UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-2920

(Summary Calendar)

IN THE MATTER OF:

CLIFFORD O. MCWILLIAMS,

Debtor.

CLIFFORD O. MCWILLIAMS,

Appellant,

versus

CONSTANCE D. MCWILLIAMS,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-0615)

(May 12, 1994)

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

EMILIO M. GARZA, Circuit Judge:[*]

Clifford McWilliams ("Mr. McWilliams") appeals the district court's judgment affirming the bankruptcy court's denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A), (a)(5). For the reasons set forth below, we affirm.

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[*] Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Mr. McWilliams and Constance McWilliams ("Mrs. McWilliams) married in 1966 and divorced in 1990. As part of the divorce decree, a judgment was entered against Mr. McWilliams for $100,000.00. Four months after the divorce, Mr. McWilliams filed for bankruptcy, seeking *inter alia,* a discharge from his $100,000.00 debt. Mrs. McWilliams subsequently filed a complaint objecting to discharge pursuant to 11 U.S.C. § 727. After a non-jury trial, the bankruptcy court denied Mr. McWilliams discharge of his debt. The district court affirmed the bankruptcy court's decision and entered a final judgment, from which Mr. McWilliams timely appealed.

Mr. McWilliams argues that the bankruptcy court erred in denying discharge of his debt. The bankruptcy court denied discharge based on its conclusions that Mr. McWilliams: (1) knowingly and fraudulently made a false oath regarding a material fact, *see* 11 U.S.C. § 727(a)(4)(A);[1] and (2) failed to satisfactorily explain his deficiency of assets and resulting inability to meet the liabilities embodied in the terms of the divorce decree. *See id.* § 727(a)(5). "We review the decision of the district court by applying the same standards of review to the bankruptcy court's findings of fact and conclusions of law as applied by the district court." *Matter of Kennard,* 970 F.2d 1455,

[1] Section 727(a)(4)(A) provides that "[t]he court shall grant the debtor a discharge, unless . . . the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account . . . ."

1457 (5th Cir. 1992). The district court correctly reviewed the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. *Id.* at 1457-58.

A party objecting to discharge under § 727(a)(4)(A) must show, by a preponderance of the evidence, that (1) the debtor knowingly and fraudulently made a false statement under oath; and (2) the statement related materially to the bankruptcy case. *Matter of Beaubouef,* 966 F.2d 174, 178 (5th Cir. 1992). "False oaths sufficient to justify the denial of discharge include (1) a false [material] statement or omission in the debtor's schedules or (2) a false [material] statement by the debtor at the examination during the course of the proceedings." *Id.* (attribution omitted). "The subject matter of a false oath is `material,' and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." *Id.* (attribution omitted).

The bankruptcy court found that Mr. McWilliams: (1) omitted from his schedule a bonus check in the amount of $100,861.00; (2) otherwise understated in his schedule his gross monthly income; and (3) understated in his schedule his liability to Mrs. McWilliams by $25,000.00. These findings are supported by the record and are not clearly erroneous. Based on these findings, the bankruptcy court could have inferred that Mr. McWilliams knowingly and fraudulently made false material statements under oath. *See In re Bastrom,* 106 B.R. 223, 227 (Bankr. D. Mont. 1989) ("Fraudulent

intent will be imputed if non-disclosed or scheduled assets have substantial value."). We therefore hold that the district court did not err in affirming the denial of discharge.[2]

Mr. McWilliams makes several other arguments on appeal which merit little discussion. He first argues that the bankruptcy court abused its discretion by denying his motions for more definite statement. *See* Fed. R. Civ. P. 12(e); *Old Time Enterprises v. International Coffee Corp.,* 862 F.2d 1213, 1217 (5th Cir. 1989) (reviewing a Rule 12(e) order for abuse of discretion). Because the court denied those motions without prejudice to Mr. McWilliams's right to renew them after the plaintiff had the opportunity to conduct limited discovery, we cannot conclude that the bankruptcy court abused its discretion in this matter. Mr. McWilliams also argues that the bankruptcy court erred in failing to dismiss the complaint for failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). He contends that because the complaint lacked sufficient facts, it should have been dismissed under Rule 12(b)(6). "If a complaint is ambiguous or does not contain sufficient information to allow a responsive pleading to be framed, the proper remedy is a motion for a more definite statement under Rule 12(e) F.R.C.P." *Sisk v. Texas Parks and Wildlife Dep't,* 644 F.2d 1056, 1059 (5th Cir. Unit A 1981). Because Mr. McWilliams's proper remedy was a Rule 12(e) motion, we reject this argument. Lastly, Mr. McWilliams argues that the

[2] Because the denial of discharge was justified under § 727(a)(4)(A), we need not consider the bankruptcy court's other basis for denial.

bankruptcy court committed reversible error in admitting evidence on issues not raised by the pleadings. Because Mr. McWilliams concedes that he did not object to the court's evidentiary rulings,[3] we review those rulings for plain error only. *See* Fed. R. Evid. 103(d); *United States v. Clinical Leasing Serv. Inc.,* 982 F.2d 900, 905 (5th Cir. 1992) (reviewing district court's conduct for plain error where no objection made). "Only an error so fundamental that it generates a miscarriage of justice rises to the level of `plain error.'" *Id.* (attribution omitted). After reviewing the record, we cannot conclude that any of the bankruptcy court's rulings resulted in a miscarriage of justice.

Accordingly, we AFFIRM the judgment of the district court.

[3] Mr. McWilliams did object to a few of the bankruptcy court's evidentiary rulings. The record shows, however, that those rulings did not affect a substantial right of the parties. Consequently, those rulings cannot be assigned as error. *See* Fed. R. Evid. 103(a).