

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-21078

Summary Calendar

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IN THE MATTER OF: ROBERT H. LIGHTFOOT, SR.

Debtor.

ROBERT H. LIGHTFOOT,

Appellant,

versus

CULLEN CENTER BANK & TRUST,

Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-93-1164)

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(August 29, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

Robert H. Lightfoot appeals from denial of discharge in bankruptcy. We affirm.

Cullen Center Bank & Trust obtained a state court judgment against Robert H. Lightfoot in 1982. Within three weeks after 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

judgment was abstracted in the Harris County Real Property Records in 1983, Lightfoot transferred title in his sailboat to his wife for "one dollar and other good and valuable consideration," after which Lightfoot continued to treat the boat as his own. When Lightfoot and his wife separated in 1986, Lightfoot retained exclusive use and possession of the boat.

Lightfoot filed for bankruptcy in 1991. He did not include the boat in his bankruptcy schedules. Cullen subsequently filed an adversary proceeding in Lightfoot's bankruptcy action seeking to deny Lightfoot's discharge pursuant to 11 U.S.C. § 727(a)(2) and (4). The bankruptcy court denied Lightfoot discharge and the district court affirmed. Lightfoot appeals.

Section 727(a)(2) provides, in pertinent part, that a debtor is not entitled to discharge in bankruptcy if "the debtor, with intent to hinder, delay, or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or concealed . . . property . . . within one year before the date of the filing of petition."<sup>1</sup> As Lightfoot acknowledges, § 727(a)(2) applies where a debtor transfers an asset over a year before filing for discharge and the attempt to hinder, delay, or defraud a creditor continues, with the requisite intent, until within a year of the filing.<sup>2</sup> Lightfoot does not contest the bankruptcy court's finding, in which the district court concurred, that Lightfoot intended to hinder,

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<sup>1</sup> 11 U.S.C. § 727(a)(2)(A).

<sup>2</sup> See In re Olivier, 819 F.2d 550, 554-55 (5th Cir. 1987).

delay, or defraud Cullen by transferring the boat to his wife.<sup>3</sup> Lightfoot notes instead that he disclosed his use of and potential interest in the boat to some, although not all, of his creditors over a year before he filed for bankruptcy. He argues that he did not conceal his interest in the boat, and lacked intent to impede his creditors, during the year prior to his filing for bankruptcy.

Lightfoot is mistaken that revealing an interest in the boat placed his actions beyond the scope of § 727(a)(2). First, while some courts have held that full disclosure of a concealed asset may protect a debtor from the consequences of deliberate concealment,<sup>4</sup> Lightfoot does not claim that he disclosed his interest in the boat to all of his creditors. Section 727(a)(2) disallows discharge when a debtor acts intentionally to frustrate any creditor, not necessarily all of his creditors, by the proscribed means.<sup>5</sup> Moreover, because Lightfoot does not maintain that he made any effort to inform all of his creditors of his interest in the boat, he could not rely on a good faith exception to full disclosure.

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<sup>3</sup> See id. at 553-54 (debtor conceals property for purposes of § 727(a)(2) where he transfers title but retains benefits of ownership).

<sup>4</sup> Lightfoot relies, for example, on Hibernia Nat'l Bank v. Perez, 124 B.R. 704, 710 (E.D. La. 1991), aff'd, 954 F.2d 1026 (5th Cir. 1992). See also In re Waddle, 29 B.R. 100, 103 (Bankr. W.D.Ky. 1983) ("A debtor who fully discloses his property transactions at the first meeting of creditors is not fraudulently concealing property from his creditors.").

<sup>5</sup> See In re Adeeb, 787 F.2d 1339, 1343 (9th Cir. 1986) ("[T]he statute requires only that the debtor make the transfer with intent to hinder, delay, or defraud 'a creditor.' There is no requirement that the debtor intend to hinder all of his creditors.") (citing Matter of Goldberg, 2 B.R. 15, 17 (Bankr. S.D. Fla. 1979)).

Second, the boat remained within his wife's nominal possession, and Lightfoot retained the benefits of ownership, until after a year before he filed bankruptcy. The deceptive transfer continued to impede creditors' recovery during the year before Lightfoot filed bankruptcy while he, as a practical matter, owned the property. Further, Lightfoot does not claim that he made any effort to reacquire formal ownership of the boat, making it available to his creditors. Lightfoot's partial disclosure of his interest in the boat did not remove the obstacle to creditors' recovering the sums owed them and did not undo the concealment.<sup>6</sup>

Lightfoot argues that once he revealed his "use of and potential interest in the sailboat," he no longer possessed the requisite intent to hinder, delay, or defraud his creditors. We will upset the bankruptcy court's conclusion to the contrary only if it is clearly erroneous.<sup>7</sup> The bankruptcy court correctly noted that "concealment of an interest in an asset that continues, with the requisite intent, into the year before bankruptcy constitutes a form of concealment which occurs within the year before bankruptcy and, therefore, ...such concealment is within the reach § 727(a)(2)(A)." The court found that Lightfoot possessed the requisite intent to frustrate his creditors' attempts at recovery.

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<sup>6</sup> See In re Olivier, 819 F.2d at 553 ("Concealing property for purposes of section 727(a)(2)(A) can be accomplished by a transfer of title coupled with the retention of the benefits of ownership."); In re Kauffman, 675 F.2d 127, 128 (7th Cir. 1981) ("The transfer of title with attendant circumstances indicating that the bankrupt continues to use the property as his own is sufficient to constitute a concealment.").

<sup>7</sup> See In re Jones, 490 F.2d 452 (5th Cir. 1974).

The court noted that Lightfoot received virtually no consideration for the boat and that he conceded it was a gift, that Lightfoot transferred it to his wife, that he acknowledged retaining possession and use of the boat, that Lightfoot transferred the boat in the face of numerous judgments and collection efforts, and that he did so shortly after entry of judgment in favor of Cullen against him. These circumstances strongly support an inference that Lightfoot intended to impede creditors' efforts at recovery not only at the time of the transfer but up to the time of his filing for bankruptcy. Lightfoot's acknowledgement of a possible interest in the boat provides some reason to believe his intent changed. It does not, however, render the bankruptcy court's finding clearly erroneous. Lightfoot's failure to attempt to reacquire the boat and to notify all of his creditors of his interest in it, under these circumstances, supports the finding that Lightfoot intended to hinder, delay, or defraud his creditors. Denial of discharge pursuant to 11 U.S.C. § 727(a)(2) was proper.

The bankruptcy court also denied discharge pursuant to § 727(a)(4), which the district court affirmed, because Lightfoot failed to list the boat in his bankruptcy schedules. Lightfoot argues that he did not have to list an asset that he did not formally possess. We need not decide this issue because we affirm on other grounds.

AFFIRMED.