruptcy estate that was created when he filed his bankruptcy petition. Plaintiff claims that the bankruptcy proceedings were closed and that the instant claims were abandoned, but provided little or no evidence to the circuit court to support these contentions. Accordingly, the circuit court correctly ruled that plaintiff lacked standing to pursue his claims, and correctly granted summary disposition in defendants' favor.

## A

The circuit court ruled that the bankruptcy trustee had sole authority to pursue the instant claims filed by plaintiff because plaintiff had petitioned for bankruptcy protection before he filed this lawsuit. 11 USC 541(a) provides:

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case.

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(...continued)

(2004). Because the circuit court did not find that it lacked jurisdiction to consider this matter, and because defendants at no point have challenged the circuit court's subject matter jurisdiction, we decline to further address this issue.

(7) Any interest in property that the estate acquires after the commencement of the case.

Federal cases interpreting § 541(a)(1) recognize that the broad category of debtor's interests that become a part of the bankruptcy estate includes, importantly for our analysis, causes of action possessed by the debtor at the time that he files a petition for bankruptcy protection. *Integrated Solutions, Inc v Service Support Specialties, Inc*, 124 F3d 487, 490-491 (CA 3, 1997). "A cause of action is a property right which passes to the trustee in bankruptcy, even if such cause of action is not included in schedules filed with the bankruptcy court. Therefore, upon filing a petition for bankruptcy, a debtor loses standing to pursue any claims because those claims become part of the bankruptcy estate."<sup>2</sup>

Moreover, once a claim becomes the estate's property under § 541(a)(1),

certain conclusions follow. First, the automatic stay applies. Moreover, because the claim is property of the estate, the trustee is given full authority over it. Thus, before a debtor or a creditor may pursue a claim, there must be a judicial determination that the trustee in bankruptcy has abandoned the claim. Without such a determination, a creditor seeking to pursue a claim cannot maintain it. [*Steyr-Daimler-Puch of America Corp v Pappas*, 852 F2d 132, 136 (CA 4, 1988).]

Abandonment may only occur pursuant to 11 USC 554. *First New York Bank for Business v DeMarco*, 130 BR 650, 655 (SDNY, 1991). Under § 554,<sup>3</sup> a trustee may commence formal

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<sup>2</sup> *Carlock v Pillsbury Co*, 719 F Supp 791, 856 (D Minn, 1989); see also *Shearson Lehman Hutton, Inc v Wagoner*, 944 F2d 114, 118 (CA 2, 1991) (observing that under the Bankruptcy Code, "the trustee stands in the shoes of the bankrupt corporation and has standing to bring any suit that the bankrupt corporation could have instituted had it not petitioned for bankruptcy," citing 11 USC 541-542).

<sup>3</sup> Section 554 provides as follows:

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) *Unless the court orders otherwise, property of the estate that is not*  
(continued...)

abandonment proceedings to abandon estate property, or property “may be abandoned by operation of law if it has been scheduled and not ‘otherwise administered’ at the time the case is closed.” *Stanley v Sherwin-Williams Co*, 156 BR 25, 26 (WD Va, 1993).

A debtor’s failure to list a claim within his schedule of assets at the time of his bankruptcy filing prevents any abandonment from occurring:

Once a cause of action becomes the property of the estate, the debtor may not bring suit on that action unless the property has been abandoned by the trustee. If a trustee chooses to abandon a claim or is ordered to do so, the debtor may assert title to the cause of action and bring suit upon it. If, however, the debtor fails to list a claim as an asset, the trustee cannot abandon the claim because he or she will have had no opportunity to determine whether it will benefit the estate. In such circumstances, the debtor may not claim abandonment and seek to enforce the claim after discharge . . . . [*Krank v Utica Mut Ins Co*, 109 BR 668, 669 (ED Pa, 1990), *aff’d* 908 F2d 962 (CA 3, 1990), citing *First Nat’l Bank v Lasater*, 196 US 115; 25 S Ct 206; 49 L Ed 408 (1905).]

See also *In re Kottmeier*, 240 BR 440, 442-444 (MD Fla, 1999) (explaining that both causes of action predating and postdating the petition filing must appear in initial or revised bankruptcy schedules for abandonment to potentially occur).

## B

Plaintiff contends incorrectly that he has standing to pursue instant claims because, by October 2002, when he commenced this lawsuit, his bankruptcy proceeding had concluded, and the trustee had abandoned the instant causes of action so that plaintiff could pursue them. The circuit court record contains scant documentation from the bankruptcy proceedings. Plaintiff attached to his complaint a copy of the personal bankruptcy petition he filed on November 9, 1999. Plaintiff also attached a copy of the petition that corporate entity Vinod Sharma, M.D., P.C. filed on February 25, 2000. Other than a copy of Gaylord’s June 12, 2000, proof of claim against plaintiff’s bankruptcy estate, the only bankruptcy-related document within the court file is an August 13, 2001, order regarding objections to claims, which allowed Gaylord’s claim for \$35,963.95. The August 2001 bankruptcy court order reflects that the court consolidated both plaintiff’s personal bankruptcy and the subsequently filed bankruptcy of Vinod Sharma, M.D., P.C.

Plaintiff repeatedly has insisted that all bankruptcy proceedings concluded by May 2000 when the corporation, Vinod Sharma, M.D., P.C., received the discharge of its debt, or October 2000, when plaintiff obtained the discharge of his personal debts. Plaintiff apparently confuses the bankruptcy events of a discharge of debts with the final closing of the bankruptcy estate.<sup>4</sup>

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(...continued)

*abandoned under this section and that is not administered in the case remains property of the estate.* [Emphasis added.]

<sup>4</sup> See *Stanley*, *supra* at 26 (observing that estate property “may be abandoned by operation of law if it has been scheduled and not ‘otherwise administered’ at the time the case is *closed*”) (continued...)

Even assuming that the discharges of plaintiff and Vinod Sharma, M.D., P.C. became effective in October and May 2000, respectively, a fact that plaintiff failed to support with any documentary evidence or testimony, the discharges did not close the consolidated bankruptcy proceedings, as evidenced by the bankruptcy court's subsequent August 2001 order regarding claims.

Plaintiff provided the circuit court with no evidence that the consolidated bankruptcy proceedings had closed by the time he commenced the instant case in October 2002. To the contrary, at the summary disposition hearing on January 2, 2003, defendant Mooney asserted that the bankruptcy proceedings remained open for administration because plaintiff had filed a claim against the bankruptcy trustee and his attorney. Moreover, and dispositively, at the summary disposition hearing, plaintiff essentially admitted that the bankruptcy proceedings had not closed.<sup>5</sup> Clearly, plaintiff failed to establish that the bankruptcy proceedings had closed, and his own statements reflect that the bankruptcy proceeding continued well after he filed his complaint in October 2002, and even after he filed his brief on appeal in September 2003. Because there is no evidence that the bankruptcies concluded, as a matter of law there is no abandonment of claims under § 554. *Stanley, supra* at 26.

In the circuit court, plaintiff introduced absolutely no evidence to support his contention that the bankruptcy trustee took affirmative steps to abandon his legal claims against defendant. On appeal, plaintiff presents an exhibit, which is not properly before this Court because it was not presented below, *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990), indicating that the bankruptcy trustee took affirmative action to abandon property of the bankruptcy estates on September 24, 2002. Were we to consider the proffered exhibit, it establishes only that the trustee had filed an application to abandon "[t]he books and records of the debtor 60 days after the entry of the order closing the estate." Accordingly, no evidence supports plaintiff's suggestion that the bankruptcy trustee took affirmative and formal steps under § 554 to abandon any legal claims that plaintiff or the corporation possessed during the pendency of the consolidated bankruptcy proceedings. *First New York Bank for Business, supra* at 655.<sup>6</sup>

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(...continued)

(emphasis added).

<sup>5</sup> Plaintiff said that he had "filed an objection to award [certain] payments. So currently there is an objection in the Court on file. And it is going to be heard. The date has not been set yet." Plaintiff further conceded in his brief on appeal that additional bankruptcy proceedings remained outstanding. According to plaintiff's brief, the trustee made decisions concerning abandonment of particular trust property on September 24, 2002, plaintiff then filed an "adversary complaint as to [defendants] in U.S. [B]ankruptcy Court . . . for alleged violation of Federal Statutes," "the trial [wa]s scheduled to begin on October 23, 2003," and a "summary disposition [motion] by . . . defendant's [sic] is on the docket without any known date of hearing being granted by the U.S. Bankruptcy Court."

<sup>6</sup> Aside from the fact that no substantiation exists regarding affirmative trustee abandonment or abandonment through closure of the consolidated bankruptcy estate, another fact precludes any potential finding of abandonment. Plaintiff presented no proof that he or the corporation revealed any legal claims that they possessed in their bankruptcy schedules of assets, either at the time of their bankruptcy filings or by amendment. *In re Kottmeier, supra* at 442-444 (explaining (continued...))

## C

The various legal claims within the complaint that plaintiff raised concerning violations of his rights and the rights of Vinod Sharma, M.D., P.C., all arose before or during their respective bankruptcy proceedings, and therefore belonged to the bankruptcy estate. *In re Kottmeier*, *supra* at 442-444; *Carlock*, *supra* at 856. No evidence suggested that at the time plaintiff filed this case, the trustee formally had abandoned any legal claims of plaintiff or the corporation that belonged to the consolidated bankruptcy estate, that the trustee had the opportunity to formally abandon any such legal claims, or that abandonment of any legal claims had occurred as a matter of law when the consolidated bankruptcy estate closed. Because any causes of action possessed by plaintiff and Vinod Sharma, M.D., P.C. constitute property rights that passed to the bankruptcy trustee, plaintiff lacks standing to pursue all of the instant legal claims against defendants. *Shearson Lehman Hutton*, *supra* at 114; *Carlock*, *supra* at 791. Therefore, the circuit court properly granted defendants' motions for summary disposition of plaintiff's complaint pursuant to MCR 2.116(C)(5).<sup>7</sup>

## II

Because we have held that the trial court properly granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(5), we decline to address plaintiff's remaining issues on appeal.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Henry William Saad

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(...continued)

that both causes of action predating and postdating the petition filing must appear in initial or revised bankruptcy schedules for abandonment to potentially occur); *Carlock*, *supra* at 856. "If . . . the debtor fails to list a claim as an asset, the trustee cannot abandon the claim because he or she will have had no opportunity to determine whether it will benefit the estate. In such circumstances, the debtor may not claim abandonment and seek to enforce the claim after discharge." *Krank*, *supra* at 669.

<sup>7</sup> In addition to plaintiff's bankruptcy-related lack of standing to pursue the instant legal claims, plaintiff does not appear to be the proper party to raise some of the allegations within his complaint for another reason. Plaintiff raises several complaint allegations concerning the wrongful execution against Vinod Sharma, M.D., P.C., on January 24, 2000. This Court has recognized that "[i]n Michigan, the law treats a corporation as entirely separate from its shareholders, even where one person owns all the corporate stock." *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 473-474; 666 NW2d 271 (2003). "The doctrine of standing provides that a suit to enforce corporate rights or to redress or prevent injury to a corporation . . . ordinarily must be brought in the name of the corporation, and not that of a stockholder, officer, or employee." *Id.* at 474.