

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2823

IN THE MATTER OF: P.T. EICHELBERGER, JR., M.D.

Debtor,

DOUGLAS AYCOCK, ET AL.,

Appellees,

versus

P.T. EICHELBERGER, JR., M.D., and LOUIS B. HUGHES,

Appellants.

Appeal from the United States District Court
for the Southern District of Texas
(CA H-89-3395)

(December 14, 1993)

Before GOLDBERG, JONES and DUHÉ, Circuit Judges.¹

PER CURIAM:

The bankruptcy court held that two judgment debts owed the appellees by the appellants are dischargeable under the Bankruptcy Code. The first debt is a 1982 money judgment entered against the appellants based on their tortious interference with the appellee's contractual relations. The second debt is a 1986 money judgment entered against the appellants for malicious prosecution. On appeal, the district court reversed the bankruptcy

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court and held that the two judgment debts were nondischargeable under the Bankruptcy Code. Because we agree with the district court regarding the malicious prosecution judgment, we affirm the district court's ruling on that issue. However, we disagree with the district court regarding the tortious interference with contractual relations judgment and accordingly reverse the district court's ruling regarding that debt.

BACKGROUND

The history of the litigation between these parties would be unnecessarily confusing and cumbersome to set forth in full detail in this opinion. The relevant facts to this decision are that the appellees filed an adversary complaint in the bankruptcy court under 11 U.S.C. § 523(a)(6) requesting that their judgment claims against the appellants be exempt from discharge under the Bankruptcy Code. The bankruptcy court found that the appellees, the judgment creditors, had failed to prove by clear and convincing evidence that the judgment debts were nondischargeable under § 523(a)(6). On appeal, the district court held that the bankruptcy court erred in applying a heightened burden of proof and ruled, using a preponderance of the evidence standard, that the judgment debts were nondischargeable.

DISCUSSION

A.

The appellants argue that the district court erred in reversing the bankruptcy court and ruling that the judgment debts are nondischargeable under the Bankruptcy Code. This court reviews

de novo issues of law arising in bankruptcy cases, while questions of fact are reviewed under a clearly erroneous standard. Luce v. First Equip. Leasing Corp. (In the Matter of Luce), 960 F.2d 1277, 1280 (5th Cir. 1992). Where there is a factual dispute, a bankruptcy court is to determine whether a debt is nondischargeable pursuant to section 523 of the Bankruptcy Code based on a preponderance of the evidence standard.² Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991); Young v. National Union Fire Ins. Co. (In the Matter of Young), 995 F.2d 547, 549 (5th Cir. 1993). The bankruptcy court applied an incorrect standard--that of clear and convincing evidence--in determining the appellants' judgment debts were dischargeable under the Bankruptcy Code.³ On appeal, the district court noted the proper standard--preponderance of the evidence--but whether it relied on that standard and evaluated facts to reach its conclusion is not clear.

It appears that dischargeability in this case is a matter of law rather than fact, because it turns on whether facts found by the state court, which have collateral estoppel effect here, amounted to findings of willful, malicious conduct under § 523(a)(6). We agree with the district court regarding the

² Section 523(a)(6) of the Bankruptcy Code provides that a discharge will not be allowed for a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6).

³ The bankruptcy court's judgment was delivered in 1989. The United States Supreme Court did not announce that the proper standard for determining a dischargeability issue under the Bankruptcy Code was a preponderance of the evidence standard until 1991. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654 (1991). However, the standard enunciated in Grogan is to be applied retroactively. Luce v. First Equip. Leasing Corp. (In the Matter of Luce), 960 F.2d 1277, 1281 (5th Cir. 1992).

malicious prosecution judgment. However, we disagree with the court regarding the tortious interference with contractual relations judgment.

Malicious Prosecution

In Texas, to recover for the intentional tort of malicious prosecution, the plaintiff must prove that:

- (1) the defendant filed a suit without probable cause;
- (2) the defendant was malicious;
- (3) the defendant lost the suit; and
- (4) the suit damaged the plaintiff.

Kale v. Palmer, 791 S.W.2d 628, 633 (Tex. App.--Beaumont 1990, writ denied). Because these elements expressly include intent and malice, the district court correctly reasoned that the bankruptcy court could not discharge the judgment debt for malicious prosecution.

Tortious Interference with a Contractual Relationship

In Texas, to recover for tortious interference with a contractual relationship, the plaintiff must show:

- (1) the defendant acted intentionally;
- (2) the defendant calculated the act to damage the plaintiff;
- (3) the act interfered with a contract to which the defendant was not a party;
- (4) the act proximately caused damage to the plaintiff; and
- (5) the defendant had no justification or excuse for the act.

Haralson v. E.F. Hutton Group, Inc., 919 F.2d 1014, 1037 (5th Cir. 1990).

The district court stated that the judgment against appellants was based on tortious interference with a business relationship. He probably drew this conclusion because appellees contended, as they do here, that this was the cause of action. Actually, the judgment was based on tortious interference with a contractual relationship. Under Texas law, these two torts are virtually identical, with one exception. Interference with a business relationship requires that malice be shown as an element of the tort; interference with a contractual relationship does not. Deauville Corp. v. Federated Dep't Stores, Inc., 756 F.2d 1183, 1196 (5th Cir. 1985) (interpreting Texas law). This difference is important in appellants' bankruptcy case because when malice is an element of the tort, then the debt should be nondischargeable under § 523(a)(6) of the Bankruptcy Code. For a debt to be nondischargeable, it must result from an act that is both intentional and malicious. In the suit against appellants, the jury was not required to find that the appellants acted maliciously when finding them liable for tortious interference with a contractual relationship. (see Plaintiff's Exhibit 4). Because malice was not shown, this debt is dischargeable under § 523(a)(6) of the Bankruptcy Code.

B.

The appellants next argue that the state court judgments are not reliable because they are based on "fraud on the courts" and other inappropriate behavior by the appellees. The appellants argue that the judgments are so unreliable as not to support a

finding of nondischargeability under the Bankruptcy Code. The appellants wish to relitigate the facts upon which the two judgments are based. Because we have found the tortious interference judgment dischargeable, it is not necessary to address the appellants' complaints regarding that judgment. However, we will address arguments relating to the malicious prosecution judgment.

The judgment based on malicious prosecution was entered by post-answer default judgment. The appellants' defense was dismissed with prejudice. The law presumes that judgments are valid on their face. Phillips v. State Farm Mut. Auto. Ins. Co., 437 F.2d 365 (5th Cir. 1971). Collateral estoppel is appropriate in bankruptcy dischargeability cases to avoid relitigation of issues already resolved in state court. Grogan v. Garner, 498 U.S. ___, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). Where the record of the state proceeding reflects "'specific false-pretense conduct, by which the federal bankruptcy court might determine the creditor's claim for nondischargeability, measured by federal bankruptcy standards' collateral estoppel can be applied to a default judgment." Lacy v. Dorsey (In Re Lacy), 947 F.2d 1276, 1277 (5th Cir. 1991) (quoting Harold V. Simpson and Co. v. Shuler (In the Matter of Shuler), 722 F.2d 1253, 1256 (5th Cir. 1984)).

The bankruptcy court considered the evidence presented regarding the unreliability of the state court judgment, including examining the appellate records, and determined that collateral estoppel was appropriate. The bankruptcy court ruled that that

judgment was in fact not a default judgment, although the appellant did not appear at trial, because the appellant had an opportunity to litigate the matter and chose not to do so. There is no evidence that the appellees have unclean hands, have perpetrated fraud on the courts, or have filed fraudulent proofs of claim. For these reasons, the decision of the lower courts on this issue will not be disturbed.

C.

The appellants' last argument is that they are entitled to a jury trial on the merits of their claims and defenses. That is wrong, because any claims or defenses that the appellants were entitled to raise were barred as a matter of law, as discussed above.

CONCLUSION

For these reasons, the ruling of the district court finding the malicious prosecution judgment nondischargeable is affirmed. However, the judgment for tortious interference with contractual relations is dischargeable, so we accordingly reverse the district court on that issue. The case must be remanded to the bankruptcy court for entry of a judgment consistent herewith.

AFFIRMED in part; **REVERSED** in part; **REMANDED** with Instructions.