

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 26, 2024

Lyle W. Cayce
Clerk

No. 23-30767

IN THE MATTER OF JULES ANTHONY SIMON,

Debtor,

JULES ANTHONY SIMON,

Appellant,

versus

ANDREW J. HARRISON, JR.,

Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:22-CV-805

Before SOUTHWICK and DUNCAN, *Circuit Judges*, and KERNODLE,
District Judge.^{*}

PER CURIAM:[†]

In this Chapter 7 case, Jules Anthony Simon appeals the bankruptcy

^{*} United States District Judge for the Eastern District of Texas, sitting by designation.

[†] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.4.

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court's ruling denying him a discharge for fraudulently transferring estate property to his brother. Finding no clear error, we affirm.

Simon formed the Mississippi LLC “D Squared” with his brother, Denis, and Wendell Spencer (through Spencer's company WJC Enterprises, LLC (“WJC")). In February 2010, D Squared bought land in Mississippi, and the three members agreed that each would make one-third of the quarterly mortgage payments. Beginning in 2016, Simon failed to pay. At first, Denis loaned Simon money to make the payments. But Denis later made Simon's payments for him. In return, the brothers orally agreed that Denis would receive Simon's interest in D Squared. They never documented their agreement, however.

In 2019, Simon filed for Chapter 7 bankruptcy relief. He listed his one-third interest in D Squared as valueless. In 2021, D Squared sold the land, and Denis and WJC divided the proceeds with one-third to WJC and two-thirds to Denis. Andrew Harrison—who in 2015 had successfully sued Simon in state court for unpaid loans—learned about the land sale only after propounding document requests about D Squared to Simon.

Harrison then filed an adversary proceeding in Simon's bankruptcy. He objected to Simon's discharge on the ground that Simon allowed his share of the sale proceeds to transfer to Denis to keep the money from creditors. *See* 11 U.S.C. § 727(a)(2)(B) (requiring denial of discharge if “debtor, with intent to hinder, delay, or defraud a creditor . . . has transferred . . . or has permitted to be transferred . . . property of the estate, after the date of the filing of the petition”). After a bench trial, the bankruptcy court sustained Harrison's objection and denied Simon's discharge. Simon appealed, and the district court affirmed. Simon appeals again.

“We review the decision of the district court by applying the same standard to the bankruptcy court's findings of fact and conclusions of law as

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the district court applied.” *Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (Matter of Whistler Energy II, L.L.C.)*, 931 F.3d 432, 441 (5th Cir. 2019) (quoting *In re Jack/Wade Drilling, Inc.*, 258 F.3d 385, 387 (5th Cir. 2001)). “‘Acting as a “second review court,”’ we review a bankruptcy court’s legal conclusions *de novo* and its findings of fact for clear error.” *21st Mortg. Corp. v. Glenn (Matter of Glenn)*, 900 F.3d 187, 189 (5th Cir. 2018) (quoting *Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 538 (5th Cir. 2015)). “A finding of fact is clearly erroneous only if on the entire evidence, the court is left with the definite and firm conviction that a mistake has been committed.” *Wiggains v. Reed (Matter of Wiggains)*, 848 F.3d 655, 660 (5th Cir. 2017) (quoting *Robertson v. Dennis (In re Dennis)*, 330 F.3d 696, 701 (5th Cir. 2003)). “The finding of intent to hinder, delay, or defraud a creditor is a factual one which must be reviewed under the clear error standard.” *Dennis*, 330 F.3d at 701 (quoting *Matter of Perez*, 954 F.2d 1026, 1029 (5th Cir. 1992)).

On appeal, Simon argues the bankruptcy court erred in finding that Simon transferred his estate interest in D Squared to Denis. In support, Simon contends the bankruptcy court conflated the brothers’ 2016 oral agreement (which Simon argues involved no transfer) with the 2021 transfer of interest. We disagree. The bankruptcy court correctly recognized that the relevant transfer was the 2021 transfer of sale proceeds to Denis. Simon thus fails to show clear error in the bankruptcy court’s finding that he transferred his estate interest in D Squared to Denis.

Simon also argues the bankruptcy court erred in finding that Simon had the intent to defraud when making this transfer. But the bankruptcy court recognized that “[a] presumption of actual fraudulent intent arises if the debtor transfers property gratuitously *or* to a relative.” *Cadle Co. v. Duncan (In re Duncan)*, 562 F.3d 688, 698 (5th Cir. 2009) (emphasis added) (citing *Pavy v. Chastant (In re Chastant)*, 873 F.2d 89, 91 (5th Cir. 1989)). Because

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Simon transferred his interest in D Squared to his brother, the bankruptcy court correctly found that the presumption of fraudulent intent applied.

Furthermore, the bankruptcy court found that other badges of fraud applied: Simon's continued use of the land after the 2016 oral agreement, Simon's financial difficulties, and Simon's failure to disclose the land sale to the trustee. *See Soza v. Hill (In re Soza)*, 542 F.3d 1060, 1067 (5th Cir. 2008) (identifying several badges that signal fraudulent intent).

Finally, Simon argues the bankruptcy court's denial of Simon's discharge inappropriately expands 11 U.S.C. § 727. We will not consider this argument, however, because Simon did not raise it in the bankruptcy court. *See Gilchrist v. Westcott (In re Gilchrist)*, 891 F.2d 559, 561 (5th Cir. 1990) ("It is well established that we do not consider arguments or claims not presented to the bankruptcy court." (citing *Moody v. Empire Life Ins. Co. (In re Moody)*, 849 F.2d 902, 905 (5th Cir. 1988))).

The bankruptcy court's judgment is

AFFIRMED.