



No. 19-209

In the Supreme Court of the United States

THOMAS W. McDONALD, JR. CHAPTER 13
BANKRUPTCY TRUSTEE, PETITIONER

v.

PAUL E. WENZLOFF, ET AL.

On Writ of Certiorari
To the Sixth Circuit Court Of Appeal

Petition For Writ Of Certiorari For Petitioner

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PETITIONER

Question Presented for Review

Did this Court's ruling in *Harris v. Viegelahn*, 575 U.S. ____ (2015) overrule 134 years of legal precedent established in *Barton v. Barber*, 104 U.S. 126 (1881) by denying standing to a Chapter 13 Trustee, after a bankruptcy case is converted to a Chapter 7 proceeding, to prohibit the Chapter 13 Trustee from litigating matters, such as fraud and malfeasance, that allegedly occurred during the administration of the Chapter 13 estate?

Parties Involved

The parties involved are as follows:

Paul E. Wenzloff, attorney for Wildfire Credit Union

Joshua R. Fireman, attorney for Wildfire Credit
Union

Wildfire Credit Union, Creditor in the underlying
Bankruptcy Case.

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The Petitioner, Thomas W. McDonald, Jr., Chapter 13 Bankruptcy Trustee, requests this Court to issue its writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals entered in this case April 1, 2019.

Citation to Opinion Below

McDonald v Wenzloff, et al, Case No: 18-2274 (6th Circuit 2019)

Basis for Jurisdiction

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1257 to review the final judgment of the Sixth Circuit Court of Appeals.

**Constitutional Provisions and Legal Principles
Involved**

The Case of *Harris v. Viegelaahn*, 575 U.S. ____ (2015) in which this Court held that a Chapter 13 Trustee's Services in administering a Chapter 13 Bankruptcy case are terminated upon the case being converted to a Chapter 7 proceeding.

The Case of *Barton v Barber* 104 U.S. 126 (1881) in which this Court held that a fiduciary, such as a trustee, remains subject to the jurisdiction of the court that appointed him for purposes of suit.

Article III of the United States Constitution, Section 2 states:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and

between a State, or the Citizens thereof, and
foreign States, Citizens or Subjects.

Standing is an essential part of the case or
controversy of Article III of the U.S. Constitution.
Allen v. Wright, 468 U.S. 737, 751 (1984).

Statement of the Case

This matter arises out of an underlying bankruptcy case initially filed as a Chapter 13 proceeding on August 19, 2014 and converted to a Chapter 7 proceeding on November 15, 2017. In that case the Respondents alleged that the Petitioner committed fraud and malfeasance on the Bankruptcy Court, requested that he be held in contempt, and that he reimburse the estate for monies paid to a secured creditor on a post-petition vehicle claim.

Respondents continued their allegations of fraud, malfeasance, and contempt dozens of times in pleadings over the course of 3 months, and requested the Court hold the Petitioner personally liable.

The case was eventually converted to a Chapter 7 proceeding on November 15, 2017. The Respondents' contested Motion and pleadings were not ruled upon by the Bankruptcy Court and remained pending at the time the case was converted.

Petitioner had filed an Adversary Proceeding against Respondents before the case was converted, seeking redress for Respondents' irresponsible and libelous actions, and to recover costs in defending against Respondents' unsubstantiated allegations.

Petitioner's Adversary Proceeding contained seven separate counts: Count I, Injunctive Relief, Count II and III, Abuse of Process Violations; Count IV, Injunctive Relief for a finding that Petitioner did not commit Fraud on the Court or Contempt of Court; and Counts V through VII, Slander, Libel and Defamation *Per Se*.

On April 30, 2018, the Bankruptcy Court, dismissed Petitioner's Adversary Proceeding in its entirety, and held that the Petitioner lacked standing due to the conversion of the case to a Chapter 7 proceeding.

The Bankruptcy Court stated in his oral opinion:

As stated by the United States Supreme Court in *Harris*, the Chapter 13 Trustee is stripped of authority to provide any services upon conversion which would include the authority to bring this instant adversary proceeding. Thus, the Plaintiff has no injury, either actual or threatened which can result from the conduct of the Defendants in this case and at this time. Even if Plaintiff did have standing to pursue this action, which the court concludes he does not, this matter is moot pursuant to Section 348 and the United States Supreme Court's decision in *Harris*.

The Bankruptcy Court erroneously construed the *Harris* opinion to hold that the Chapter 13 Trustee did not have standing to pursue his Adversary Proceeding.

The Bankruptcy Court's opinion erroneously ties the jurisdictional case and controversy requirement of standing with the statutory interpretation contained in the *Harris* opinion. *Harris* was not a decision about standing. It was a decision about the Chapter 13 Trustee's **statutory**

ability to continue administering a case after conversion in the face of 11 U.S.C. §348¹.

Additionally, the Bankruptcy Court's holding on the issue of mootness merely repeated its previous dicta regarding *Harris* and 11 U.S.C. §348, which again relates not to jurisdictional standing, but with the statutory mechanics of what occurs upon conversion of a Chapter 13 case to a Chapter 7 proceeding.

On appeal, the District Court ignored the arguments on standing advanced by Petitioner, and summarily upheld the Bankruptcy Court's ruling that Petitioner lacked standing to pursue his Adversary Proceeding after conversion of the Bankruptcy case to a Chapter 7 proceeding.

On Appeal to the 6th Circuit Court of Appeals, the 6th Circuit held that because the Petitioner did not challenge mootness (which, as stated above was the same basis for the Bankruptcy Court's ruling on standing) the 6th Circuit would not address the standing issue. The Petitioner requests review of this opinion.

Petitioner avers that the lower Courts erroneously applied this Court's decision in *Harris* which deprived Petitioner of standing to litigate matters that occurred during his administration of the Chapter 13 estate, and rights guaranteed by this Court's decision in *Barton v. Barber*.

¹ 11 U.S.C. §348(e) states that "conversion of a case. . . terminate the services of any trustee. . . that is serving in the case before such conversion.

Reasons for Granting the Writ

Did this Court's ruling in *Harris v. Viegelahn*, 575 U.S. ____ (2015) overrule 134 years of legal precedent established in *Barton v. Barber*, 104 U.S. 126 (1881) by denying standing to a Chapter 13 Trustee, after a bankruptcy case is converted to a Chapter 7 proceeding, to prohibit the Chapter 13 Trustee from litigating matters, such as fraud and malfeasance, that allegedly occurred during the administration of the Chapter 13 estate?

The Sixth Circuit erred by affirming the Bankruptcy and District Courts' finding that Petitioner no longer had standing to litigate matters, such as fraud and malfeasance, that occurred while the case was administered as a Chapter 13 matter due to the conversion of the bankruptcy case to a Chapter 7 proceeding. (6th Circuit Court Appeal Order Affirming the Bankruptcy Court, Appendix Page XXI.)

The Sixth Circuit's opinion affirming the District and Bankruptcy Court's rulings declined to address Petitioner's arguments regarding standing because he had failed to address the issues of mootness.

The Bankruptcy Court construed this Court's ruling in *Harris* stripped a Chapter 13 Trustee of authority to administer a case upon conversion to a Chapter 7 proceeding, and therefore Petitioner had no standing to pursue his action against Respondents. (See pages 11 and 12 of Transcript.) However, the *Harris* decision by this Court did not

address the jurisdictional issues of standing and was improperly relied upon by the Bankruptcy Court. The *Harris* decision was limited to the scope of a Chapter 13 Trustee's statutory duties upon conversion to a Chapter 7 proceeding and made no determination regarding standing. The Bankruptcy Court confused *Harris* and this Court's holding in *Burton v. Barber* which sustained the Bankruptcy Court's continuing jurisdiction over matters involving the Trustee's actions, giving rise to Petitioner's standing in this matter.

Furthermore, the application of *Harris* by the Bankruptcy Court in this matter was erroneous as Petitioner's Adversary Proceeding was commenced to defend against the Respondents' allegations filed while the case was an active Chapter 13 proceeding. Petitioner's Adversary Proceeding was not a means to continue administering the Chapter 13 estate post-conversion, and therefore, the holding in *Harris* is not applicable to standing and not grounds for dismissal of Petitioner's Adversary Proceeding.

This critical point is evident by closely examining this Court's ruling in *Harris* which was silent on the issue of a Chapter 13 Trustee's standing. *Harris* held that conversion of a bankruptcy case to a Chapter 7 proceeding terminates the Chapter 13 statutory duties. *Harris* did not terminate a Chapter 13 Trustee's standing to litigate matters that occurred during the administration of the Chapter 13 estate, a right guaranteed by *Barton*. As stated by this Court in *Harris*:

When a debtor exercises his statutory right to convert, the case is placed under Chapter 7's governance, and no Chapter 13 provision holds sway. §103(i) ("Chapter 13 . . . applies only in a case under [that] chapter."). Harris having converted the case, the Chapter 13 plan was no longer "bind[ing]." §1327(a). And Viegelahn, by then the former Chapter 13 Trustee, lacked authority to distribute "payment[s] in accordance with the plan." §1326(a)(2); see §348(e). *Id* at *9².

Unlike the statutory interpretation of 11 U.S.C. §348 regarding the termination of Trustee's *services*, the issue of *standing* is founded not in the Bankruptcy Code, but in Article III of the United States Constitution. Article III, Section 2 states:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another

² In fact, the jurisdictional issue of standing was not at issue in the *Harris* case at all. *Harris* dealt with the question of what a Chapter 13 Petitioner can do (if anything) after her services were terminated pursuant to a case conversion.

State,—between Citizens of different States,—
between Citizens of the same State claiming
Lands under Grants of different States, and
between a State, or the Citizens thereof, and
foreign States, Citizens or Subjects.

Standing is an essential part of the—case or
controversy requirement of Article III of the U.S.
Constitution. *Allen v. Wright*, 468 U.S. 737, 751
(1984). As a general matter, standing concerns
whether a litigant “is entitled to have the court
decide the merits of the dispute or of particular
issues.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975). A
plaintiff must “[1] allege personal injury [2] fairly
traceable to the defendant’s allegedly unlawful
conduct and [3] likely to be redressed by the
requested relief.” *Allen v. Wright*, 468 U.S. 737
(1984) at 751, 104 S.Ct. at 3324, 82 L.Ed. 2d 556)).

Despite the Bankruptcy Court’s opinion,
Harris did not deal with the Bankruptcy Court’s
jurisdiction at all. *Harris* addressed a Chapter 13
Trustee’s **statutory** authority to administer assets of
a bankruptcy estate when the Case was converted to
a Chapter 7. *Harris* was a dispute about who had
the authority to distribute funds from a Chapter 13
estate that had been converted. Jurisdictional
standing was never questioned in *Harris* nor was it
ever discussed.

Jurisdictional standing, which is the ability for
a party to maintain a suit in a federal court is an
entirely different matter aside from *Harris* statutory
authority. Jurisdictional standing was the sole issue
on appeal raised by Petitioner. Both the District
Court and the Sixth Circuit Court of Appeals refused

to consider the standing issue because they deemed that the Bankruptcy Court's ruling on the Plaintiff's other counts of the complaint (i.e. mootness—stemming from the same *Harris* statutory authority argument as the Bankruptcy Court's lack of “standing” ruling, would make the Appellant's appeal fruitless.

However, these holdings ignored the “order-of-decision doctrine” established by *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998). (See also *Lance v. Coffman* 549 U.S. 437, 439 (2007) and *Children's Hosp. Med. Ctr. v. Youngstown Assocs. In Radiology, Inc.* Case Number 14-3437 attached.)

This doctrine establishes that elements of jurisdiction must be decided before the merits of a case, and that in particular, standing must be decided first:

In the *Steel Co.* case, five members of the Supreme Court held that “standing questions” as distinguished from questions on the “merits” must be decided at the outset of the case. That order of decision is now mandatory and must be enforced by the lower courts. The Supreme Court's reasoning is based on the theory that such standing questions go to the constitutional power of a federal court under the “case or controversy” provisions of Article III. If a federal court does not have such jurisdiction, according to the doctrine adopted in the *Steel Co.* case, it may not decide the merits, and hence it must decide such standing questions first. *Children's Hospital Medical Center of Akron v. Youngstown*

Associates in Radiology, Inc., Case No: 14-3437 see Exhibit ** attached, citing *Lance v. Coffman*, 549 U.S. 437 (2007) and *Ward v. Alt. Heart Delivery Sys., Inc.*, 261 F. 3d 524 (6th Circuit 2001).

Accordingly, the proper **jurisdictional** test for standing should have been decided first before considering other matters of the case. The lower Courts ignored this “order of decision doctrine” established in *Steel Co* which resulted in depriving the Petitioner jurisdictional and constitutional standing guaranteed by *Barton*.

Petitioner avers that a Chapter 13 Trustee has jurisdictional standing to litigate matters that occurred prior to conversion as the legally appointed Trustee in a Chapter 13 estate pursuant to the Bankruptcy Court’s ongoing jurisdiction over a Bankruptcy Trustee pursuant to this Court’s holding in *Barton*.

In *Barton*, this Court held that a Bankruptcy Court has jurisdiction over “any party wishing to institute an action in a forum against a trustee, for acts done in the trustee’s official capacity and within the trustee’s authority as an officer of the court.” *In re DeLorean Motor Co.*, 991 F.2d 1236, 1240 (6th Cir. 1993).

This right to litigate claims that occurred during the administration of a Chapter 13 case was the very issue addressed in the case of *In re Heinsohn*, 231 B.R. 48 (Ed. Tenn 2000) which was completely disregarded by the lower Courts in this matter.

In *Heinsohn*, the Debtor’s bankruptcy case was closed, the Chapter 13 Trustee had filed his final

report, and was discharged from his duties pursuant to 11 U.S.C. §350. Well after the case was closed, the Debtor sued the Trustee in State Court for malicious prosecution because the Trustee had referred the Debtor to the U.S. Attorney's Office for bankruptcy fraud. In response to this State Court action, the Trustee had the matter removed to the Bankruptcy Court as an Adversary Proceeding. The Debtor argued that the Petitioner no longer had standing in the Bankruptcy Court as the case had been closed and the Petitioner's services had been terminated.

The *Heinsohn* Bankruptcy Court's opinion, which was affirmed on appeal by the District Court, stated:

There is no bright-line rule dictating that once an estate has been fully administered a Petitioner cannot avail himself of the federal court's bankruptcy jurisdiction if he is subsequently sued for actions taken while administering the estate. *In re Heinsohn*, 231 B.R. 38 at *8 (Ed Tenn 1999) aff'd by *In re Heinsohn*, 247 B.R. 237, 242-244 (E.D. Tenn 2000), emphasis added.

This situation was also discussed in the case of *Lowenbraun v. Canary*, 453 F.3d 314 (6th Cir. 2006), the Plaintiff filed suit against the Trustee for state court claim. The 6th Circuit held that the District Court had properly heard the case because the claims brought by the Plaintiff were against the Trustee for actions taken while administering the estate. In so holding, this court stated:

. . .the plaintiff's malicious prosecution and defamation claims against a bankruptcy trustee a[re] a core proceeding because the conduct about which the plaintiff complained "would not have arisen but for Defendant's obligations and conduct as a trustee. . . . When faced with a similar question, the bankruptcy court in *In re Heinsohn* "presume[d that] acts were a part of the trustee's duties unless Plaintiff initially alleges at the outset facts demonstrating otherwise." 247 B.R. at 246.

Therefore, despite the lower Courts' rulings otherwise in this case, termination of the Chapter 13 Petitioner's services upon the conversion of the case to a Chapter 7 proceeding does not automatically deprive the Chapter 13 Petitioner from jurisdictional standing to litigate against a malicious and unfounded contested matter **that occurred during the time the case was an active Chapter 13 proceeding.** In fact, as *Heinsohn* and *Lowenbraun* clearly holds, Petitioner may avail himself of the Bankruptcy Court's jurisdiction to litigate causes of action for *obligations and conduct as a Trustee* which arose in the underlying Chapter 13 bankruptcy case, and termination of Petitioner's services upon conversion in no way impedes standing to do so.

The lower Courts made a fundamental error in upholding the Bankruptcy Court's dismissal of the Adversary Proceeding in this matter. The clear holding of *Barton* provides that Petitioner does have jurisdictional standing to litigate an Adversary Proceeding against unjust accusations of fraud and malfeasance.

Wherefore, Petitioner requests this Court to enter an order remanding this matter back to the Bankruptcy Court for further action.

Conclusion

The Petitioner respectfully requests that the Court grant the petition for writ of certiorari.

SUBMITTED BY:

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June 14, 2019