

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SALLY STERN-HAMILTON,

Plaintiff,

and THOMAS BOYD, as Trustee of
Sally Stern-Hamilton's Bankruptcy Estate,

Proposed Substitute Plaintiff,

CASE NO. 1:11-CV-717

v.

HON. ROBERT J. JONKER

MASON COUNTY DISTRICT LIBRARY,
ROBERT DICKSON, in his individual and
official capacity, and MARILYN BANNON,
in her individual and official capacity,

Defendants.

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OPINION AND ORDER

Before the Court is a motion to substitute the Bankruptcy Trustee of Plaintiff's bankruptcy estate for Plaintiff in this lawsuit (docket # 21), and Defendants' motion to dismiss for lack of subject matter jurisdiction (docket # 22). The Court has review all relevant matters of record. Both motions are ripe for decision. For the reasons set forth below, the Bankruptcy Trustee's motion to substitute as party-plaintiff is **GRANTED**, and Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1) is **DENIED**.

FACTUAL BACKGROUND

The facts relevant to the parties' motions are not in dispute. On July 13, 2011, Plaintiff filed this lawsuit, claiming that Defendants violated her First Amendment rights by firing her from the Mason County District Library on July 25, 2008. (docket #1.) After being served with the

Complaint, Defendants discovered that Plaintiff had previously filed for Chapter 7 bankruptcy protection on September 4, 2009, but failed to disclose her potential cause of action against Defendants in her bankruptcy schedules or at any time prior to receiving a discharge from bankruptcy on December 15, 2009. (docket # 21, at 2.) Defendants' counsel contacted Thomas Boyd, the Trustee of Plaintiff's estate, and alerted him of this fact in August 2011. (*Id.* at 3.) Shortly thereafter, the Trustee filed a motion to reopen Plaintiff's bankruptcy estate and to withdraw the Trustee's Report of No Distribution, which the Bankruptcy Court granted on September 8, 2011. (*Id.* at Ex. A.)

On October 14, 2011, the Trustee filed a motion to substitute for Plaintiff in this lawsuit under Fed. R. Civ. P. 17(a). (*Id.*) Defendants opposed the motion and filed their own motion to dismiss, arguing that Plaintiff lacked standing when she initially filed the lawsuit and that as a result, the Trustee cannot substitute for Plaintiff as the real party-in-interest. (docket #20.) Defendants admit Plaintiff was not the real party-in-interest at the time the lawsuit was filed because her cause of action was property of the bankruptcy estate, but argue that Plaintiff had constitutional standing and that Defendants may therefore substitute for Plaintiff, with the substitution "relating back" to the original filing date of the Complaint. (docket ## 21, 24.)

ANALYSIS

The parties agree that Plaintiff is not the real party-in-interest due to the operation of section 541 of the Bankruptcy Code. To cure this defect, the Trustee moves to substitute as the real party-plaintiff in this action under Fed. R. Civ. P. 17(a)(3), which states "the court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action." Shortly after Plaintiff filed her lawsuit, Defendants moved to dismiss the case because

Plaintiff was not the real party in interest. After receiving notice of Plaintiff's self-created plight, the Trustee promptly moved to reopen Plaintiff's bankruptcy estate. After the Bankruptcy Court granted the Trustee's motion, the Trustee filed a motion to substitute with this Court before the case had proceeded on the merits. The substitution will not change the legal and factual issues raised in Plaintiff's Complaint, and Defendants will not be unduly prejudiced by any delay associated with the substitution. Therefore, the Court concludes that the Trustee has satisfied the requirements of Rule 17(a)(3).

Additionally, the Trustee's substitution relates back to the date Plaintiff filed her Complaint. Rule 17(a)(3) expressly provides that "[a]fter ratification, the case proceeds as if it had been originally commenced by the real party in interest." The Sixth Circuit has held that substitution "relates back to the original time when the original party had standing to sue," and that "no other conclusion is possible" given the Rule's plain language. *Corbin v. Blankenburg*, 39 F.3d 650, 654 (6th Cir. 1995) (*en banc*). As noted above, the Trustee satisfied Rule 17(a)(3). Consequently, the substitution relates back to July 13, 2011—the date the Complaint was filed.

Defendants do not dispute the Trustee satisfied Rule 17(a)(3), and they concede that such a substitution would relate back to Plaintiff's date of filing. Rather, Defendants argue that Plaintiff lacked constitutional standing to bring the lawsuit when it was originally filed, and that as a consequence, Plaintiff's lawsuit must be dismissed. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("[I]f jurisdiction is lacking at the commencement of a suit, it cannot be aided by the intervention of a plaintiff with a sufficient claim."); *Am. Telecom Co. v. Republic of Lebanon*, 501 F.3d 534, 539 (6th Cir. 2007); *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Under Defendants' theory, the earliest effective date of the Trustee's cause of action would be October 14, 2011—the

date the motion to substitute was filed—which is outside of the applicable statute of limitations and therefore time-barred.¹

Defendants argument is unpersuasive because Plaintiff had constitutional standing when she filed the Complaint and the relation back of the Trustee’s substitution under Rule 17(a)(3) renders moot Defendants’ statute-of-limitations argument. To satisfy the constitutional standing requirements of Article III, Plaintiff must show that (a) she suffered an “injury in fact”; (b) the injury is “fairly traceable” to Defendants’ alleged conduct; and (c) the relief requested in this lawsuit can redress her injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Taking Plaintiff’s allegations as true for the purposes of this analysis, the constitutional standing requirements are satisfied. Plaintiff was injured when she was fired in alleged violation of her First Amendment rights. (docket #1, at ¶¶ 36-46.) Plaintiff’s alleged injury is certainly fairly traceable to Defendants, who were responsible for firing her. (*Id.*) And prevailing in this lawsuit would redress her injury,

¹ Even if the Trustee’s effective filing date was outside Plaintiff’s three-year statute of limitations period, the Trustee may still be able to maintain its lawsuit under section 108 of the Bankruptcy Code, which provides that

If applicable nonbankruptcy law . . . fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such an action only before the later of—

- (1) the end of such period, including the suspension of such period occurring on or after the commencement of the case; or
- (2) two years after the order for relief.

11 U.S.C. § 108. In this case, Plaintiff’s bankruptcy filing occurred on September 4, 2009—well before the statute of limitation period expired. (docket #21, at 2.) The initial order of bankruptcy relief was entered on December 15, 2009, which would have allowed the Trustee to file a Complaint on behalf of the estate on or before December 15, 2011, if Plaintiff had properly listed her cause of action on her schedules. (*Id.*) How her failure to disclose impacts the section 108 analysis remains unclear and was not briefed by the parties, but it is certainly arguable that the Trustee would not be time-barred from asserting its claim against Defendants absent the “relate-back” provision of Rule 17(a)(3).

given that a money damage award would provide compensation for her allegedly unlawful termination.²

Defendants argue that section 541 of the Bankruptcy Code essentially divested Plaintiff of constitutional standing the instant she filed her bankruptcy petition. However, Defendants argument is flawed because it improperly conflates *constitutional* standing and *statutory* standing requirements. *See Roberts v. Hamer*, 655 F.3d 578, 580-81 (6th Cir. 2011) (explaining the distinction between constitutional and statutory standing). The distinction is an important one in this case. As noted above, if Plaintiff lacked constitutional standing, the case would necessarily be dismissed. *Am. Telecom Co.*, 501 F.3d at 538; Fed. R. Civ. P. 12(h)(3). The Trustee would be unable to cure this defect by substituting as the party-plaintiff and would arguably be time-barred from filing a new complaint due to the applicable statute of limitations in this case. *See Grupo Dataflex v. Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004). If Plaintiff only ran afoul of statutory standing requirements, however, the Court would not be deprived of jurisdiction, and the Trustee would be able to cure the statutory standing defect by substituting as the party-plaintiff, assuming the substitution was appropriate under Fed. R. Civ. P. 17(a)(3). *See Roberts*, 655 F.3d at 580-81.

This case presents the not-uncommon situation of Plaintiff filing a complaint based on an alleged injury, but not being the real party-in-interest due to the operation of statute—in this case, section 541 of the Bankruptcy Code. When faced with this situation in the trustee/debtor context, the Sixth Circuit has consistently accepted subject-matter jurisdiction over such disputes. *See Knight*

²This compensation might flow directly to the creditors of Plaintiff's bankruptcy estate, but that does not change the fact that her injury would be redressed—paying down her debt, even if through the Trustee, satisfies this prong of the Article III standing analysis.

v. New Farmers Nat'l Bank, No. 90-6071, 1991 WL 207056, at *2 (6th Cir. Oct. 15, 1991) (remanding case to district court to consider allowing substitution of trustee); *see also, e.g., White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 476 (6th Cir. 2010) (addressing merits of defendants' judicial estoppel claim under summary judgment standard); *Eubanks v. CBSK Fin. Group, Inc.*, 385 F.3d 894 (6th Cir. 2004) (holding plaintiff's claim could proceed despite failure to identify claim in schedules). While the jurisdiction issue is generally not expressly discussed, the Sixth Circuit's routine acceptance of jurisdiction indicates that constitutional jurisdictional requirements are satisfied, particularly given the courts' "independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh*, 546 U.S. at 514 (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)).

Similar to the above-cited cases, the Court has subject-matter jurisdiction to adjudicate Plaintiff's lawsuit. Section 541 of the bankruptcy code divested Plaintiff of statutory standing to sue, but did not divest the Court of subject-matter jurisdiction. To cure this statutory defect, the Trustee moved to substitute as the real party-in-interest under Rule 17(a)(3). For the reasons discussed above, the Trustee satisfied the requirements of Rule 17(a)(3), and the motion to substitute is therefore **GRANTED**, Trustee's substitution "relates back" to July 13, 2011, and Defendants' motion to dismiss is **DENIED**.

IT IS SO ORDERED.

Dated: November 28, 2011

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE