

No. _____

In the
Supreme Court of the United States

DOUGLAS K. SMITH, M.D.,

Petitioner,

v.

ERIC TERRY,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Circuit Court's March 8, 2023 denial of a second motion for thirty-day extension of time to file appellant brief, and resultant dismissal of appeal, was abuse of discretion.

LIST OF PROCEEDINGS

United States Court of Appeals for the Fifth Circuit
No. 22-50764

In the Matter of Salubrio, L.L.C., *Debtor*, Douglas K. Smith, MD, *Appellant*, v. Eric Terry, *Appellee*

Date of Final Opinion: March 8, 2023

United States District Court for the Western District of Texas San Antonio Division

No. SA-21-CV-0476-JKP

In Re: Salubrio, L.L.C., *Debtor*, Douglas K. Smith, MD, *Appellant*, v. Eric Terry, *Appellee*

Date of Final Judgment: August 5, 2022

United States Bankruptcy Court for the Western District of Texas San Antonio Division

No. 20-05067

In Re: Salubrio, L.L.C., *Debtor*, Douglas K. Smith, MD, *Plaintiff*, v. Eric Terry, *Defendants*

Date of Final Judgment: December 1, 2020

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Douglas K. Smith, M.D., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.



OPINIONS BELOW

The order of the United States Court of Appeals for the Fifth Circuit denying an extension and dismissing the appeal is included herein as App.1a. The judgment of the United States District Court for the Western District of Texas San Antonio Division is attached as App.3a. The order of the United States Bankruptcy Court for the Western District of Texas San Antonio Division is attached as App.26a.



JURISDICTION

The Fifth Circuit entered its judgment on March 8, 2023. (App.1a). This Court's jurisdiction invoked under 28 U.S.C. § 1254(1).



CONSTITUTIONAL PROVISIONS AND JUDICIAL RULES INVOLVED

U.S. Const., amend. XIV § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fifth Circuit L.R. 31.4.2(c) Grounds for Extensions.

As justification for extensions, generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient. Grounds that may merit consideration for extensions are, without limitation, the following, which must be set forth if claimed as a reason in any motion for an extension beyond 30 days:

...

- (c) Extreme hardship will result unless an extension is granted, in which event the nature of the hardship must be set forth in detail.

Tex. Civ. Prac & Rem. Code § 37.006(a)

(a) When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties. A declaration does not prejudice the rights of a person not a party to the proceeding.

STATEMENT OF FACTS

1. On March 8, 2023 the United States Court of Appeals or the Fifth Circuit denied a second motion for thirty-day extension.
2. Appeal had been timely brought from the United States District Court's August 5, 2022 judgment of a bankruptcy appeal for lack of bankruptcy standing.
3. In the district court's opinion dismissing the bankruptcy appeal, the Court held that Salubrio is a single member LLC owned by Dr. Smith providing diagnostic MRI evaluations services for personal injury evaluations,
4. Dr. Smith initiated an individual bankruptcy case. The bankruptcy court granted a motion to abandon, which Dr. Smith appealed,
5. The court held that Dr. Smith does not meet the definition of a creditor as defined in the Bankruptcy Code.
6. The Court referenced the person aggrieved test, which is a prudential standing requirement applicable in the bankruptcy context.

7. The Court held that Dr. Smith has not shown that he was directly and adversely affected pecuniarily by the appealed order.

8. The Court held that even if Dr. Smith were a debtor-in-possession with the rights and responsibilities of a trustee, he would have no authority to represent the trust, that is, the bankruptcy estate, in a bankruptcy appeal unless he secured legal counsel.

9. The Court did not reference any jurisdictional problem, and ruled that it had jurisdiction.

10. Dr. Smith claims the above dismissal order to constitute error. The very subject of the petition is the unfairness/lack of due process of the dismissal itself.

11. The order dismissing the USCA-5 appeal, based on denial of a second motion for extension for only thirty days, had been preceded only a month earlier by the Court's granting of a first motion for extension for only thirty days, so petitioner claims an abuse of discretion in denying its second motion for a thirty-day extension to file his brief.



REASONS FOR GRANTING THE PETITION

Denial of the Motion for Extension of Time to File Appellant Brief, and Resultant Dismissal of Appeal Was an Abuse of Discretion Petitioner Was Prepared Make the Following Arguments to the Circuit Court:

I. Whether the Bankruptcy court erred by concluding that Notice given of the Motion to Compromise was reasonable and sufficient in light of the circumstances and nature of the relief requested, and no other or further notice of the Motion is necessary? **PARTIES AFFECTED BY DECLARATORY JUDGMENT WERE NOT NOTICED.**

II. Whether the Bankruptcy Court erred or abused its discretion by concluding that a reasonable and fair opportunity to object to the Motion with respect to the relief granted in this Order has been afforded under the circumstances? **TRUSTEE HAS IGNORED TWO SUBPOENAS DEMANDING SURRENDER OF CONFIDENTIAL PROPERTY REMOVED FROM MY MEDICAL OFFICE THAT CONTAINED PROOF THAT TRUSTEE'S COMPROMISE WAS UNJUST AND UNFAIR THAT LIKELY WOULD HAVE CAUSED OTHER CREDITORS TO OBJECT.**

III. Whether the Bankruptcy Court erred or abused its discretion and compromised Parties affected by Declaratory Judgment by approving Compromise of Declaratory Judgment without compelling Plaintiff Medlegal to enjoin **ALL PARTIES** affected as required by section 37.006(a) of Texas and Uniform Declaratory Judgment Act? **DECLARATORY JUDGMENT**

DETERMINED VALIDITY OF LAA AND BAA CONTAINING SIGNATURE FORGERY BY ATTORNEY THAT RENDERED MEDLEGAL'S RECEIPT, AND SUBSEQUENT DISCLOSURE OF CONFIDENTIAL PATIENT RECORDS FOR FINANCIAL GAIN AN UNAUTHORIZED DISCLOSURE CARRY STATE COURT PENALTY OF 5-20 YEARS IN STATE PRISON AND POTENTIAL PERMANENT BANISHMENT OF PARENT COMPANY OASIS FROM INTERACTION WITH MEDICAL RECORDS OF TEXAS CITIZENS.

IV. Whether the Bankruptcy Court erred or abused its discretion by overruling the Objection filed by Douglas K. Smith [Docket No. 856] for the reasons stated on the record at the Hearing held on the Motion? THE COURT DID NOT DIRECTLY ADDRESS REASONS FOR OVERRULING MY OBJECTION IN THE TRANSCRIPT. Judge seems to render equitable argument that Salubrio accepted the money and although it was subsequently repaid, Medlegal deserved compensation despite unclean hands of defrauding Salubrio and FRAUD-ON-THE-COURT by submission of attorney fabricated documents and false claims by attorneys under penalty of perjury as evidence to support its claim on equitable basis.

V. Whether the Bankruptcy Court erred or abused discretion by concluding that no proof of Fraud-on-the-Court was presented during the hearing regarding Trustee's Rule 9019 Compromise? THE BUSINESS ASSOCIATE AGREEMENT INCORPORATED IN THE LAA CONTAINED FORGERY OF JEFFREY S. TRIGILIO BY KEY HEALTH ATTORNEY DANIEL CHRISTENSEN. USBS ACCEPTED IRREFUTABLE EVIDENCE FROM DOCVERIFY PROVING THE

INVALIDATING SIGNATURE FORGERY OVER TWO YEARS AGO. ECF 499.

VI. Whether the Bankruptcy Court erred or abused its discretion and prejudiced the due process rights of Creditors and Parties affected by disregarding due process requirements of Rule 9014, L Rule 9014, Rule 9019, and L Rule 9019? LOCAL RULES CONTAIN SPECIFIC REQUIREMENTS FOR COMPROMISE ORDERS FOR AN ADVERSARY PROCEEDING THAT WERE NOT FOLLOWED INCLUDING FAILURE TO POST FINAL ORDER IN BOTH LEAD CASE AND ADVERSARY AND “AMENDED” FINAL ORDER.

VII. Whether the Bankruptcy Court erred or abused its discretion by protecting Fiduciary Terry from answering Dr. Smith’s cross-examination questions to his knowledge of seizure and sequestration of evidence from Dr. Smith’s medical office as lacking relevance to Trustee’s Compromise? This would be a judgment call by appellate court. Judge King considered issues related to Fiduciary Terry’s bad faith actions were not relevant to whether his Compromise was fair and reasonable? My position was the Court was protecting the unreasonable and unlawful positions of his two former law clerks to prevent a jury from hearing evidence in a jury trial.

VIII. Whether the Bankruptcy Court erred or abused discretion by ruling that non-physician Debtor Salubrio was legal owner of medical records of Dr. Smith’s medical practice? Under Texas Administrative Code, medical records are the personal property of the physician that created them and ownership can only be transferred to another licensed physician with consent and consideration to licensed physician created

the records. This issue is already part of pending 5th Circuit appeal for which Judge King denied request for stay pending appeal. This would be a clear Federal disregard for sovereign Texas state law.

IX. Whether the Bankruptcy Court prejudiced U.S. Trustee, Texas Attorney General, Health and Human Services, Department of Justice Office of Inspector General ability to protect privacy of confidential medical records of thousands of Dr. Smith's patients by failing to Notice of hearing on Trustee's Compromise? Section 37.006(a) of Texas Civil Procedure and Remedies Code to include ALL PARTIES affected by the Declaratory Judgment and Texas Health and Safety Code requires Trustee and Medlegal to notify Texas Attorney General and U.S. Health and Human Services of Unauthorized Disclosure of protected health information. It is not settled law as to whether each patient whose records were affected by the Dec Action or whether naming a class is sufficient but not patient consent was obtained by Trustee, Medlegal, or parent Oasis.

X. Whether the Bankruptcy Court erred or abused its discretion by concluding the Court had no reason to question the Trustee's business judgement on Motion to Compromise? I would argue that Fiduciary Terry's warrantless search and seizure of confidential records from a medical office, sequestering said records to deprive Creditors of evidence of FRAUD-ON-THE-COURT and defying to subpoenas from USBC ordering surrender of stolen property to San Antonio Police Department should have been sufficient evidence upon which to conclude that Fiduciary's business judgment should be questioned by U.S. Trustee that was not noticed of hearing and was not in attendance.

XI. Whether the Bankruptcy Court prejudiced Dr. Smith's Objection to Compromise by not providing opportunity for Dr. Smith to offer the Binder of Exhibits timely submitted and in Court's possession at time of hearing? Hearing transcript is best evidence that Judge King had the Binder in his possession at beginning of the hearing and stated-We'll see when Dr. Smith tries to Offer them as evidence. Transcript is best evidence that he never provided opportunity to offer the exhibits as evidence and unjustly prejudiced my Objection case.

XII. Whether the Bankruptcy Court erred or abused its discretion by acknowledging Dr. Smith's position that Medlegal had no valid Claim because of Medlegal's Fraud-on-the-Court contained in evidence offered by Medlegal during the hearing? This Court had accepted evidence proving FRAUD-ON-THE-COURT by MEDLEGAL nearly two years earlier but ignored the evidence at that time and prevented Trustee from answering my questions regarding Trustee's bad faith actions as Fiduciary and Officer of the Court.

XIII. Whether the Bankruptcy Court erred or abused its discretion by disregarding the Opinion of Salubrio's healthcare compliance expert MB Lawhon? This opinion was rendered for Travis County Court in 2019 and was removed to AP5019 on March 31, 2020 in support of the Declaratory Judgement to determine if LAA and BAA were valid and enforceable by Medlegal as matters of contract construction and capacity of Parties on June 28, 2020. No further evidence is required for adjudication of DEC ACTION as matter of law.

XIV. Whether the Bankruptcy court erred or abused its discretion by approving Trustee's Compromise in contravention of bankruptcy absolute priority rule? Effectively, Judge King authorized Trustee to distribute funds to Medlegal prior to distribution to Creditors with valid and perfected security interest. This violates Absolute Priority Rule and two Creditors filed Objections when Trustee suggested a similar Compromise previously.

XV. Whether the Bankruptcy Court erred or abused its discretion by compromising or prejudicing property rights of legal owner Texas Licensed Physician Accounts Receivables ("TXLPAR")? Texas Property Code and related laws are sovereign state law determinant of legal ownership of TXLPAR for which Salubrio has admitted it lacked capacity to generate equitable interest. This is already subject matter in pending 5th Circuit appeals.

XVI. Whether the Bankruptcy Court erred or abused its discretion by approving Compromise that circumvented Rule 7001(2) & (9) requirements of adjudication of Medlegal's disputed claim and Declaratory Judgment respectively by adversary proceeding? Rule 7001 requires these designated subject matters to be adjudicated by adversary proceeding. 5th Circuit precedent In re. Zale Corp. renders any USBC Order rendered by contested matter rather than adjudication in adversary proceeding VOID for want to USBC SMJ. I could not find any case precedent if Rule 9019 contested matter permits Compromise of Declaratory Judgement in which not all AFFECTED PARTIES were included and therefore not prejudiced by the Compromise under TXCPRC 37.006(a) also known as Uniform Declaratory Judg-

ment Act. This should be a hook for 5th Circuit or SCOTUS.

XVII. Whether the Bankruptcy Court erred or abused its discretion by approving Compromise of threshold Declaratory Judgment without requiring Plaintiff Medlegal to Enjoin ALL PARTIES affected as required by section 37.006(a) of Uniform Declaratory Judgment Act? As above

XVIII. Whether the Bankruptcy Court erred or abused its discretion by concluding that Trustee's Compromise of privacy rights of Dr. Smith's patients was "fair and just" and displayed sound business judgment in best interest of estate? Based on disregard of FRAUD-ON-THE-COURT and disregard of sovereignty of Texas laws.

XIX. Did the Bankruptcy Court err or abuse discretion by approving Compromise Order in contravention of Bankruptcy Absolute Priority Rule ("APR") prejudicial Creditors with valid and perfected security interest? As above, USBC disregarded prior written Objections to Trustee's attempts to cut a deal with Medlegal prior to Creditors with valid secured Claims.

XX. Did the Bankruptcy Court err or abuse judicial discretion by requiring Dr. Smith, testifying in his personal capacity, to answer questions on half of the corporate entity Salubrio? This issue has been raised in previous pending appeals. Judge King asked me to respond to questions on behalf of Salubrio AFTER Trustee argued and presented evidence that my personal bankruptcy severed my representation of Salubrio and even though I was appearing in my personal

capacity and the Court could not hear my representation of any corporate entity.



CONCLUSION

For all of the foregoing reasons, petition urges that the Court reverse the dismissal of the appeal, and remand the action to the circuit court.

Respectfully submitted,

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