

October 6, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-30449
Summary Calendar

IN RE: COSSETTA WARD; DERRICK WARD,

COSSETTA WARD; DERRICK WARD,

Debtors.

Appellants,

versus

BATON ROUGE NEONATAL ASSOCIATES, INC.,

Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No.: 03-CV-188-A

Before JOLLY, WIENER, and DENNIS, Circuit Judges.

PER CURIAM:*

Cosetta and Derrick Ward appeal the judgment of the district court affirming judgment of the bankruptcy court, which denied the Wards a discharge pursuant to 11 U.S.C. § 727(a)(2) and (5), and held that, as to Cosetta Ward, the debt to Baton Rouge Neonatal Associates was non-dischargeable under 11 U.S.C. § 523(a)(6). The district court affirmed the bankruptcy court's judgment because it was impossible for the court to determine whether the bankruptcy court's factual findings were clearly erroneous, inasmuch as the

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Wards failed to include a transcript of the trial in the bankruptcy court in the record on appeal. The Wards argue that the district court's judgment was biased because it gave no weight to the their trial testimony, and that the district court violated their rights to due process and equal protection because it did not ascertain why a trial transcript was not ordered -- they claim, for the first time on appeal, that they lacked financial resources to pay for a transcript.

Because a trial transcript was not made a part of the record on appeal, it was impossible for the district court to give weight to the Wards' trial testimony. The district court's failure to inquire about the reason why the transcript was not part of the record did not violate the Wards' due process and equal protection rights. The Wards did not seek leave to proceed in forma pauperis or request a transcript at public expense.

For the foregoing reasons, the judgment of the district court is AFFIRMED, essentially for the reasons stated by the district court.

A F F I R M E D.