

APR 06 2010

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. NV-09-1263-DJuP
)	
ARNEL FLORES and MARIA)	Bk. No. 08-21047-MKN
RODRIGUEZ-FLORES,)	
)	
Debtors.)	
<hr/>		
ARNEL FLORES;)	
MARIA RODRIGUEZ-FLORES,)	
)	
Appellants,)	
)	
v.)	MEMORANDUM¹
)	
RICK A. YARNALL, Chapter 13)	
Trustee,)	
)	
Appellee.)	

Argued and Submitted on March 19, 2010
at Pasadena, California

Filed - April 6, 2010

Appeal from the United States Bankruptcy Court
for the District of Nevada

Hon. Mike K. Nakagawa, Chief Bankruptcy Judge, Presiding.

Before: DUNN, JURY and PERRIS,² Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² Hon. Elizabeth L. Perris, Chief Judge of the Bankruptcy Court for the District of Oregon, sitting by designation.

1 Arnel Flores ("Mr. Flores") and Maria Rodriguez-Flores
2 ("Mrs. Flores") (collectively, "the Floreses") claimed as exempt
3 a medical malpractice claim and a loss of consortium claim
4 (collectively, "injury claims") on their amended Schedule C.³
5 The chapter 13 trustee, Rick A. Yarnall (the "trustee"), objected
6 to Mrs. Flores exempting the loss of consortium claim as a
7 personal injury claim under Nev. Rev. Stat. ("N.R.S.")
8 § 21.090(1)(u).

9 The Floreses countered his objection, arguing that neither
10 of the injury claims was property of the estate because the
11 injury claims were so personal to them that, as a matter of
12 public policy, the injury claims should be excluded from the
13 estate. The bankruptcy court determined that, though the injury
14 claims were property of the estate, Mrs. Flores could exempt her
15 loss of consortium claim as a personal injury claim under N.R.S.
16 § 21.090(1)(u). The Floreses appeal the bankruptcy court's
17 determination that the injury claims were property of the
18 estate.⁴

20 ³ Unless otherwise indicated, all chapter, section and rule
21 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
22 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

23 ⁴ In his opening brief, the trustee contends that the
24 bankruptcy court erred in allowing Mrs. Flores to exempt her loss
25 of consortium claim as a personal injury claim under N.R.S.
26 § 21.090(1)(u). The Floreses point out in their reply brief that
27 the trustee did not file a notice of cross-appeal. At oral
28 argument, counsel for the trustee conceded that the trustee did
not file a cross-appeal. We lack jurisdiction to address issues
raised by appellees in the absence of a notice of cross-appeal.
See Abrams v. Sea Palms Assocs., Ltd. (In re Abrams), 229 B.R.

(continued...)

1 We AFFIRM.

2
3 **FACTS**

4 Six years before filing for bankruptcy, Mr. Flores sustained
5 a brain injury while undergoing sinus surgery. The Floreses
6 initiated a medical malpractice lawsuit against the physician who
7 performed the surgery. Among the causes of action asserted in
8 the medical malpractice lawsuit,⁵ the Floreses included a loss of
9 consortium claim on behalf of Mrs. Flores.

10 The Floreses filed their chapter 13 petition on September
11 23, 2008. On their Schedule B, the Floreses listed three
12 lawsuits, one of which they described as a "medical lawsuit" with
13 a \$0 value. On their Schedule C, the Floreses claimed the
14 medical lawsuit as exempt with a value of \$0 under N.R.S.
15 § 21.090(1)(u).⁶

16 _____
17 ⁴(...continued)
18 784, 788 (9th Cir. BAP 1999), aff'd 242 F.3d 380 (9th Cir. 2000).
19 We therefore do not address the trustee's arguments on the issue
20 of Mrs. Flores's claimed exemption in her loss of consortium
21 claim.

22 ⁵ The Floreses also asserted negligence, negligent
23 infliction of emotional distress, and breach of fiduciary duty.

24 ⁶ Nevada has opted out of the federal exemption scheme. See
25 N.R.S. § 21.090(3).

26 N.R.S. § 21.090 provides in relevant part:

- 27 1. The following property is exempt from execution, except
28 as otherwise specifically provided in this section or
required by federal law:

. . .

(continued...)

1 The Floreses amended their Schedule B and Schedule C four
2 times over the course of their bankruptcy case.⁷ On their second
3 amended Schedule B and Schedule C, the Floreses recast the
4 medical lawsuit as a "medical malpractice lawsuit" with an
5 "unknown" value and claimed it as exempt in the value of
6 \$16,150.⁸

7 On their third amended Schedule B, the Floreses added a
8 second medical malpractice lawsuit; they listed Mr. Flores as the
9 plaintiff in both medical malpractice lawsuits and assigned the
10 medical malpractice lawsuits "unknown" values. On their third
11 amended Schedule C, the Floreses claimed both medical malpractice
12 lawsuits as exempt, each in the value of \$16,150.

13 On their fourth amended Schedule B,⁹ the Floreses modified
14 their description of the medical malpractice lawsuits; they
15

16 ⁶(...continued)

17 (u) Payments, in an amount not to exceed \$16,150,
18 received as compensation for personal injury, not
19 including compensation for pain and suffering or
20 actual pecuniary loss, by the judgment debtor or
by a person upon whom the judgment debtor is
dependent at the time the payment is received.

21 NEV. REV. STAT. ANN. § 21.090(1)(u) (2008).
22

23 ⁷ The Floreses amended their Schedule B and Schedule C on
24 October 10, 2008, December 19, 2008, January 2, 2009 and January
13, 2009.

25 ⁸ The Floreses claimed the medical malpractice lawsuit as
26 exempt under N.R.S. § 21.090(1)(u) in every amended Schedule C.

27 ⁹ The Floreses apparently filed their fourth amended
28 Schedule B and Schedule C in response to the trustee's objection
to their third amended Schedule B and Schedule C.

1 listed Mr. Flores as the plaintiff in the first medical
2 malpractice lawsuit and Mrs. Flores as the plaintiff in the
3 second medical malpractice lawsuit (i.e., loss of consortium
4 claim).¹⁰ The Floreses assigned each medical malpractice lawsuit
5 a value of \$175,000.¹¹ On their fourth amended Schedule C, the
6 Floreses claimed both medical malpractice lawsuits as exempt,
7 each in the value of \$16,150.

8 The medical malpractice claims settled for a total of
9 \$175,000 pursuant to an order entered by the bankruptcy court on
10 January 21, 2009 (the "settlement"). Approximately \$75,000
11 remained from the settlement after payment of attorney's fees and
12 costs.

13 The trustee objected to Mrs. Flores's exemption of the loss
14 of consortium claim as listed on the fourth amended Schedule C.
15 Relying on Suter v. Goedert, 396 B.R. 535 (D. Nev. 2008), the
16 trustee contended that a debtor may exempt a personal injury
17 claim under N.R.S. § 21.090(1)(u) only if the personal injury
18 claim arose from harm done to his or her own person (i.e., a
19 bodily injury). Only Mr. Flores sustained a "personal injury"
20 within the meaning of N.R.S. § 21.090(1)(u). Mrs. Flores's loss
21 of consortium claim was derivative from Mr. Flores's medical
22 malpractice claim. Because Mrs. Flores had no personal injury
23

24 ¹⁰ The Floreses clarified in subsequent pleadings before the
25 bankruptcy court that Mrs. Flores's medical malpractice claim was
26 in fact her loss of consortium claim.

27 ¹¹ The Floreses apparently assigned the medical malpractice
28 lawsuits these values based on the \$175,000 settlement of all of
the related claims.

1 claim separately from Mr. Flores, the trustee argued, she could
2 not exempt her loss of consortium claim under N.R.S.
3 § 21.090(1)(u).

4 The Floreses raised two arguments in response to the
5 trustee's objection. First, they contended that the injury
6 claims were not property of the estate under § 541 because the
7 injury claims were so personal to them as to be excluded from the
8 estate on public policy grounds and/or were non-assignable under
9 state law.¹² Second, the Floreses argued that, assuming that the
10 injury claims were property of the estate, Mrs. Flores's loss of
11 consortium claim constituted a personal injury claim within the
12 meaning of N.R.S. § 21.090(1)(u) that was exempt up to \$16,150.

13 The bankruptcy court held an evidentiary hearing, at which
14 Mrs. Flores testified, and a hearing for argument on legal
15 issues. On August 4, 2009, the bankruptcy court issued its
16 ruling in a memorandum decision, determining that the injury
17 claims were not so personal to the Floreses as to be excluded
18 from the estate. The bankruptcy court found, however, that Mrs.
19 Flores's loss of consortium claim constituted a personal injury
20 within the meaning of N.R.S. § 21.090(1)(u). As such, the
21 bankruptcy court concluded, Mrs. Flores could claim an exemption
22 in her loss of consortium claim. The bankruptcy court entered an

23
24 ¹² The trustee did not object to Mr. Flores's exemption of
25 the medical malpractice claim in either his written objection or
26 at final argument. In fact, counsel for the trustee stated at
27 final argument that the trustee's objection "was simply [to] Mrs.
28 [Flores] taking and [sic] additional personal injury exemption
under N.R.S. § 21.090U [sic] in the [\$]16,150 from the settlement
of the [medical malpractice claim]." Tr. of June 24, 2009 Hr'g,
5:2-5.

1 order, consistent with its ruling, on the same day. The Floreses
2 filed a timely notice of appeal.

3
4 **JURISDICTION**

5 The bankruptcy court had jurisdiction under 28 U.S.C. § 1334
6 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C. § 158.

7
8 **ISSUE**

9 Whether the bankruptcy court erred in finding that the
10 injury claims were property of the estate.

11
12 **STANDARDS OF REVIEW**

13 We review questions regarding a debtor's right to claim
14 exemptions as questions of law subject to de novo review. Arnold
15 v. Gill (In re Arnold), 252 B.R. 778, 784 (9th Cir. BAP 2000).
16 We review questions as to whether property is included in a
17 bankruptcy estate also as questions of law subject to de novo
18 review. Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th Cir.
19 BAP 2000), aff'd 35 Fed. Appx. 592 (9th Cir. 2002).

20
21 **DISCUSSION**

22 The Floreses argued before the bankruptcy court that their
23 injury claims were so personal to them that, as a matter of
24 public policy, the injury claims should be excluded from property
25 of the estate. In making their argument, the Floreses relied on
26 Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705
27 (9th Cir. 1986), and Suter v. Goedert, 396 B.R. 535 (D. Nev.
28 2008).

1 In Sierra Switchboard Co., the debtor initiated a state
2 court action against Westinghouse regarding certain commercial
3 transactions between them. 789 F.2d at 706. Ella Fehl, co-owner
4 and manager of the debtor, cross-complained against Westinghouse
5 for emotional distress arising from its interference with the
6 debtor's contractual and business relationships and for breaches
7 of a credit agreement and a security agreement under which Ms.
8 Fehl personally guaranteed the debtor's debts. After Ms. Fehl
9 and the debtor filed for bankruptcy, the action, along with Ms.
10 Fehl's emotional distress claim, was removed to the bankruptcy
11 court. Westinghouse, Ms. Fehl, the trustee for Ms. Fehl's
12 bankruptcy case and others stipulated to a dismissal of the
13 action, including the emotional distress claim, without
14 prejudice, with a condition that any party could refile the
15 action within one year. Ms. Fehl refiled her emotional distress
16 claim in the bankruptcy court. The bankruptcy court determined,
17 however, that Ms. Fehl had no standing to refile her emotional
18 distress claim because it was property of the estate. The
19 district court affirmed the bankruptcy court.

20 The Ninth Circuit agreed with the bankruptcy court and the
21 district court, determining that the broad definition of property
22 of the estate under the Bankruptcy Reform Act of 1978 included
23 personal injury causes of action, such as emotional distress
24 claims. Id. at 707-09. The Ninth Circuit noted in passing,
25 however, that in some circumstances, an emotional distress claim
26 might be so personal to the debtor that, on public policy
27 grounds, it would not become property of the estate. Id. at 709
28 n.3.

1 Twenty-two years later, the debtors in Suter attempted to
2 exclude a legal malpractice claim from the estate on several
3 grounds, including the public policy ground noted in Sierra
4 Switchboard Co. Suter, 396 B.R. at 545. The debtors prepetition
5 initiated an action against a medical facility and its physicians
6 for the improper treatment of their daughter ("medical
7 malpractice action"). After the medical malpractice action
8 resulted partially in a judgment against the debtors, they
9 initiated a legal malpractice action against the attorneys who
10 had represented them in the medical malpractice action. Id. at
11 539. The debtors sought to exclude the legal malpractice claim
12 as an asset of their chapter 7 estate on the ground that their
13 legal malpractice claim was so personal to them that it was not
14 property of the estate. Id. at 545.

15 Noting that Sierra Switchboard Co. provided "limited
16 guidance," the district court in Suter set forth "three related
17 reasons for finding an action to be so personal as to exclude it
18 from the bankruptcy estate: (1) permitting the debtor to
19 prosecute intimately personal claims serves as a type of
20 catharsis for the debtor; (2) it seems unfair to allow a
21 defendant to 'buy' his or her own wrong and to keep it from
22 public scrutiny; and (3) compensation for personal injury claims
23 [is] intended to make a plaintiff whole, not merely to pay off a
24 debt." Id. at 546. The district court emphasized that "[e]ach
25 of these reasons stem[med] from righting a wrong done to a
26 plaintiff herself. As the court wrote in Sierra Switchboard
27 [Co.], the claim must be 'personal,' that is, it must belong to
28 the plaintiff." Id.

1 The district court in Suter ultimately concluded that the
2 debtors' legal malpractice claim was not so personal to them as
3 to exclude it from the estate because they sought to recover for
4 harm that arose from injuries, not to their own persons, but to
5 their daughter. Id.

6 Here, the bankruptcy court found that, because the debtors'
7 medical malpractice and loss of consortium claims settled, none
8 of the factors set forth in Suter applied.¹³ The bankruptcy
9 court went through each factor outlined in Suter in determining
10 that the Floreses' injury claims remained property of the estate.

11 The bankruptcy court first found that the Floreses had no
12 reason to exclude their injury claims from the estate in order to
13 prosecute them to achieve catharsis. The bankruptcy court did
14 not consider Mr. Flores's medical malpractice claim as
15 "intimately personal" to him given that many personal injury tort
16 claims involved similar circumstances (e.g., physical injury,
17 damage to cognitive functions). Memorandum Decision, 6:25-27,
18 7:1. Though the bankruptcy court acknowledged that Mrs. Flores's
19 loss of consortium claim was "intimately personal," it concluded
20 that she did not need to have her loss of consortium claim

21
22 ¹³ The Floreses contend in their opening brief that,
23 contrary to the bankruptcy court's determination, the issue is
24 not moot because the trustee had not distributed the settlement
25 proceeds that they seek to exempt. Appellant's Opening Brief at
26 7. In its memorandum decision, the bankruptcy court concluded
27 that the Floreses' arguments "based on Suter [were] moot inasmuch
28 as the medical malpractice claim [had] been settled." Memorandum
Decision, 6:22-24. The Floreses misapprehend the bankruptcy
court's use of the term. The bankruptcy court merely meant that,
because the medical malpractice lawsuit was settled, the reasons
set forth in Suter were irrelevant (i.e., inapplicable).

1 excluded from the estate to achieve catharsis through prosecuting
2 it. Memorandum Decision, 7:1-11. She "had her day in court" by
3 testifying at the evidentiary hearing, even though her loss of
4 consortium claim still remained part of the estate. Memorandum
5 Decision, 7:8-11. Moreover, the bankruptcy court reasoned, the
6 settlement obviated the Floreses' need for prosecution.

7 The bankruptcy court next determined that there was no
8 reason for the Floreses to exclude the injury claims from the
9 estate in order to right the wrong done to them, again, in light
10 of the approved settlement. Nothing in the record indicated that
11 the defendants in the medical malpractice lawsuit were
12 "attempting to keep their alleged misdeeds from public scrutiny."
13 Memorandum Decision, 7:17. As the bankruptcy court noted, the
14 medical malpractice lawsuit was settled after notice to all
15 interested parties and a hearing.

16 The bankruptcy court finally found that there was no reason
17 for the Floreses to exclude the injury claims from the estate in
18 order to right the wrong against them, as the settlement provided
19 compensation sufficient to make the Floreses whole.

20 The Floreses contend that the bankruptcy court erred in its
21 application of Suter to the instant case. The Floreses assert
22 that all of the Suter factors were present for finding that the
23 injury claims were so personal to them as to be excluded from the
24 estate as a matter of public policy.

25 The Floreses argue that the bankruptcy court missed the
26 purpose of the first factor. A victim's "day in court," the
27 Floreses contend, consists of actually prosecuting the claim.
28 Here, Mrs. Flores did not have her "day in court" until she

1 testified at the evidentiary hearing, which took place after the
2 medical malpractice lawsuit was settled.

3 As to the second Suter factor, the Floreses claim that,
4 contrary to the bankruptcy court's conclusion, the defendants did
5 manage to keep their wrong from public scrutiny. None of the
6 documents relating to the settlement filed in the bankruptcy
7 case, the Floreses point out, reveal the names of the medical
8 personnel defendants. Moreover, the Floreses add, only creditors
9 received notice of the settlement.

10 The Floreses also contend that the bankruptcy court ignored
11 the intent of the third Suter factor. According to the Floreses,
12 making plaintiffs whole through compensation for their personal
13 injury claims is the "exact reason to exclude" such claims from
14 property of the estate.

15 We note that, since Sierra Switchboard Co. was decided in
16 1986, no court in any circuit has determined that personal injury
17 claims are so personal to the debtor that they should be excluded
18 from the estate. No decision that we or the Floreses have found
19 applies the Suter analysis to arrive at the result the Floreses
20 want. Suter developed a test based on dictum in Sierra
21 Switchboard Co. that has never been applied, in the Ninth Circuit
22 or elsewhere, to exclude debtors' personal injury claims from
23 their bankruptcy estates.

24 The Ninth Circuit cited In re Brooks, 12 B.R. 22, 24-25
25 (S.D. Ohio 1981), in suggesting in Sierra Switchboard Co. that
26 there may be some circumstances in which an emotional distress
27 claim may "be so personal to the debtor that it would be
28 undesirable, on public policy grounds, to transfer the property

1 interest to the bankruptcy trustee." 789 F.2d at 709 n.3. But
2 the bankruptcy court in Brooks did not find any public policy
3 ground on which to exclude personal injury claims from property
4 of the estate. Brooks, 12 B.R. at 25.

5 In Brooks, the debtor argued that § 541 violated public
6 policy in including personal injury claims as property of the
7 estate. Id. at 24-25. In support of his argument, the debtor in
8 Brooks cited Cesner v. Schmelzer (In re Schmelzer), 480 F.2d 1074
9 (6th Cir. 1973), which dealt with § 70(a)(5) of the Bankruptcy
10 Act of 1898. Section 70(a)(5), predecessor to § 541, vested the
11 bankruptcy trustee with the debtor's title to causes of action,
12 except personal injury causes of action, unless, under state law,
13 personal injury causes of action were subject to judicial
14 process. 480 F.2d at 1075. The bankruptcy trustee thus had to
15 demonstrate that a cause of action was property within the
16 meaning of the Act and was subject to judicial process under
17 state law to include such claims as property of the estate. Id.
18 The Sixth Circuit found that, under Ohio law, a personal injury
19 cause of action was not subject to judicial process. Id. at
20 1076-77. The bankruptcy trustee thus lacked title to personal
21 injury causes of action. Id. The Sixth Circuit further reasoned
22 in support of its holding that, in light of the basic purpose of
23 the Bankruptcy Act to provide the debtor a "fresh start," it
24 seemed contrary to public policy to allow the trustee to take
25 over and prosecute in his name the debtor's unliquidated claims
26 for personal injury. Id. at 1077.

27 The bankruptcy court in Brooks declined to apply Schmelzer,
28 determining that § 541 did not violate public policy in including

1 personal injury claims as property of the estate. The bankruptcy
2 court reasoned that, though it had considered public policy,
3 Congress intentionally broadened the definition of "property of
4 the estate" to "include virtually every imaginable equitable or
5 legal interest of the debtor in any property." 12 B.R. at 25.
6 The bankruptcy court concluded that, in light of Congress's
7 intent, it had "no reason to tamper" with Congress's choice to
8 expand the definition of "property of the estate." Id.

9 Based on our review of Brooks and Schmelzer, we determine
10 that public policy considerations do not exclude personal injury
11 claims from becoming property of the estate under § 541 of the
12 Bankruptcy Code. As the bankruptcy court in Brooks recognized,
13 Congress broadened the definition of property of the estate,
14 despite the public policy considerations underlying bankruptcy
15 law.¹⁴ Moreover, we underline the fact that Schmelzer dealt with
16 § 70(a)(5) of the Bankruptcy Act of 1898, which sets forth a
17 narrower definition of property of the estate than § 541.

18 After Sierra Switchboard Co. was decided and after twenty-
19 four subsequent years of decisions interpreting § 541, no court
20 has determined that personal injury claims are not property of
21 the estate under § 541. The scope of section § 541 is very
22 broad. United States v. Whiting Pools, Inc., 462 U.S. 198, 205
23 (1983). Section 541(a)(1) provides that the estate is comprised
24

25 ¹⁴ We note that, although one of the public policies served
26 by the current Bankruptcy Code is to provide the debtor a
27 financial "fresh start," it is not the only public policy served;
28 the Bankruptcy Code balances this public policy consideration
with other competing public policy concerns, such as equitable
distribution of estate assets.

1 of "all legal or equitable interests of the debtor in property as
2 of the commencement of the case . . . wherever located and by
3 whomever held." (emphasis added). Claims for relief sounding in
4 tort, such as personal injury claims, constitute property of the
5 estate. Ileto v. Glock, Inc., 565 F.3d 1126, 1148 n.1 (9th Cir.
6 2009) (Berzon, J., concurring in part, dissenting in part). See
7 also In re Wischan, 77 F.3d 875, 877 (5th Cir. 1996); In re
8 Yonikus, 974 F.2d 901, 905 (7th Cir. 1992). Plainly read, § 541
9 includes personal injury claims as property of the estate. See
10 Hartford Underwriters Ins. Co. v. Union Planters Bank, NA, 530
11 U.S. 1, 6 (2000) ("[W]hen the statute's language is plain, the
12 sole function of the courts . . . is to enforce it according to
13 its terms.") (internal quotation and citation omitted). Nothing
14 in § 541, implicitly or explicitly, provides a public policy
15 exception for excluding personal injury claims from property of
16 the estate. Because § 541, plainly read, includes personal
17 injury claims, we conclude that the bankruptcy court did not err
18 in determining that the Floreses' injury claims were property of
19 the estate.

20 We further point out that Nevada also does not consider
21 personal injury claims to be "so personal to the debtor" as to
22 prevent judgment creditors from executing on amounts over and
23 above the \$16,150 state law exemption.

24 The crux of the Floreses' argument is that the injury claims
25 are "personal" to them. Yet, the settlement encompassed economic
26 loss as well as personal injury loss. The settlement did not
27 differentiate between the economic and personal injury losses the
28 Floreses sustained. The fact that the settlement covered both

1 the economic and personal injury losses of the Floreses cuts
2 against a determination that the injury claims are "so personal"
3 to the Floreses that they cannot be considered property of the
4 estate.

5 Alternatively, the Floreses argue, the injury claims are not
6 property of the estate because they are non-assignable under
7 Nevada law. Though the Floreses themselves acknowledge that,
8 under Sierra Switchboard Co., the transferability or
9 assignability of property is no longer a consideration when
10 determining whether it becomes property of the estate, they
11 nonetheless urge us to reconsider this issue.

12 The Floreses contend that, even though federal law (i.e.,
13 § 541) determines what interests of the debtor are property of
14 the estate, under Butner v. United States, 440 U.S. 48 (1979),
15 state law determines the existence and scope of the debtor's
16 interest in a particular asset. In Nevada, the right of an
17 injured plaintiff to recover against the tortfeasor in a tort
18 claim cannot be assigned to a third party. Sierra Switchboard
19 Co. holds, however, that "regardless of whether a personal injury
20 claim is transferable or assignable under state law, such claims
21 become part of the bankruptcy estate under section 541." Sierra
22 Switchboard Co., 789 F.2d at 709. The holding in Sierra
23 Switchboard Co., the Floreses assert, contradicts the holding in
24 Butner.

25 Sierra Switchboard Co. is not inconsistent with Butner.
26 Sierra Switchboard Co. explains that § 541 establishes the scope
27 of property of the estate - what property of the debtor comes
28 into the bankruptcy estate, which, in Sierra Switchboard Co.,

1 included an emotional distress claim. Id. at 708-09. Butner
2 explains that state law creates and defines the debtor's property
3 interests - state law establishes the debtor's ownership
4 interests in property. Id. at 55. Sierra Switchboard Co.
5 therefore is not at odds with Butner. Because Sierra Switchboard
6 Co. holds that a personal injury claim still becomes property of
7 the estate, even if state law prohibits its transfer or
8 assignability to a third party, we disagree with the Floreses
9 that the injury claims are not property of the estate.

10 In seeking to exclude their injury claims from property of
11 the estate, the Floreses in effect attempt to establish a new
12 common law exemption scheme that does not comport with either the
13 federal or Nevada exemption schemes. Section 522(d)(11)(D)
14 allows a debtor to exempt up to \$20,200 in proceeds from a
15 personal injury claim; N.R.S. § 21.090(1)(u) allows a debtor to
16 exempt up to \$16,150 in proceeds from a personal injury claim.
17 Both statutes limit the amount of proceeds from a personal injury
18 claim that a debtor may exempt. The Floreses propose an
19 exemption scheme that would allow them to exempt the entirety of
20 their injury claims, which neither federal nor Nevada exemption
21 schemes allow or contemplate.

22
23 **CONCLUSION**

24 Neither public policy considerations nor a plain reading of
25 § 541(a)(1) exclude the Floreses' injury claims from property of
26 their bankruptcy estate. We therefore conclude that the
27 bankruptcy court did not err in finding that the Floreses' injury
28 claims were property of the estate, and AFFIRM.