

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 91-5100  
Summary Calendar

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In the Matter of: MICHAEL KRYDER and BETH KRYDER,  
Debtors.

MICHAEL KRYDER and  
BETH KRYDER,

Appellants,

versus

THE FROST NATIONAL BANK  
OF SAN ANTONIO,

Appellee.

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Appeal from the United States District Court for the  
Eastern District of Texas  
(S-90-130-A)

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(February 9, 1993)

Before GARWOOD, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.\*

GARWOOD, Circuit Judge:

Debtors-appellants Michael Kryder and Beth Kryder (the Kryders) appeal from the district court's affirmance of the

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

bankruptcy court's decision to sustain exceptions filed by creditor-appellee Frost National Bank of San Antonio (Frost Bank) to the Kryders' claims of exempt property in their bankruptcy petition. We hold that the bankruptcy court's findings that the Kryders had deliberately overvalued certain assets and failed to list other assets with the intent to defraud their creditors are not clearly erroneous. We therefore affirm.

#### **Facts and Proceedings Below**

The Kryders filed a joint petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code in the Northern District of Texas, Fort Worth Division, on February 7, 1989. After the Kryders had filed their various schedules of estate and exempted property and Frost Bank had filed its exceptions thereto, the case was transferred to the Eastern District of Texas on December 3, 1989.

In their bankruptcy schedules, the Kryders had listed various items of household and personal goods and their values. These included household goods with a total value of \$10,000 and jewelry with a total value of \$3,300. The Kryders claimed this property was exempt pursuant to Texas Property Code §§ 42.001 & 42.002.

Frost Bank, in its objections to the exemptions claimed by the Kryders, submitted a financial statement that the Kryders had prepared for Frost Bank on June 30, 1988, roughly six months before the Kryders filed their petition. In this financial statement, the Kryders estimated the cost and market value, respectively, of: art as \$15,046 and \$20,500; furniture and fixtures as \$31,121 and \$30,000; and jewelry as \$15,630 and \$40,000. According to the

deposition testimony of Michael Kryder, in the six months between June 30, 1988 and February 7, 1989, the Kryders had sold some items of jewelry for a total of \$11,100, and had sold no art or other household goods. The remaining differences in value he attributed to the difference in market values (used in the June 1988 financial statement) and liquidation values (used in the schedules accompanying the bankruptcy petition).

Frost Bank's objections also alleged that the Kryders had failed to include in their schedules two checking accounts containing a total of over \$3,000 and two Individual Retirement Accounts (IRA's) containing over \$20,000 in investment certificates. In his deposition, Michael Kryder stated that he believed that the checking accounts had nearly zero balances because he had written checks against those accounts that had not been posted as of the time the bank statements had been prepared. He stated further that he had not listed the IRA's because he believed that they were exempt property.

Prior to the bankruptcy court's hearing on Frost Bank's exceptions, the Kryders agreed to turn over the total amount in the two checking accounts to the estate. After the hearing, in an order dated April 5, 1990, the bankruptcy court found that the Kryders had deliberately understated the value of their household property and jewelry in order to defraud their creditors and had deliberately failed to list the checking accounts and IRA's in order to defraud their creditors. The bankruptcy court held that the deliberate concealment of the checking accounts and IRA's prevented the Kryders from claiming any exemption in those

accounts, and therefore ordered that the accounts be turned over to the estate.

The district court upheld the bankruptcy court determinations in an opinion dated November 7, 1991. The Kryders then timely appealed to this Court.

### **Discussion**

On appeal, the Kryders challenge only the sufficiency of the evidence before the bankruptcy court to support that court's factual findings. They do not challenge the legal consequences, the disallowance of exemption of the IRA's, imposed by the bankruptcy court as a result of those factual findings. Thus, the only issues we address on appeal are whether the bankruptcy court erred in finding that the Kryders intentionally undervalued their assets and omitted the checking accounts and IRA's in order to defraud their creditors.

This Court reviews factual findings of the bankruptcy court only for clear error. Bankruptcy Rule 8013; *In re Killough*, 900 F.2d 61, 63 (5th Cir. 1990). Thus, we must affirm the bankruptcy court findings of fact unless "we are . . . left with the definite and firm conviction that a mistake has been committed." *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1164 (5th Cir.), cert. denied, 109 S. Ct. 311 (1988).

After a careful review of the record, we conclude that the evidence before the bankruptcy court was clearly sufficient to sustain the bankruptcy court's findings of fact. The bankruptcy court was amply supported in its conclusion that the Kryders had undervalued their household goods and jewelry by the large

discrepancies in the values reported by the Kryders in their June 1988 financial statement and their bankruptcy petition schedules. Further, the bankruptcy court was entitled to disbelieve Michael Kryder's deposition testimony attempting to explain away these discrepancies.

Similarly, the bankruptcy court was entitled to disbelieve Michael Kryder's deposition testimony that he had failed to list the checking accounts because he thought there was no remaining balance in them, and the IRA's because he thought they were exempt. The Kryders never explained why they listed a great deal of property that they also considered exempt but neglected to mention the IRA's.<sup>1</sup> Further, Michael Kryder had previously participated in two corporate bankruptcies and his claims of misunderstanding the requirements of the property schedules could be found to ring hollow. Finally, if a debtor is uncertain as to whether certain assets are legally required to be included in the petition, it is the debtor's duty to disclose those assets to the court so that the question may be resolved. *In re Montgomery*, 86 B.R. 948, 957 (Bankr. N.D. Ind. 1988).

We conclude that the bankruptcy court had sufficient evidence before it on which to base its factual findings and that therefore those findings are not clearly erroneous. We therefore affirm the

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<sup>1</sup> The Kryders' make one last-ditch argument before this Court: that they believed that the IRA's were not property of the estate at all because they somehow resembled a spendthrift trust. This argument not only stretches credulity and existing law, but is irrelevant because the question here is whether the bankruptcy court had enough evidence before it to sustain its findings, not whether these accounts would have been exempt under the bankruptcy laws had the Kryders not failed to list them.

district court's affirmance of the bankruptcy court.

AFFIRMED