

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JEANITTA SMITH,	:	APPEAL NO. C-060966
	:	TRIAL NO. A-0605500
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
LYNN A. LAPE,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Raising a single assignment of error, plaintiff-appellant Jeanitta Smith contests the entry of summary judgment for defendant-appellee Lynn A. Lape, on her claim that Lape, an Ohio attorney, had negligently handled Smith’s petition in bankruptcy. Smith alleged that Lape had negligently failed to disclose Smith’s pending federal discrimination claim against a former employer as Schedule B personal property in the bankruptcy petition. The United States District Court ultimately dismissed Smith’s discrimination claim, and Smith brought this action against Lape.

Summary judgment is proper pursuant to Civ.R. 56(C) when (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence viewed most strongly in favor of the party against

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

whom the motion for summary judgment is made, that conclusion is adverse to that party.²

The substantive law governing Smith's legal-malpractice claim identified the factual disputes that were potentially material and thus could have precluded summary judgment.³ To establish the essential elements of a legal-malpractice claim, a plaintiff must show that (1) the attorney owed her a duty; (2) there was a breach of that duty, and the attorney failed to conform to the standard of care required by law; and (3) there was a causal connection between the conduct complained of and the resulting damage to the plaintiff.⁴ Thus, we cannot disturb the entry of summary judgment below unless Smith could identify factual disputes that affected the essential elements of her legal-malpractice claim.

But Smith could not adduce any evidence of damages to her from Lape's actions because Smith was not the real party in interest in the discrimination case. Civ.R. 17(A) provides that "[e]very action shall be prosecuted in the name of the real party in interest." A real party in interest is "one who has a real interest in the subject matter of the litigation, and not merely an interest in the action itself, i.e., one who is directly benefited or injured by the outcome of the case."⁵ "In order to ascertain the real party in interest, a court must ask, 'who would be entitled to damages?'"⁶

Federal bankruptcy law provides that all legal or equitable interests of the debtor, including any causes of action existing at the time of a case's commencement, become the property of the bankruptcy estate.⁷ "Where a cause of action is property of the bankruptcy

² See, also, *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264.

³ See *Gross v. Western-Southern Life Ins. Co.* (1993), 85 Ohio App.3d 662, 666-667, 621 N.E.2d 412, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 247-248, 106 S.Ct. 2505.

⁴ See *Vahila v. Hall*, 77 Ohio St.3d 421, 427, 1997-Ohio-259, 674 N.E.2d 1164; see, also, *Burke v. Gammarino* (1995), 108 Ohio App.3d 138, 143, 670 N.E.2d 295.

⁵ *Shealy v. Campbell* (1985), 20 Ohio St.3d 23, 24, 485 N.E.2d 701.

⁶ *First Union Natl. Bank v. Hufford*, 146 Ohio App.3d 673, 677, 2001-Ohio-2271, 767 N.E.2d 1206.

⁷ See Section 541(a)(1), Title 11, U.S.Code; see, also, *In re Dow* (S.D. Ohio 1991), 132 B.R. 853, 859.

estate, the debtor is divested of it and only the trustee has standing to assert the claim * * *.”⁸ As the “damages caused by the alleged malpractice occurred at the point of the filing of the petition,” in this case Smith’s claim was the property of the bankruptcy estate.⁹ Thus Smith lacked standing to bring the legal-malpractice claim, and Lape was entitled to judgment as a matter of law. The assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 5, 2007
per order of the Court _____.
Presiding Judge

⁸ *Kovacs v. Thomson, Hewitt & O'Brien* (1997), 117 Ohio App.3d 465, 469, 690 N.E.2d 970.

⁹ See *In re Dow*, 132 B.R. at 860; see, also, *Kovacs v. Thomson, Hewitt & O'Brien*, 117 Ohio App.3d at 468, 690 N.E.2d 970.