

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4850

Summary Calendar

IN THE MATTER OF: JOHN C. GRAHAM and
BECKY A. GRAHAM.

H. Glenn Gunter,

Debtor.

Appellant,

versus

John C. Graham and Rebecca A. Graham,

Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(6:92-CV-568)

September 30, 1993

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

H. Glenn Gunter challenged in bankruptcy court the discharge of debts owed him by his former wife, Rebecca A. Graham, and her current husband, John C. Graham. The bankruptcy court denied Gunter's objections to dismissing any debts Mr. or Mrs. Graham might owe him. The court did note, however, that Mrs. Graham

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conceded Gunter's right to three items of personal property in her possession. On appeal, the district court affirmed the bankruptcy court order. In the present action, Gunter appeals the order of the district court. We AFFIRM.

I.

Gunter argues that the bankruptcy court erred in failing to apply properly 11 U.S.C.A. § 523(a). Section 523(a)(2)(A) excludes from discharge a debt obtained by "false pretenses, a false representation, or actual fraud" Similarly, section 523(a)(6) excludes any debt resulting from a "willful and malicious injury" caused by the debtor. Gunter claims that the Grahams owe him several debts that resulted from their dishonest and malicious actions. Gunter's allegations include: (1) that his wife fraudulently transferred ownership in his pickup truck to a third party; (2) that his wife and her current husband took possession of and converted various items of his personal property; (3) that his wife withdrew without authority \$4,500 from his bank account; and (4) that his wife kept approximately \$100.00 in utility deposits that were registered to his former residence.¹ The bankruptcy court denied Gunter's objections to the discharge of any debts that the Grahams might owe him.

II.

¹ Gunter also alleges that the Grahams violated the Deceptive Trade Practices Act by failing to allow him access to the premises he rented. He cites Tex. Bus. & Com. Code Ann. § 17.45 (Vernon 1987) for the assertion that he was denied "services" within the scope of the Act. Neither the bankruptcy court nor the district court addressed this issue. As Gunter invokes a law that, on its face, does not apply to his situation, we dismiss this claim.

We review the findings of fact of the bankruptcy court under the clearly erroneous standard. Federal Rule of Bankruptcy Procedure 8013; Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1308 (5th Cir. 1985) (per curiam). We will rule that the findings of the bankruptcy court are clearly erroneous only if we have a firm and definite conviction that the bankruptcy court has erred. Matter of Monnig's Dept. Stores, Inc., 929 F.2d 197, 201 (5th Cir. 1991). Moreover, we give due regard to the bankruptcy court's assessment of the credibility of witnesses. Fed. R. Bankr. P. 8013; Richmond Leasing, 762 F.2d at 1308. The bankruptcy court's conclusions of law, however, are subject to de novo review. Richmond Leasing, 762 F.2d at 1307.

Gunter's testimony provided the only evidence that the money and goods that he exchanged for the pickup truck were exclusively his property. The bankruptcy court found that Gunter's testimony was motivated by a desire to intimidate and punish his ex-wife and refused to rely on it. The court ruled, therefore, that Gunter failed to show by clear and convincing evidence that the truck which Mrs. Graham sold to a third party was not community property. See Tex. Fam. Code Ann. § 5.02 (Vernon 1993) ("property possessed by either spouse during or on dissolution of marriage is presumed to be community property"). The bankruptcy court had an opportunity to evaluate Gunter's testimony not available to this court on review. As the record does not controvert the bankruptcy court's finding that Gunter's testimony was untrustworthy, we hold that that finding was not clearly erroneous. Moreover, as the

district court noted, title to the truck was restored to Gunter subsequent to the issuance of the bankruptcy court's order. As a result, this issue is moot.

The bankruptcy court also did not find credible Gunter's assertion that the Grahams converted his personal property. Gunter's testimony figured prominently in the evidence he adduced to support this accusation. The bankruptcy court did not commit reversible error in discounting his testimony and in dismissing this general claim. Three of these items require separate attention, however.

In bankruptcy court, the Grahams waived their rights to a bed, a trunk, and a waterbed mattress. Gunter complains that the Grahams have not yet returned these items to him. As the district court noted, Gunter may pursue this issue in a contempt proceeding in bankruptcy court. It is not ripe for appeal.

Finally, Gunter alleges that the Grahams owe him approximately \$4,600. The bankruptcy court found that Gunter had been reimbursed for the \$4,500 that he alleges his ex-wife lacked authority to withdraw from his bank account. As Gunter suffered no damages, the court dismissed this claim. The court also dismissed Gunter's claim for \$100 in utility security deposits as de minimis and petty. The record fully supports these decisions.

Conclusion

Gunter's testimony played a central role in the litigation in bankruptcy court. That court found that Gunter's testimony was not reliable. The court refused, therefore, to rule based on his

unsubstantiated allegations. We defer to the court's assessment of Gunter's credibility. As the bankruptcy court's findings were not clearly erroneous, we AFFIRM.