United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 29, 2022
Lyle W. Cayce
Clerk

No. 22-10354

IN THE MATTER OF: LISA ROCHELLE WOODARD

Debtor,

HAROLD D. HAMMETT,

Appellant,

versus

LISA ROCHELLE WOODARD; TIM TRUMAN,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CV-99

Before SMITH, BARKSDALE, and HAYNES, *Circuit Judges*.

PER CURIAM:*

Creditor Harold D. Hammett ("Hammett") appeals the district court's order overruling his objections to and confirmation of Debtor Lisa

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Rochelle Woodard's ("Woodard") Chapter 13 bankruptcy plan. For the following reasons, we AFFIRM.

I. Background

Woodard hired Hammett, an attorney, to represent her in an election lawsuit contesting her primary victory as nominee for Justice of the Peace in 2010. Following a successful defense and Woodard's ultimate election, Woodard failed to pay the majority of Hammett's fees. Unable to recoup these fees by other means, Hammett secured a judgment against Woodard in state court in 2019. When his efforts to collect on this judgment failed, Hammett moved to appoint a receiver. Woodard filed for bankruptcy and submitted her proposed Chapter 13 plan on April 22, 2020, one day before the receivership hearing was scheduled to take place.

During the bankruptcy process, Woodard amended her bankruptcy schedules multiple times to reflect previously undisclosed income, assets, and expenses. These amendments reflected the addition of multiple vehicles either owned or leased by Woodard (including a December 2019 lease of a Mercedes-Benz at $1080 per month), and the addition of a nephew as a dependent. The updated schedules also revealed an $800-per-month increase in income from weddings Woodard regularly officiated as a Justice of the Peace. In light of these delayed disclosures, Woodard's "prepetition obstruction," and a proposal which permitted Woodard to pay less to creditors than her monthly disposable income, Hammett objected to confirmation of the plan. He contended that Woodard filed bankruptcy and proposed her plan in bad faith in violation of 11 U.S.C. §§ 1325(a)(1), (a)(3), and (a)(7).

Following an evidentiary hearing (at which both Woodard and Hammett testified) and Woodard's multiple amendments, the bankruptcy court overruled Hammett's objections and confirmed Woodard's Chapter 13

plan. While determining that it was "a very close call," the bankruptcy court ultimately concluded that Woodard met her burden to establish good faith. Hammett appealed the order to the district court under 28 U.S.C. § 158(a). The district court overruled Hammett's objections and affirmed the bankruptcy court's order confirming Woodard's Chapter 13 plan. Hammett timely appealed.

II. Standard of Review

"When a court of appeals reviews the decision of a district court, sitting as an appellate court, it applies the same standards of review to the bankruptcy court's findings of fact and conclusions of law as applied by the district court." *In re Jacobsen*, 609 F.3d 647, 652 (5th Cir. 2010) (quotation omitted). Where, as here, the bankruptcy court applied the correct legal standard to its good-faith determination, we "review a bankruptcy court's finding of good faith for clear error." *In re Brown*, 960 F.3d 711, 718 (5th Cir. 2020). Under this standard, the bankruptcy court's determination "will be reversed only if, considering all the evidence, we are left with the definite and firm conviction that a mistake has been made." *In re Young*, 995 F.2d 547, 548 (5th Cir. 1993). "Strict application of this standard is particularly appropriate when the district court has affirmed the bankruptcy court's findings." *Id.*

III. Discussion

The Bankruptcy Code imposes a two-part good-faith requirement on the confirmation of bankruptcy plans. The court "shall confirm a plan" if (1) the *petition* was filed in good faith, and (2) the *plan* was "proposed in good faith" and is not "forbidden by law." 11 U.S.C. §§ 1325(a)(7), (a)(3). The debtor shoulders the burden of proving good faith. *In re Stanley*, 224 F.

App'x 343, 346 (5th Cir. 2007) (per curiam) (unpublished).[1] Good faith in this context is evaluated under the "totality of the circumstances test." *In re Crager*, 691 F.3d 671, 675 (5th Cir. 2012). In accordance with this test, the court may consider, among other factors:

> (1) "the reasonableness of the proposed repayment plan," (2) "whether the plan shows an attempt to abuse the spirit of the bankruptcy code," (3) whether the debtor genuinely intends to effectuate the plan, (4) whether there is any evidence of misrepresentation, unfair manipulation, or other inequities, (5) whether the filing of the case was part of an underlying scheme of fraud with an intent not to pay, (6) whether the plan reflects the debtor's ability to pay, and (7) whether a creditor has objected to the plan.

In re Stanley, 224 F. App'x at 346 (citations omitted); *see also In re Crager*, 691 F.3d at 675 (citing *In re Stanley* and applying factors under the totality of circumstances test). The court's failure to consider or otherwise give sufficient weight to a single factor does not in and of itself amount to clear error. *In re Rogers*, 134 F.3d 369, 369 (5th Cir. 1997) (per curiam) (unpublished); *see also In re Crager*, 691 F.3d at 675 (noting that a challenged factor was "only one of at least seven factors").

Hammett contends the bankruptcy court erred in applying the totality of the circumstances test by (1) relying exclusively on Woodard's technical compliance with the Bankruptcy Code and (2) giving insufficient weight to indicia of bad faith, including the timing of the filing, Woodard's prevarications about her income and expenses, her ability to pay more toward

[1] Although *In re Stanley* and other unpublished opinions cited herein "[are] not controlling precedent," they "may be [cited as] persuasive authority." *Ballard v. Burton*, 444 F.3d 391, 401 n.7 (5th Cir. 2006) (citing 5TH CIRCUIT RULE 47.5.4).

the debts than the plan commits, and her failure to explain any of the foregoing. However, because both the bankruptcy court *and* the district court considered—and rejected—each of Hammett's objections while applying the proper test, we find no clear error in what was reasonably described as a "close call."

At the outset, the bankruptcy court correctly delineated and considered the totality-of-the-circumstances factors when evaluating each prong of the good faith requirement under §§ 1325(a)(7) and (a)(3). As to the petition, the court expressly considered indicia of bad faith, noting that Woodard's evasion of prepetition discovery related to her income from wedding officiating was "particularly troubling," and her continued obfuscation of these facts during the bankruptcy proceedings was "indicative of a debtor motivated by a desire to hinder or delay a creditor's recovery of a debt." Nonetheless, the court concluded that other factors—specifically, Woodard's attempt to structure a viable payment plan to satisfy the judgment, her proposed plan (which included paying the debts in full), and the absence of a fraudulent scheme—sufficed to establish good faith under the totality of the circumstances.

As to the plan, the bankruptcy court expressly acknowledged that Woodard's proposal to fully repay her debts could not alone establish good faith. Nonetheless, the bankruptcy court found that her plan to pay each creditor in full without any attempt to use the equivocations to "lowball the payment[s]" established a good faith proposal. Moreover, the bankruptcy court concluded that, under our precedent, Woodard's failure to either devote more discretionary income to the plan or to repay the debts more quickly than Hammett desires did not undercut a finding of good faith. *See In re Brown*, 960 F.3d at 718 ("[M]aintaining excess disposable income" is not "inherently bad faith and manipulation of the Code.").

In sum, the bankruptcy court considered the evidence of good faith, the pursuit of permissible goals under the Code, and Hammett's presentation of the indicia of bad faith, and ultimately made the "close call" that Woodard satisfied her burden. That the court did not assign greater weight to Hammett's arguments about the indicia of bad faith does not amount to clear error in this case. *In re Stanley*, 224 F. App'x at 347 (rejecting the argument that the bankruptcy court incorrectly applied the test when it "failed to give adequate weight to various indicia of bad faith"). Instead, the fact that the determination here is detailed and involves discordant facts that may cut both ways demonstrates why we are bound by the deferential standard of review to the bankruptcy and district courts. *See In re Young*, 995 F.2d at 548. In view of the "strict application" of the standard of review applicable to this case, and having considered all the evidence, we are not left with the firm conviction that an error was made. *See id.* Accordingly, we AFFIRM.