

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-1144
No. 93-1146
Summary Calendar

IN THE MATTER OF: R. DON WRIGHT and MICKI WRIGHT, Debtors,
R. DON WRIGHT

Appellant,

VERSUS

JOHN DEERE INDUSTRIAL EQUIPMENT CO., Creditor, NCNB TEXAS
NATIONAL BANK, Creditor, and STANLEY WRIGHT, Trustee,

Appellee.

Appeal from the United States District Court
For the Northern District of Texas

(1:91-CV-058-C; 1:91-CV-059-C)

(September 3, 1993)

Before: JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM*:

R. Don Wright, Debtor-Appellant, appeals the district court's affirmance of the bankruptcy court's imposition of a constructive trust and equitable lien on Wright's domicile in favor of John Deere Industrial Equipment Co., Creditor-Appellee ("John Deere").

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The constructive trust and equitable lien were imposed as part of the bankruptcy court's entry of default judgment against Wright for his repeated refusals to follow the bankruptcy court's lawful orders that he allow John Deere and other creditors to inspect personal property located within his domicile. Concluding that under the law of the case doctrine we are bound by an earlier decision of this court upholding the default judgment, we affirm the orders of the district court.

I

FACTS AND PROCEEDINGS

Both of Wright's instant appeals, No. 93-1144 and No. 93-1146, arise out of the district court orders¹ affirming the bankruptcy court's imposition of sanctions that in turn produced the entry of default judgment in favor of creditors John Deere and NCNB Texas National Bank. They and the trustee, Stanley Wright, had moved for sanctions because of Wright's repeated refusal to obey the

¹Appeal no. 1144 arises from the Order dated January 25, 1993 in adversarial case no. CA-1-91-058-C; Appeal no. 1146 arises from the Order dated January 22, 1991 in adversarial case no. CA-1-91-059-C. Neither the Appellant nor the Appellees have distinguished between the two adversarial cases and orders on appeal. In addition, the only thing that the Appellant challenges is the imposition of the equitable lien and constructive trust in favor of John Deere, the imposition of which was contained in both orders of the district court. Thus, for purposes of these appeals, we have consolidated the analysis of the two orders and the constructive trust issue within this one opinion.

Bankruptcy Court's inspection orders. After conducting a full evidentiary hearing the bankruptcy court entered orders in favor of the trustee and the creditors.

In an earlier appeal Wright challenged the order imposing sanctions in favor of the trustee. In Wright I,² we reviewed those sanctions and concluded that none were erroneous, including those striking Wright's answer and imposing a default judgment in favor of the creditors. As we stated in Wright I :

Wright invoked the aid of the court in seeking a benefit he desired--a discharge in bankruptcy. As long as the court did his bidding he was inclined to obey. When orders adverse to Wright's position were issued he chose to ignore them without seeking interlocutory appeal or mandamus relief. Wright's conduct constituted open and notorious contempt of the bankruptcy court. We cannot and will not countenance such.³

In this appeal Wright challenges the district court's orders affirming the bankruptcy court's imposition of sanctions in favor of John Deere. Specifically, Wright challenges the sanction that imposed an equitable lien and constructive trust as part of the default judgment in favor of John Deere.

²In re R. Don Wright, No. 92-1604 (5th Cir., Dec. 22, 1992) [Wright I].

³Wright I, at 6.

II

ANALYSIS

Wright asserts several grounds to challenge the district court's orders affirming the equitable lien and constructive trust in favor of John Deere. We do not address the merits of Wright's challenges, however, because we are bound by the earlier decision of this court in Wright I.⁴

In Wright I, while deciding the trustee's appeal, we addressed whether the bankruptcy court abused its discretion in striking Wright's answer and entering default judgment in favor of the creditors, John Deere and NCNB. After a review of the record we concluded that Wright's open and notorious defiance of the bankruptcy court amply justified the imposition of those sanctions.⁵ The following colloquy with the bankruptcy court reveals the extent of Wright's contempt:

Q: So Mr. Wright if the court issues a fourth order, or a fifth order compelling you to allow the creditors entry to your residence, to inspect and appraise the entire contents, you will continue to refuse to obey those orders?

A: I will refuse to let you in the house; yes, sir.

The sanction striking Wright's answer and entering default judgment in favor of John Deere establishes the validity of John

⁴E.g., Ingalls Shipbuilding, Inc. v. Director, Office of Workers' Compensation Programs, 976 F.2d 934, 937 (5th Cir. 1992) (stating that one panel is bound by the decision of a prior panel absent intervening legislation or a superseding decision by the Supreme Court or this court en banc).

⁵Wright I, at 1, 6.

Deere's equitable lien and constructive trust. As a result of Wright's answer being stricken, the allegations contained in John Deere's original and amended complaint are taken as true--including the allegation that Wright fraudulently diverted proceeds from John Deere for the improvement of his property. By entering the default judgment the bankruptcy court granted John Deere's prayer for relief--which included the request that Wright's property be impressed with an equitable lien and constructive trust for \$403,933.34.

Consideration here of Wright's sole colorable basis for challenging the equitable lien and constructive trust--that they cannot be placed on non-fraudulently acquired homestead property as a matter of law--is also pretermitted by the sanctions upheld by a previous panel of this court in Wright I. Wright's challenge is predicated on classifying his property as a homestead as of the time he misappropriated the funds. Texas law, however, places the burden of establishing the homestead character of the property on the one claiming the homestead exemption.⁶ Because Wright subjected himself to sanctions that prevented him from offering proof on this issue, he cannot now claim that his property was a homestead during the relevant period without requiring us to revisit whether those sanctions were properly imposed. Again, that

⁶E.g. NCNB Texas National Bank v. Carpenter, 849 S.W.2d 875, 879 (Tex. App.--Fort Worth 1993, no writ); First Interstate Bank v. Bland, 810 S.W.2d 277, 286 (Tex. App.--Fort Worth 1991, no writ); Pace v. McEwen, 617 S.W.2d 816, 818 (Tex. Civ. App.--Houston [14th Dist.] 1981, no writ).

inquiry is precluded by the law of the case.⁷

III

CONCLUSION

Wright's open defiance of the bankruptcy court led to extensive but justifiable sanctions having far reaching consequences. One of those consequences was the imposition of an equitable lien and constructive trust on his domicile. Because we conclude that our previous decision bars reexamination of the validity of the sanctions on which the district court's orders are based, the orders of the district court are

AFFIRMED.⁸

⁷See e.g., E.E.O.C. v. Intern. Longshoremen's Ass'n, 623 F.2d 1054, 1058 (5th Cir. 1980) (stating that the "law of the case" rule precludes review of findings of fact and conclusions of law made by an appellate court in a prior appeal of the case at issue).

⁸In affirming the district court, and thus the bankruptcy court, we caution Wright that, like his defiance of those courts, any frivolous or contemptuous actions in this court relative to the subject matter of this and previous decisions could subject him to the full panoply of sanctions at our disposal.