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**ORDER OF THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT
(MARCH 8, 2023)**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN THE MATTER OF SALUBRIO, L.L.C.,

Debtor,

DOUGLAS K. SMITH, MD,

Appellant,

v.

ERIC TERRY,

Appellee.

No. 22-50764

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-476

Before: James E. GRAVES, JR.,
United States Circuit Judge.

IT IS ORDERED that Appellant's opposed motion
to file brief out of time and for an extension of time to
file brief until March 20, 2023, is DENIED.

IT IS FURTHER ORDERED that Appellee's Motion to dismiss appeal for want of prosecution is GRANTED.

/s/ James E. Graves, Jr.

United States Circuit Judge

**FINAL JUDGMENT OF THE UNITED STATES
DISTRICT COURT WESTERN DISTRICT OF
TEXAS SAN ANTONIO DIVISION
(AUGUST 5, 2022)**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE: SALUBRIO, LLC,

Debtor.

Bankruptcy Case No. 20-50578-RBK

DOUGLAS K. SMITH, MD,

Appellant,

v.

ERIC B. TERRY,
CHAPTER 7 TRUSTEE, SALUBRIO LLC.,

Appellee.

Case No. SA-21-CV-0476-JKP
(Appeal from Order in Bankruptcy
Case No. 20-50578-RBK)
Before: JASON PULLIAM,
United States District Judge.

The Court has considered the issues presented in this appeal and rendered its decision. For the reasons stated in the Memorandum Opinion and Order issued contemporaneously with this Final Judgment, the Court DISMISSES this appeal for Appellant's lack of bankruptcy standing. The appeal is now TERMINATED on the active docket of this Court.

IT IS SO ORDERED this 5th day of August 2022.

/s/ Jason Pulliam
United States District Judge

**MEMORANDUM OPINION AND ORDER OF
THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS SAN
ANTONIO DIVISION
(AUGUST 5, 2022)**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE: SALUBRIO, LLC,

Debtor.

Bankruptcy Case No. 20-50578-RBK

DOUGLAS K. SMITH, MD,

Appellant,

v.

ERIC B. TERRY,
CHAPTER 7 TRUSTEE, SALUBRIO LLC.,

Appellee.

Case No. SA-21-CV-0476-JKP
(Appeal from Order in Bankruptcy
Case No. 20-50578-RBK)
Before: JASON PULLIAM,
United States District Judge.

Before the Court is an appeal from an order in Bankruptcy Case No. 20-bk-50578-RBK. Pursuant to 28 U.S.C. § 158(a), Appellant Douglas K. Smith, MD, (“Dr. Smith” or “Appellant”) appeals an order of the Bankruptcy Court issued on May 3, 2021, after a hearing. Appellant proceeds pro se in this appeal and is an interested party of the corporate debtor in the underlying bankruptcy action. In the appealed order, the Bankruptcy Court authorized the Chapter 7 Trustee for the Debtor to abandon the estate’s interest in physical and locally stored electronic records. Eric B. Terry is the Chapter 7 Trustee and the Appellee in this appeal.

On June 21, 2021, the Bankruptcy Court certified that Appellant’s designation of the record on appeal (“ROA”) is complete and transmitted designated items. *See* ECF No. 2. That same date, Appellant filed his appellate brief. *See* ECF No. 3. Two days later, the Bankruptcy Court certified that Appellee’s designation of additional items to include in the ROA is complete and transmitted those designated items. *See* ECF No. 5. Appellee has filed his brief (ECF No. 7) and Appellant has filed his reply brief (ECF No. 8). In two later filings, docketed as Advisories to the Court, Appellant has submitted a transcript of the motion hearing (ECF No. 9) and an amended appellate brief with proper format (ECF No. 10).¹ The appeal is ready for ruling.

Having considered the issues raised in this appeal to the extent necessary, the arguments of the parties,

¹ Because the transcript is contained within the official record on appeal, *see* ECF No. 5-3, there is no need for the duplicate transcript. The Court will address the amended brief later.

the relevant portions of the record, and the applicable principles of law, the Court finds no need for oral argument and, for the reasons that follow, it dismisses this appeal for Appellant’s lack of bankruptcy standing.

I. Background

On March 11, 2020, Salubrio, LLC (“Salubrio”), the debtor in the underlying bankruptcy action, filed a voluntary petition for relief under Chapter 11, Subchapter V, of the Bankruptcy Code. *See* Bankruptcy Docket Sheet (ECF No. 2-3) at 2. During the Subchapter V proceedings, the Bankruptcy Court appointed Mr. Terry as Trustee and he continued in that capacity after the matter was converted to Chapter 7. *See* R.² at 4 nn. 1-2.

Pursuant to 11 U.S.C. §§ 1107(a) and 1108, the Debtor initially operated its business and managed its property as a debtor-in-possession. On June 10, 2020, the Bankruptcy Court granted a motion to remove the debtor in possession. *See* ECF No. 2-3 at 22 (D.E. 140 and related entries). On September 23, 2020, the Bankruptcy Court converted the Chapter 11 bankruptcy to Chapter 7 and removed Mr. Terry as Chapter 11 Trustee. *See id.* at 42 (D.E. 261).

Salubrio is a single member limited liability company (“LLC”) owned by Dr. Smith which is located on Basse Road in San Antonio, Texas. R. at 68. It provided “Diagnostic MRI services for personal injury eval-

² The Court uses “R.” to refer to the initial bankruptcy record on appeal, which is found at ECF No. 2-2. The Court will refer to the supplemental record on appeal, found at ECF No. 5-2, as “Supp. R.”

ations.” R. at 64. As part of its bankruptcy, Salubrio filed the following forms:

- (1) Summary of Assets and Liabilities for Non-Individuals (Official Form 206Sum), R. at 29;
- (2) Schedule A/B: Assets – Real and Personal Property (Official Form 206A/B), R. at 30-36;
- (3) Schedule D: Creditors Who Have Claims Secured by Property (Official Form 206D), R. at 37-40;
- (4) Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 206E/F), R. at 41-51;
- (5) Schedule G: Executory Contracts and Unexpired Leases (Official Form 206G), R. at 52;
- (6) Schedule H: Codebtors (Official Form 206H), R. at 53-54;
- (7) Declaration Under Penalty of Perjury for Non-Individual Debtors (Official Form B202), R. at 55;
- (8) Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy (Official Form 207), R. at 56-70; and
- (9) Disclosure of Compensation of Attorney for Debtor (Form B2030), R. at 71-72.

As President of the Debtor, Dr. Smith signed these forms (other than the summary and disclosure of compensation) under penalty of perjury. *See* R. at 55, 70.

According to Schedule A/B, the Debtor’s assets primarily consisted of accounts receivable. *See* R. at

30-36. But the assets also included cash or cash equivalents; minimal computer and office equipment valued at \$1,500.00; and a sublease valued at \$1.00. *See R. at 30, 33-34, 36.* And, as found by the Bankruptcy Court, the Debtor's property also included billing and other pertinent medical records of its patients ("Patient Records") that warranted a qualified protective order to ensure compliance with applicable laws. *See R. at 4-5.* The Bankruptcy Court approved certain recipients "to use, disclose, and receive Patient Records," including the Trustee, his attorneys, and other consultants, professionals, and third parties engaged by the Trustee. *See R. at 5-6.*

Although numerous creditors are listed on the filed schedules, the official forms do not list Dr. Smith as a creditor. *See R. 29-72.* Instead, he has acted as the Debtor's corporate representative. *See R. 55, 70.* He also controls various non-debtor entities, including Musculoskeletal Imaging Consultants, LLC ("MSKIC") and Complete Radiology Management Solutions, LLC ("CRMS"). *See R. 197-99* (showing he signed on their behalf).

On April 21, 2021, the Trustee filed a motion, hereinafter referred to as Motion to Abandon, that led to the appeal now before the Court. *See R. 8-18* (entirety of the motion). On that same date, he filed a motion to expedite consideration. *See R. 19-24* (entirety of motion to expedite). The next day, he emailed notice of an expedited hearing on the motion to Dr. Smith. *See Supp. R. 4-5.*

On April 23, 2021, Dr. Smith, as a party-in-interest, filed partial objections to the Motion to Abandon. *See id. at 7-17* (entirety of objections). Within the objections, he described himself as "Owner"

or “Trust Settlor.” *See, e.g., id.* at 8. As one reason for objecting, he argued that the “Trustee and his professionals should be estopped from now asserting control over the personal property of the licensed physician, Dr. Smith.” *Id.* at 9. He contended “that medical records documenting medical care performed under his medical license are his personal property under Texas state laws and Trustee has no ownership claim to Dr. Smith’s personal property.” *Id.* While objecting to certain matters, Dr. Smith stated that he “has no objection to Trustee abandoning all Debtor interest in property at Basse location.” *Id.* at 12. Thus, although he asked the Bankruptcy Court to deny some requested relief, he also requested that the court grant the Motion to Abandon “any estate property that may exist at Basse location.” *Id.* at 15.

Dr. Smith objected to what he contended was the Trustee’s improper attempt to seize third party property for which the Trustee allegedly had not proven to be property of the Debtor’s estate. *Id.* at 13. He described the third-party property as items including but not limited to “Trade Secrets of separate legal entities including MSKIC and CRMS that are protected by Defend Trade Secrets Act of 2016.” *Id.* Further, based on his contention that he owned “all medical records performed under his license,” he objected to the Trustee’s requested relief to remove, scan, and then store physical records if he refused to retrieve or arrange for the records to be delivered after written notice. *Id.* In addition, he objected to the copying and wiping of all locally stored electronic data on any computer drives and MRI machines located on the premises. *Id.*

On April 29, 2021, the Bankruptcy Court held a telephonic hearing on the Motion to Abandon. *See* Tr. Mot. H'rg of Apr. 29, 2021, (ECF No. 5-3) (hereinafter Tr.) at 3-59. Dr. Smith continued to object to abandoning property owned by separate legal entities, *see id.* at 21, 27-30, 36, 4344, 47, 50-51, 58, and himself, *see id.* at 30-31, 36, 44. The Trustee contended that, due to “the way that Dr. Smith ran Salubrio and the non-debtor entities, information had been comingled and the system set-up has caused confusion. *Id.* at 24-25. The Bankruptcy Court stated that, in its view, there is no question “that the information is something that’s essential to the estate” and that Salubrio owns the information. *Id.* at 45. It recognized that “MSKIC or CRMS may own the computers” and other physical office equipment, but the information within any such items is necessary “to liquidate the assets of this estate.” *Id.* at 45-46. It specifically found that the information is “property of the estate.” *Id.* at 57. It found that for the Trustee “to do his job and liquidate the assets of the estate, he’s got to have the information in order to prove these claims against the personal-injury claimants and their law firms.” *Id.* at 52-53. It found that the information may be copied in a confidential manner and then notice can be given “to MSKIC and CRMS” and “the computers will be delivered to those entities wherever they specify.” *Id.* at 53. It also stated:

The issue today is copying and then basically abandonment of these electronic records. And I’m saying that they can copy them because they’ve got to have access to the information, and then they can abandon them to CRMS, MSKIC, or whoever is the lawful

owner of the hardware, obviously, with protections where the hardware needs to be protected against disclosure of confidential information. But if MSKIC and CRMS want to keep the information on the hardware, I guess they can do that. They're the owners of the hardware, apparently.

Id. at 54. The Bankruptcy Court also indicated that Dr. Smith could have “the computers with the information on it . . . on behalf of the owner, which is either MSKIC or CRMS.” *Id.* at 46.

The day after the hearing, Dr. Smith initiated an individual bankruptcy case on his own behalf pro se. *See In Re Smith*, No. 5:21-bk-50519-rbk (filed April 30, 2021) (Bankr. ECF No. 1 (Chapter 11 petition)). And the Bankruptcy Court appointed Brad W. Odell as Trustee on May 5, 2021. *See id.* (Bankr. ECF No. 12).

On May 3, 2021, two days prior to appointing the Trustee in Case No. 5:21-bk-50519-rbk, the Bankruptcy Court granted the Motion to Abandon. *See R.* at 205-07. In that order, the Bankruptcy Court, among other things, “authorized, but not directed” the Trustee in this case to (1) “abandon the estate’s interest in the physical and locally stored electronic records located” inside the Basse Road premises of the Debtor and (2) “have some or all physical records and computer hard drives containing locally stored electronic data . . . removed and then copied or scanned by a vendor of his choice.” *Id.* at 206. The court also ordered that those records and hard drives “shall be made available” to Dr. Smith, “individually and in his capacity as a representative of [CRMS] and/or Musculoskeletal Imaging Consultants, LLC, for his

retrieval (from the Premises or from the vendor’s location if such records are removed) or to arrange delivery to him.” *Id.*

On May 17, 2021, Dr. Smith appealed the Bankruptcy Court’s order on the Motion to Abandon. *See* R. at 208-09. As characterized by Dr. Smith, he filed the instant bankruptcy appeal as party-in-interest as to the underlying bankruptcy case, No. 20-bk-50578-rbk, and as a debtor-in-possession in relation to Case No. 5:21-bk-50519-rbk. *See id.* at 208. He filed the appeal pro se, not through counsel or through the Trustee appointed in the individual bankruptcy case.

II. Jurisdiction and Standard of Review

This Court has jurisdiction to hear this appeal pursuant to 28 U.S.C. § 158(a), which provides district courts with the authority to hear appeals from final judgments and orders of bankruptcy judges. The Bankruptcy Court exercised jurisdiction over the underlying matter pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 as a core proceeding as set forth in § 157 (b)(2)(A) and (O).

“The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995). “Pursuant to 28 U.S.C. § 1334, the district court has exclusive jurisdiction of all bankruptcy cases under title 11 and ‘original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.’” *Wilson v. W. Builders of Amarillo, Inc. (In re Morrison)*, 555 F.3d 473, 478 (5th Cir. 2009) (quoting § 1334(b)). And § 157(b)(1) provides that “Bankruptcy judges may hear and determine all

cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.”

“On appeal, ‘the burden is on the appellants to show error.’” *Edwards Family P’shp, LP v. Johnson (In re Cnty. Home Fin. Servs. Corp.)*, 32 F.4th 472, 484 (5th Cir. 2022) (quoting *Murphy v. St. Paul Fire & Marine Ins. Co.*, 314 F.2d 30, 31 (5th Cir. 1963)). “When reviewing a bankruptcy court’s decision in a ‘core proceeding,’ a district court functions as a[n] appellate court and applies the standard of review generally applied in federal court appeals.” *First Nat’l Bank v. Crescent Elec. Supply Co.*, 713 F.3d 285, 293 (5th Cir. 2013) (quoting *Webb v. Reserve Life Ins. Co. (In re Webb)*, 954 F.2d 1102, 1103-04 (5th Cir. 1992)). As recognized in *Webb*, “[a] core proceeding is one that invokes a substantive right provided by Title 11 [of] the Bankruptcy Code or is a proceeding that by its nature could arise only in the context of a bankruptcy case.” 954 F.2d at 1103 n.1 (citation and internal quotation marks and brackets omitted); *accord In re Morrison*, 555 F.3d at 479.

Courts review a bankruptcy court’s findings of fact under the clearly erroneous standard, but review questions of law *de novo*. *Saenz v. Gomez*, 899 F.3d 384, 390 (5th Cir. 2018); *Wiggains v. Reed*, 848 F.3d 655, 660 (5th Cir. 2017); *Thaw v. Moser*, 769 F.3d 366, 368 (5th Cir. 2014); *Whitley v. Cage*, 737 F.3d 980, 985 (5th Cir. 2013). “Mixed questions are not all alike”; thus making “the standard of review for a mixed question [dependent] on whether answering it entails primarily legal or factual work.” *U.S. Bank*

Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC, 138 S. Ct. 960, 967 (2018).

“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the Bankruptcy Court to judge the credibility of the witnesses.” *Webb*, 954 F.2d at 1104 (quoting former Fed. R. Bankr. P. 8013).³ “A finding of fact is clearly erroneous only if ‘on the entire evidence, the court is left with the definite and firm conviction that a mistake has been committed.’” *Robertson v. Dennis (In re Dennis)*, 330 F.3d 696, 701 (5th Cir. 2003) (quoting *Hibernia Nat'l Bank v. Perez (In re Perez)*, 954 F.2d 1026, 1027 (5th Cir. 1992)).

Furthermore, on appeal, courts review a bankruptcy judge’s discretionary rulings and decisions for abuse of discretion. *Rozelle v. Branscomb*,

³ “As another court has noted, the 2014 amendments to the Federal Rules of Bankruptcy Procedure removed former Rule 8013, but ‘[d]espite the omission of what existed as Rule 8013 prior to December 2014, logic still compels the same conclusion with respect to the appellate powers of the District Court.’” *In re Atiyeh*, No. 21-2381, 2022 WL 970854, at *1 n.3 (E.D. Pa. Mar. 31, 2022) (quoting *In re Great Atl. & Pac. Tea Co., Inc.*, No. 14-4170, 2015 WL 6395967, at *2 n.1 (S.D.N.Y. Oct. 21, 2015)). Not only do courts continue to rely on former Rule 8013, *see, e.g.*, *Rozelle v. Autry (In re Rozelle)*, No. SA-21-CA-173-FB, 2022 WL 709022, at *1 (W.D. Tex. Jan. 31, 2022); *Silicon Hills Campus, LLC v. Tuebor REIT Sub, LLC*, No. 1:20-CV-1201-RP, 2021 WL 783554, at *2 (W.D. Tex. Mar. 1, 2021), but the provisions of the former rule are consistent with typical appellate procedure. Absent a future modification of the rules, binding precedent holding otherwise, or a persuasive opinion that alters this view regarding the appellate procedures, this Court will continue to follow the procedures of the former rule as consistent with appellate procedure in general.

PC, Case No. 5:16-cv-01024-RCL, 2017 WL 3301511, at *2 (W.D. Tex. Jul. 31, 2017). A bankruptcy court’s decision on the motion to abandon is reviewed for abuse of discretion. *See Mohns, Inc. v. Wilson*, 475 B.R. 674, 680 (E.D. Wis. 2012) (relying on *In re Johnston*, 49 F.3d 538, 540 (9th Cir.1995)). “An abuse of discretion occurs” when the bankruptcy court: (1) applies an improper legal standard, which is reviewed de novo; (2) “follows improper procedures”; or (3) “rests its decision on findings of fact that are clearly erroneous.” *Lejeune ex rel. Estate of Caillouet v. JFK Cap. Holdings. LLC (In re JFK Cap. Holdings, LLC)*, 880 F.3d 747, 751 (5th Cir. 2018) (quoting *Barron & Newburger, PC v. Tex. Skyline, Ltd. (In re Woerner)*, 783 F.3d 266, 270 (5th Cir. 2015) (en banc)).

III. Compliance with Briefing Requirements

The Trustee objects to Dr. Smith’s statement of the case because Dr. Smith fails to support factual assertions with references to the record as required by Fed. R. App. P. 28(a)(6). ECF No. 7 at 9. Rule 28(a)(6) requires the appellant’s brief to contain “a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record.” “References to the parts of the record contained in the appendix filed with the appellant’s brief must be to the pages of the appendix.” Fed. R. App. P. 28(e).

“Despite [a] general willingness to construe pro se filings liberally, [courts] still require pro se parties to fundamentally ‘abide by the rules that govern the federal courts.’” *EEOC v. Simbaki, Ltd.*, 767 F.3d 475,

484 (5th Cir. 2014) (quoting *Frazier v. Wells Fargo Bank, N.A.*, 541 F. App'x 419, 421 (5th Cir. 2013)). Among other things, pro se parties must “brief arguments on appeal.” *Id.* A failure to brief an argument constitutes abandonment of the argument. *Yohey v. Collins*, 985 F.2d 222, 224 (5th Cir. 1993). To preserve an issue for appeal, an appellant must brief the issue. *Id.* Failures to cite to the record may result in dismissal of an appeal. See *Moore v. FDIC*, 993 F.2d 106, 107 (5th Cir. 1993) (per curiam).

In reply, Dr. Smith requested an opportunity to submit an amended brief to comply with the procedural requirements. See ECF No. 8 at 3. More specifically, he requested that he have until August 9, 2021, to submit an amended brief. See *id.* at 4. Although he ultimately filed an amended brief, see ECF No. 10, he did not do so until September 20, 2021. The Court has no need to address whether it should consider this amended brief. Dr. Smith merely seeks to file it to correct procedural deficiencies noted by the Trustee. The Court, however, does not rely on any procedural deficiency to Dr. Smith’s detriment. Instead, although the Court notes the Trustee’s objection, Dr. Smith’s request to amend, and the untimely amended brief, the circumstances do not dictate any further court action on the asserted procedural deficiencies because Dr. Smith lacks standing to appeal in this case. Through his reply brief, Dr. Smith had ample opportunity to show that he has standing to pursue this appeal, but he failed to do so.

IV. Standing

The Trustee argues that “Dr. Smith lacks standing to object to the Motion to Abandon and to bring this

appeal.” ECF No. 7 at 11. Notably, Dr. Smith does not meet the definition of a creditor as defined in the bankruptcy code. *See* 11 U.S.C. § 101(10). He is not listed as a creditor on Salubrio’s sworn schedules, as signed under penalty of perjury by Dr. Smith himself. *See* R. 29-72. Nor has he filed a claim in the underlying bankruptcy case. Moreover, the hearing on the motion clearly reflects that, Dr. Smith’s position at that time was that either he or a separate legal entity that he controls, CRMS or MSKIC, owns the property. Supp. R. at 21, 27-31, 35-36, 43-44, 47, 50-51. But standing is lacking even accepting this latter position for purposes here.

Absent standing by the bankruptcy appellant, courts do not reach the merits of a bankruptcy appeal. *Fortune Nat. Res. Corp. v. U.S. Dep’t of Interior*, 806 F.3d 363, 367 (5th Cir. 2015). Standing in the bankruptcy context differs from the traditional Article III context. *See Furlough v. Cage (In re Technicool Sys., Inc.)*, 896 F.3d 382, 385 (5th Cir. 2018). “But that does not mean disgruntled litigants may appeal every bankruptcy court order willy-nilly. Quite the contrary.” *Id.* Consequently, “standing to appeal a bankruptcy court order is, of necessity, quite limited” given the involvement of “numerous parties with conflicting and overlapping interests.” *Id.* To permit “each and every party to appeal each and every order would clog up the system and bog down the courts.” *Id.*

In the Fifth Circuit, courts apply a “narrow inquiry for bankruptcy standing – known as the ‘person aggrieved test.’” *Id.* This test is a prudential standing requirement applicable in the bankruptcy context, *Dean v. Seidel, (In re Dean)*, 18 F.4th 842, 844 (5th

Cir. 2021); *Gibbs & Bruns LLP v. Coho Energy Inc.* (*In re Coho Energy Inc.*), 395 F.3d 198, 202 (5th Cir. 2004), and “is more exacting than the test for Article III standing,” *In re Technicool Sys., Inc.*, 896 F.3d at 385 (citations and internal quotations omitted). Instead of showing a “fairly traceable causal connection, a bankruptcy appellant must instead show that he was directly and adversely affected pecuniarily by the order of the bankruptcy court.” *Id.* (footnotes, internal quotation marks, and citations omitted). With its “higher causal nexus between act and injury,” the bankruptcy standing “restriction narrows the playing field, ensuring that only those with a direct, financial stake in a given order can appeal it.” *Id.* (footnote and citation omitted).

To have standing, all bankruptcy appellants, with one exception, must have a pecuniary interest affected by the matter appealed. *Edwards Family P'shp, LP v. Johnson* (*In re Cmty. Home Fin. Servs., Inc.*), 990 F.3d 422, 426 (5th Cir. 2021). The lone exception is the bankruptcy trustee – the person entrusted with the responsibility to administer the bankruptcy estate. *Id.* The “trustee’s standing comes from the trustee’s duties to administer the bankruptcy estate, not from any pecuniary interest in the bankruptcy.” *Id.* at 427.

For Article III standing, “a party generally may not appeal . . . to champion the rights of another, and even ‘[a]n indirect financial stake in another party’s claims is insufficient to create standing on appeal.’” *Rohm & Hass Tex., Inc. v. Ortiz Bros. Insulation*, 32 F.3d 205, 208 (5th Cir. 1994) (footnotes and citations omitted). In that context, furthermore, “[t]he injury or threat of injury must be both real and immediate

not conjectural or hypothetical, and the putative appellant shoulders the burden of alleging facts sufficient to demonstrate that it is a proper party to appeal.” *Id.* (footnotes, citations, and internal quotation marks omitted). Given the prudential standing concerns mentioned in the preceding paragraphs, courts may apply these Article III standing requirements in the bankruptcy context. *See Schum v. Zwirn Special Opportunities Fund LP (In re The Watch Ltd.),* 257 F. App’x 748, 749 (5th Cir. 2007) (per curiam) (applying such requirements and quoting *Rohm* in dicta).

As stated in an historical context, the prudential standing concept includes “at least three broad principles: the general prohibition on a litigant’s raising another person’s legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff’s complaint fall within the zone of interests protected by the law invoked.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (internal quotation marks and citation omitted). Although in *Lexmark*, the Supreme Court criticized the prudential standing label especially in the zone-of-interest context, *see id.* at 125-27, the Fifth Circuit continues to apply the doctrine in other contexts, *see Superior MRI Servs., Inc. v. Alliance Healthcare Servs., Inc.*, 778 F.3d 502, 506 (5th Cir. 2015) (noting that the Fifth Circuit has “long applied the prudential requirement that a party must assert its own rights and we are bound to follow our precedent until the Supreme Court squarely holds to the contrary”) (internal citation omitted). The prudential standing doctrine remains “especially important in bankruptcy proceedings which often involve numerous

parties who may seek to assert the rights of third parties for their own benefit.” *Marable v. Sam Pack’s For Country of Lewisville, Ltd. (In re Emergency Room Mobile Servs., LLC)*, 529 B.R. 676, 685 (N.D. Tex. 2015) (quoting *In re Ampal-Am. Israel Corp.*, 502 B.R. 361, 369 (Bankr. S.D.N.Y. 2013)).

In this appeal, Dr. Smith has simply not shown that he was directly and adversely affected pecuniarily by the appealed order. His initial brief does not make such a showing. And after the Trustee raised the standing issue, Dr. Smith proclaims in his reply brief that he has standing as “the Subchapter V Debtor-in-Possession (“SCVDIP”) of the 21-bk-50519-rbk bankruptcy estate.” ECF No. 8 at 8. While confident that his role as SCVDIP provides him standing to appeal the bankruptcy order at issue in this appeal, he overlooks flaws in his proclamation.

First, Dr. Smith did not assert his objection on the Motion to Abandon in any role related to Case No. 21-bk-50519. Supp. R. at 15 (showing that Appellant signed the written objections simply as a “Party-in-Interest” without reference to any SCVDIP). Nor did he appear at the hearing on the motion in such a role. *See, generally*, Tr. (showing no such role). Although in a general sense, “party in interest,” includes debtors, trustees, and creditors among others that have a right to “appear and be heard on any issue in a case under [Chapter 11],” *see* 11 U.S.C. § 1109(b), individuals asserting objections or appearing at a motion hearing as a party in interest should affirmatively state their role if it is not apparent from the record. Moreover, Dr. Smith could not have lodged the objection or appeared at the hearing in such a role, because he lodged his objections on April 23, 2021, and attended

the hearing on April 29, 2021, before he filed his individual bankruptcy on April 30, 2021.

Although the Bankruptcy Court issued the appealed order on May 3, 2021, it is clear that Appellant's role related to the appealed order was not in any respect related to his individual bankruptcy action that he had yet to file. Furthermore, although a "debtor-in-possession in chapter 11 assumes the substantial duties and responsibilities of a trustee" through 11 U.S.C. § 1107, the bankruptcy court may remove those rights and duties by replacing the debtor with a trustee through § 1104(a). *In re Herberman*, 122 B.R. 273, 280-81 (Bankr. W.D. Tex. 1990). In cases arising under Chapter 11, "it is the debtor-in-possession who assumes [a fiduciary] obligation (unless a trustee is appointed under Section 1104)." *Id.* at 280.

In bankruptcy cases with an appointed trustee, "the debtor-out-of-possession typically has no concrete interest in how the bankruptcy court divides up the estate." *Dean v. Seidel*, (*In re Dean*), 18 F.4th 842, 844 (5th Cir. 2021) (quoting *Mandel v. Mastrogiovanni Schorsch & Mersky (In re Mandel)*, 641 F. App'x 400, 402-03 (5th Cir. 2016) (per curiam)). In such cases, "a debtor-out-of-possession will rarely have a sufficient interest to challenge a bankruptcy court order." *Mandel*, 641 F. App'x at 402. "Once a trustee is appointed, 'the trustee, not the debtor or the debtor's principal, has the capacity to represent the estate and to sue and be sued.'" *Dean*, 18 F.4th at 844 (quoting *Mandel*, 641 F. App'x at 402). This latter principle is based upon 11 U.S.C. § 323, which sets out the role and capacity of trustees in two subparagraphs:

- (a) The trustee in a case under [Title 11] is the representative of the estate.

- (b) The trustee in a case under [Title 11] has capacity to sue and be sued.

Because § 323 applies to all cases under Title 11, including those arising under both Chapter 7 (like *Dean* and *Mandel*) and Chapter 11, the cited principles from those cases apply equally to Chapter 11 cases.

Before Dr. Smith lodged the instant appeal in this case, the Bankruptcy Court had appointed a Trustee in his individual bankruptcy case, thus removing from Dr. Smith the rights and duties of the trustee. Thus, at the time of the appeal in this case, Dr. Smith was not a debtor-in-possession with the rights and responsibilities of a bankruptcy trustee. He was instead a debtor-out-of-possession without those rights and responsibilities. Even if a debtor-in-possession may have standing without a pecuniary interest, as a trustee would (a matter not decided here), a debtor-out-of-possession must have a pecuniary interest affected by the matter appealed.

Additionally, when appealing as a trustee rather than as an individual, an appellant must secure the services of counsel. Pro se individuals can bring an action only on their own behalf; they cannot pursue an action on behalf of a trust in federal court. *Gabayzadeh v. Taylor*, 639 F. Supp. 2d 298, 301 (E.D.N.Y. 2009) (citing cases). “[I]t is well established that artificial entities, including trusts, ‘may appear in the federal courts only through licensed counsel.’” *Naja v. U.S. Tr.*, No. 1:20-CV-02027, 2021 WL 858832, at *3 (M.D. Pa. Mar. 8, 2021) (quoting *Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 201-02 (1993)). Because the trustee in a bankruptcy case is responsible for the bankruptcy estate, *Edwards Family P’shp, LP v. Johnson (In re Cnty. Home Fin. Servs. Corp.)*, 32 F.4th

472, 484 (5th Cir. 2022), trustees do not appeal or assert claims or arguments on their own behalf. Thus, even if Dr. Smith was a debtor-in-possession with the rights and responsibilities of a trustee, he would have no authority to represent the trust, *i.e.*, bankruptcy estate, in a bankruptcy appeal unless he secured legal counsel. Even in an official capacity as a SCVDIP, he cannot appeal without legal counsel representing the interests of the bankruptcy estate.

Dr. Smith has not shown any adverse pecuniary effect resulting from the appealed order, either to himself, any controlled third-party entity, or even to Salubrio, now controlled by the Trustee. Of course, even had he showed an adverse pecuniary effect to a controlled third-party entity or to Salubrio, he may not appeal on their behalf and an indirect financial stake in their claims is not sufficient to bestow standing. Notably, as the Bankruptcy Court informed Dr. Smith, “artificial entities such as LLCs, partnerships, corporations, or other artificial entities . . . need to be represented by counsel.” *See* Supp. R. at 23. And, as already discussed, Dr. Smith cannot represent an entity pro se.

V. Conclusion

For the foregoing reasons, the Court DISMISSES this appeal for Appellant’s lack of bankruptcy standing. Contemporaneously, with this Memorandum Opinion and Order, the Court will issue a final judgment dismissing the appeal.

IT IS SO ORDERED this 5th day of August 2022.

/s/ Jason Pulliam
United States District Judge

**ORDER OF THE UNITED STATES
BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION
(DECEMBER 1, 2020)**

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE: SALUBRIO, LLC,

Debtor.

Case No. 20-50578-RBK
CHAPTER 7

DOUGLAS K. SMITH, MD,

Plaintiff,

v.

ERIC B. TERRY, ET. AL.,

Defendants.

Adv. Pro. No. 20-05067
Before: Ronald B. KING,
Chief United States Bankruptcy Judge.

**ORDER GRANTING, IN PART, AND DENYING,
IN PART, TRUSTEE'S MOTION TO (I)
ENFORCE THE AUTOMATIC STAY; (II)
ENFORCE THE BARTON DOCTRINE; (III)
HOLD DOUGLAS K. SMITH IN CONTEMPT;
AND (IV) ENTER CHANNELING INJUNCTION
AGAINST DOUGLAS K. SMITH**

CAME ON FOR HEARING, the Motion to *(I) Enforce the Automatic Stay; (II) Enforce the Barton Doctrine; (III) Hold Douglas K. Smith in Contempt; and (IV) Enter Channeling Injunction Against Douglas K. Smith* (the “Motion”) filed by Eric Terry, the duly-appointed Chapter 7 Trustee (the “Trustee”) in the above-captioned bankruptcy case (the “Case”) of Salubrio, LLC (“Salubrio” or the “Debtor”) and in the above captioned adversary proceeding. Upon consideration of the Court’s findings of fact and conclusions of law as stated on the record at the hearing on the Motion and incorporated herein, (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iii) venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the Motion is in full compliance with all applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (v) proper and adequate notice of the Motion and the hearing thereon was given, and no other or further notice is necessary; (vi) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; (vii) the relief sought in the Motion is in the best interests of the Debtor, its estate, creditors, and applicable parties in interest; (viii) any timely objection to the Motion having been withdrawn or overruled for the

reasons stated on the record at the hearing; (ix) Dr. Smith¹ violated, and is in contempt of, the Bankruptcy Code's automatic stay provided by 11 U.S.C. § 362, by filing the complaint initiating the Adversary Proceeding asserting claims that would be property of the Debtor's estate and controlled by the Trustee; (x) as a result of Dr. Smith's violation of the Bankruptcy Code's automatic stay, it is necessary and appropriate to dismiss the complaint in the Adversary Proceeding; (xi) it is further necessary and appropriate to establish a "gatekeeping" procedure that requires Dr. Smith to seek leave of this Court before filing any motion or complaint in any forum that seeks relief from or against the Trustee, his professionals, or other creditors or parties in interest, including Pioneer Bank, MedLegal Solutions, Inc., and BooToo, Ltd.; and (xii) after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is GRANTED, in part, and DENIED, in part, as provided herein.
2. The automatic stay provided by 11 U.S.C. § 362 of the Bankruptcy Code is hereby enforced against Dr. Smith for his violation of the automatic stay as a result of his filing the complaint which initiated the Adversary Proceeding.
3. The complaint in the Adversary Proceeding shall be dismissed, with prejudice, because it asserts claims that would constitute

¹ Undefined capitalized terms have the meaning given them in the Motion.

property of the Debtor's bankruptcy estate and controlled by the Trustee.

4. As a necessary and appropriate "gatekeeping" procedure, Dr. Smith must first seek leave from this Court before filing any motion or complaint in any forum that seeks relief from or against the Trustee, his professionals, or other creditors or parties in interest, including Pioneer Bank, MedLegal Solutions, Inc., and BooToo, Ltd.
5. All other relief requested in the Motion, but not provided herein, is DENIED.
6. The Court retains exclusive jurisdiction to interpret and enforce this Order.
7. This Order is effective immediately.

###

SUBMITTED BY:

SPENCER FANE LLP

By: /s/ Eric M. Van Horn

Eric M. Van Horn

TX Bar No. 24051465

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COUNSEL FOR TRUSTEE

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By: /s/ Eric B. Terry
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CHAPTER 7 TRUSTEE

**MOTION HEARING,
TRANSCRIPT EXCERPTS
(NOVEMBER 25, 2020)**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DOUGLAS K. SMITH, MD,

Plaintiff,

v.

ERIC TERRY, ET AL.,

Defendants.

Case No: 20-05067-RBK
ADVERSARY

Lead Case: 20-50578-RBK
SALUBRIO, LLC

Before: Hon. Ronald B. KING,
United States Bankruptcy Judge.

MOTION TO (I) ENFORCE THE AUTOMATIC STAY;
(II) ENFORCE THE BARTON DOCTRINE; (III) HOLD
DOUGLAS K. SMITH IN CONTEMPT; AND (IV) ENTER
CHANNELING INJUNCTION AGAINST DOUGLAS
K. SMITH [DKT.NO.4]

[November 25, 2020, Transcript, p. 35]

THE COURT: Okay. Well I'm going to grant the motion in part; not every single element. But, number one, I will enforce the automatic stay. There's a case from a long time ago by Judge King on the Fifth Circuit, no relation to me by the way, her name was Judge Randall at that time, Mortgage America, *American National Bank of Austin versus Mortgage America*. And in that case American National Bank sued Mortgage America in State Court, obtained a judgment, and then decided to go against the owner of Mortgage America, a gentleman named Joe Long in Austin. And so Mortgage America filed bankruptcy in the Southern District of Texas and American Bank continued to sue Mr. Long for fraudulent transfers. And Mortgage America was successful in having that declared to be property of the estate. So whether it's under 548 or 544 or some other provision of the Bankruptcy Code, fraudulent transfer causes of action are owned by the debtor. In this case, the Debtor is Salubrio, LLC. So if anybody owns a fraudulent transfer action relating to Salubrio or its assets or causes of action that it owns, those belong to Salubrio, LLC. And this is a Chapter 7 case and so Mr. Terry as the Chapter 7 Trustee is in effect the owner of these causes of action. So the causes of action that Dr. Smith has alleged in his adversary proceeding are property of the estate and he's not allowed to pursue those causes of action. So I will grant the first portion of it, that he's violated the stay by seeking to appropriate or enforce rights which are owned by the Trustee

as the representative of the bankruptcy estate. So he's in violation of the stay.

Second, on the Barton Doctrine, the Barton Doctrine says you can't go suing people, you have to go back to the original court and either pursue it there or get permission from the bankruptcy court that has the case in order to go forward on any causes of action. Well, this is the same court so I don't think the Barton Doctrine applies. And we thought that should be obvious but we went and looked and found a case by Judge Houser in the Northern District called *In Re Provider Meds, LLC*, 514 Bankruptcy Reporter 473, a 2014 opinion by Judge Houser. And by the way, she did about three or four in that same case on various subjects. But this one is on the Barton Doctrine. And it says if you file in the same court, Barton Doctrine doesn't really apply. You can't go to the court and say, oh, can I file this, you just file it as long as it's the same court. So as far as Barton Doctrine, I'm denying the motion.

As far as contempt, I mean, Dr. Smith does not own these causes of action so he has no standing to assert them. Technically that's contempt for violation of the stay. I'm not granting any sanctions. I'm just telling him he doesn't have standing to pursue these causes of action and so therefore he can't go forward with them.

And then finally on the request-the fourth request is for a channeling injunction. I think that really is more of a confirmation of a plan issue where you issue channeling injunctions against either insiders or other parties so that the debtor can

perform under a plan of reorganization. I would call it a gatekeeper order. And so I will grant that in part and just say that if Dr. Smith wants to file anything that seeks relief, whether it's an adversary proceeding or whether it's a motion, he can do that on his own behalf pro se. If his entities that he owns or controls want to do that, then they need to have counsel. And then, secondly, he needs to file a motion for leave and have an order granted granting leave before he can file any motion seeking relief against the Trustee, the Trustee's attorneys, the Trustee's professionals, or the estate. And if he files a motion for leave and then gets that granted, then he can file that pleading. Certainly we're not going to prevent him from asserting lawful and valid bankruptcy theories or bankruptcy issues. He just can't sue the Trustee, the Trustee's attorney, other creditors, for causes of action that are owned by the estate of Salubrio, LLC under the *Mortgage America* case. Oh, by the way, the cite for *Mortgage America* is 714 Federal Second 1266. It's a Fifth Circuit case from 1983 by Judge Carolyn Randall, now known as Judge Carolyn King.

So the motion's granted in the most-for the most part. The stay will be enforced. Dr. Smith is ordered not to violate the stay any further by filing either motions or adversary proceedings for causes of action owned by the bankruptcy estate. And, number two, the motion is denied as far as the Barton Doctrine because we're in the same court as the case and he has filed this in the same court. Number three, Dr. Smith was in

contempt for filing this but I'm not asserting or imposing any sanctions at this point. But just a warning for further conduct that may be in violation of the stay. And then finally a gatekeeper order to require Dr. Smith to seek leave of Court to file any further pleadings against the Trustee, the attorneys, or other creditors.

So I'll ask Mr. Van Horn to do the order and just send everyone by email the order before you upload it to the Court.

[. . .]

FIFTH CIRCUIT DOCKET
CASE NO: 22-50764

General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 22-50764

Smith v. Terry

Appeal From: Western District of Texas, San Antonio

Fee Status: Fee Paid

Docketed: 08/25/2022

Termed: 03/08/2023

Case Type Information:

- 1) Bankruptcy
- 2) District Court

Originating Court Information:

District: 0542-5 : 5:21-CV-476

Originating Judge: Jason Kenneth Pulliam, U.S. District Judge

Date Filed: 05/18/2021

Date NOA Filed: 08/18/2022

Date Rec'd COA: 08/19/2022

Prior Cases: None

Current Cases: None

Panel Assignment: Not available

08/25/2022

- 1 BANKRUPTCY CASE docketed. NOA filed by Appellant Mr. Douglas K. Smith, MD (Monitoring for the Creditor Disclosure Statement) due on 09/08/2022 for Appellant Douglas K. Smith, MD and Appellee Eric Terry [22-50764] (RAJ) [Entered: 08/25/2022 11:48 AM]

08/29/2022

- 5 INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [5] Initial AA Check Due satisfied. Fee due on 09/13/2022 for Appellant Douglas K. Smith, MD [22-50764] (CBW) [Entered: 08/29/2022 12:09 PM]

08/29/2022

- 6 APPEARANCE FORM received from Ms. Misty Ann Segura for Mr. Eric Terry for the court's review. Lead Counsel? Yes. [22-50764] (Misty Ann Segura) [Entered: 08/29/2022 03:18 PM]

08/29/2022

- 7 APPEARANCE FORM FILED by Attorney Misty Ann Segura for Appellee Eric Terry in 22-50764 [22-50764] (CBW) [Entered: 08/29/2022 04:32 PM]

09/07/2022

- 8 CREDITOR DISCLOSURE STATEMENT filed. Miscellaneous deadline satisfied. [22-50764] KB REVIEWED AND/OR EDITED- The original text prior to review appeared as follows: CREDITOR DISCLOSURE STATEMENT filed by Appellee Mr. Eric

Terry Date of Service: 09/07/2022 via email-
Attorney for Appellant: Jesser; Attorney for
Appellees: Segura, Van Horn; US mail-
Attorney for Appellee: Van Horn . . . [22-
50764] (Misty Ann Segura) [Entered: 09/
07/2022 10:17 AM]

09/14/2022

9 LETTER OF ADVISEMENT. Reason:
requesting creditor disclosure statement [22-
50764] (CBW) [Entered: 09/14/2022 08:05
AM]

09/20/2022

11 CREDITOR DISCLOSURE STATEMENT
filed. Miscellaneous deadline satisfied. [22-
50764] REVIEWED AND/OR EDITED-The
original text prior to review appeared as
follows: CREDITOR DISCLOSURE STATE-
MENT filed by Appellant Mr. Douglas K.
Smith, MD Date of Service: 09/20/2022 via
email-Attorney for Appellant: Jesser; Attor-
ney for Appellees: Segura, Van Horn; US
mail-Attorney for Appellees: Segura, Van
Horn . . . [22-50764] (Steven H. Jesser)
[Entered: 09/20/2022 10:46 PM]

09/30/2022

12 CLERK ORDER dismissing appeal pursuant
to 5th Circuit Rule 42 for failure to pay fee
[12] [22-50764] (RSM) [Entered: 09/30/2022
01:07 PM]

10/03/2022

15 DOCUMENT RECEIVED-NO ACTION
TAKEN. No action will be taken at this time
on the Verified motion to vacate received

from Appellant Mr. Douglas K. Smith, MD because must refile using correct event and comply with FRAP 27 [22-50764] (MBC) [Entered: 10/03/2022 02:10 PM]

10/03/2022

16 FEE PAID by Appellant Mr. Douglas K. Smith, MD. [22-50764] 09/30/2022-17 USCA Appeal Fees received \$ 505 receipt number 1101 re Notice of Appeal, filed by Douglas K. Smith, MD. (mgr) (Entered: 10/03/2022) (MBC) [Entered: 10/03/2022 02:21 PM]

11/17/2022

17 OPPOSED MOTION filed by Appellant Mr. Douglas K. Smith, MD to reopen case [17]. Date of service: 11/17/2022 via email-Attorney for Appellant: Jesser; Attorney for Appellee: Segura; US mail-Attorney for Appellee: Van Horn [22-50764] (Steven H. Jesser) [Entered: 11/17/2022 11:35 PM]

11/21/2022

21 CLERK ORDER granting Motion to reopen case filed by Appellant Mr. Douglas K. Smith, MD [17] [22-50764] (MVM) [Entered: 11/21/2022 07:53 AM]

11/21/2022

22 ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 5:21-CV-476. Electronic ROA due on 12/06/2022. [22-50764] (MVM) [Entered: 11/21/2022 08:11 AM]

12/09/2022

23 ELECTRONIC RECORD ON APPEAL FILED. Admitted Exhibits on File in District Court? No. Video/Audio Exhibits on File in District Court? No Electronic ROA deadline satisfied. [22-50764] (DDL) [Entered: 12/09/2022 01:19 PM]

12/09/2022

24 BRIEFING NOTICE ISSUEDA/Pet's Brief Due on 01/18/2023 for Appellant Douglas K. Smith, MD. [22-50764] (DDL) [Entered: 12/09/2022 01:20 PM]

12/29/2022

25 APPEARANCE FORM for the court's review. Lead Counsel? Yes. [22-50764] (Steven H. Jesser) [Entered: 12/29/2022 04:49 PM]

12/30/2022

26 APPEARANCE FORM FILED by Attorney Steven H. Jesser for Appellant Douglas K. Smith, MD in 22-50764 [22-50764] (RSM) [Entered: 12/30/2022 12:37 PM]

01/14/2023

27 OPPOSED MOTION filed by Appellant Mr. Douglas K. Smith, MD to extend time to file brief as appellant [27]. Date of service: 01/14/2023 via email-Attorney for Appellant: Jesser; Attorney for Appellees: Segura, Van Horn; US mail-Attorney for Appellee: Van Horn [22-50764] (Steven H. Jesser) [Entered: 01/14/2023 12:46 AM]

01/16/2023

31 CLERK ORDER granting in part Motion to extend time to file appellant's brief filed by Appellant Mr. Douglas K. Smith, MD [27] A/Pet's Brief deadline updated to 02/17/2023 for Appellant Douglas K. Smith, MD [22-50764] (MVM) [Entered: 01/16/2023 02:48 PM]

02/23/2023

33 OPPOSED MOTION for leave to file brief out of time [33]-Brief Tendered? No, to extend time to file brief as appellant until 03/20/2023 [33]. [22-50764]

REVIEWED AND/OR EDITED-The original text prior to review appeared as follows: OPPOSED MOTION filed by Appellant Mr. Douglas K. Smith, MD to extend time to file brief as appellant [33]. Date of service: 02/23/2023 via email-Attorney for Appellant: Jesser; Attorney for Appellees: Segura, Van Horn [22-50764] (Steven H. Jesser) [Entered: 02/23/2023 11:36 PM]

02/24/2023

34 RESPONSE/OPPOSITION [34] to the Motion to extend time to file appellants brief filed by Appellant Mr. Douglas K. Smith, MD in 22-50764 [33], Motion to file brief out of time filed by Appellant Mr. Douglas K. Smith, MD in 22-50764 [33] and INCORPORATED MOTION to dismiss appeal pursuant to 5th Circuit Rule 42 [34] [22-50764]

REVIEWED AND/OR EDITED-The original text prior to review appeared as follows:
RESPONSE/OPPOSITION filed by Mr. Eric Terry [34] to the filed by Appellant Mr. Douglas K. Smith, MD [33], filed by Appellant Mr. Douglas K. Smith, MD [10049270-2] Date of Service: 02/24/2023 via email-Attorney for Appellant: Jesser; Attorney for Appellee: Segura; US mail-Attorney for Appellee: Van Horn. [22-50764] (Misty Ann Segura) [Entered: 02/24/2023 08:36 AM]

03/08/2023

42 COURT ORDER denying Motion to extend time to file appellants brief filed by Appellant Mr. Douglas K. Smith, MD [33]; denying Motion to file brief out of time filed by Appellant Mr. Douglas K. Smith, MD [33]; granting Motion to dismiss appeal filed by Appellee Mr. Eric Terry [34]; for failure to file appellants brief [42]. Mandate issue date is 03/30/2023. [22-50764] (MVM) [Entered: 03/08/2023 07:42 AM]

03/30/2023

45 MANDATE ISSUED. Mandate issue date satisfied. [22-50764] (MVM) [Entered: 03/30/2023 01:02 PM]