

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 05-18477
	)	
ROBERT F. CAMPBELL,	)	Chapter 7
Debtor.	)	
	)	
MARVIN A. SICHERMAN,	)	Adversary Proceeding No. 05-1534
Plaintiff,	)	
	)	Judge Arthur I. Harris
v.	)	
	)	
ROBERT F. CAMPBELL,	)	
Defendant.	)	

MEMORANDUM OF OPINION

Before the Court is the plaintiff-trustee's motion for summary judgment. The trustee asks the Court to deny the debtor's discharge because the debtor transferred property within a year of the filing of his bankruptcy petition with the alleged "intent to hinder, delay, or defraud a creditor." For the reasons stated below, the trustee's motion for summary judgment is denied. In addition, pursuant to the trustee's request, this adversary proceeding will be dismissed unless a party in interest, including the U.S. Trustee, files a brief in opposition to the proposed dismissal by June 13, 2006.

JURISDICTION

Proceedings to deny a debtor's discharge are core under 28 U.S.C. § 157(b)(2)(J). The Court has jurisdiction over core proceedings under 28 U.S.C.

§§ 1334 and 157(a) and Local General Order No. 84, entered on July 16, 1984, by the United States District Court for the Northern District of Ohio.

### FACTUAL AND PROCEDURAL BACKGROUND

The following facts are undisputed. Debtor Robert Campbell filed a Chapter 7 petition on June 13, 2005. Several months prior, on February 20, 2005, debtor executed a deed transferring his interest in real estate located at 6520 Tampico Court, Fayetteville, North Carolina (“the property”) to his ex-wife, Denise Campbell. The debtor’s statement of financial affairs lists the transfer and indicates that a value of \$40,000 was transferred. The property is also listed in Schedule A; it is listed as jointly owned with a value of \$80,000 and a secured claim of \$3,651. At the 341 hearing, the trustee asked the debtor to explain why he gave the deed to his ex-wife:

Basically a good will. When I explained to her I was going – I tried to get money out of the house from her, which I really don’t have any rights to. She wouldn’t help me out and I told her I was coming to Bankruptcy Court and that the property would probably be attached to the Court. And she has this idea that if I signed it over that it wouldn’t be. So in good faith I just – I gave her a quit claim deed.

On September 21, 2005, the trustee filed an adversary complaint against Denise Campbell to set aside the alleged fraudulent transfer of the property and to sell the property, including Denise Campbell’s interest. On October 3, 2005, the trustee

filed this adversary complaint seeking to deny the debtor's discharge pursuant to 11 U.S.C. § 727(a)(2)(A). The trustee alleges that debtor transferred the property with the "intent to hinder, delay, or defraud" his creditors. The debtor filed his answer denying that he made the transfer with intent to hinder, delay, or defraud.

On April 18, 2006, the trustee filed a motion for summary judgment asking the Court to find the intent to hinder, delay, or defraud creditors based on the debtor's statements at the 341 hearing. The trustee's motion also contained the following footnote:

The Debtor's testimony is the only evidence that the Trustee plans to introduce regarding the Debtor's intent to hinder, delay, or defraud a creditor. The Trustee's position is that he had no choice but to file a Complaint Objecting to the Discharge of the Debtor based on the Debtor's testimony at the meeting of creditors. If this Court were to determine that the Debtor's testimony at the meeting of creditors does not establish that the Debtor transferred his interest in the Real Estate with the intent to hinder, delay, or defraud creditors or an officer of the estate, then the Trustee requests that this Court grant summary judgment in favor of the Defendant, Robert F. Campbell, as a trial would be unnecessary.

On May 10, 2006, debtor filed his brief in opposition. The debtor submitted an affidavit that states that debtor has not lived in the property since 1989, that debtor has not made any of the mortgage, real estate tax, or insurance payments since that time, and that a large down payment on the house came from money that came to Denise Campbell because of her father's death. The debtor further

explained that he divorced Denise Campbell in 1992 but the divorce decree did not address the property: “I presume that my attorney in the divorce proceeding basically advised me not to make an issue of the real property due to the fact that the Court would award said property to Denise and in addition make me partially responsible for the mortgage and other related expenses.” The debtor also explained that he deeded the property to his ex-wife in an attempt to show his sons, one of whom lived on the property, that he was not trying to use the bankruptcy to “divest them of their home” but that he had “other debts to resolve in the bankruptcy.” He concluded, “The transfer was not made to defraud creditors as I never believed that I had any right to the property as a result of not living in it since 1989.” On May 19, 2006, the trustee filed a reply brief, and the Court is now ready to rule.

#### SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56(c), as made applicable to bankruptcy proceedings by Bankruptcy Rule 7056, provides that a court shall render summary judgment:

if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The party moving the court for summary judgment bears the burden of showing that “there is no genuine issue as to any material fact and that [the moving party] is entitled to judgment as a matter of law.” *Jones v. Union County*, 296 F.3d 417, 423 (6th Cir. 2002). *See generally Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party meets that burden, the nonmoving party “must identify specific facts supported by affidavits, or by depositions, answers to interrogatories, and admissions on file that show there is a genuine issue for trial.” *Hall v. Tollett*, 128 F.3d 418, 422 (6th Cir. 1997); *see, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986) (“The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.”). In determining the existence or nonexistence of a material fact, a court will view the evidence in a light most favorable to the nonmoving party. *Tennessee Dep’t of Mental Health & Mental Retardation v. Paul B.*, 88 F.3d 1466, 1472 (6th Cir. 1996).

## DISCUSSION

Section 727 of the Bankruptcy Code states, in pertinent part:

(a) The court shall grant the debtor a discharge, unless—

....

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred . . . —

(A) property of the debtor, within one year before the date of the filing of the petition . . . .

“This section encompasses two elements: 1) a disposition of property, such as concealment, and 2) ‘a subjective intent on the debtor’s part to hinder, delay, or defraud a creditor through the act disposing of the property.’ ” *In re Keeney*, 227 F.3d 679, 683 (6th Cir. 2000) (quoting *In re Lawson*, 122 F.3d 1237, 1240 (9th Cir. 1997)).

[T]he level of fraudulent intent required to deny a debtor’s discharge is that of actual intent. This is a subjective standard as distinguished from constructive intent which, based solely upon the application of objective criteria, may arise by operation of law. Although actual intent is difficult to prove directly, it may be established indirectly through the use of circumstantial evidence.

*In re Newell*, 321 B.R. 885, 889 (Bankr. N.D. Ohio 2005) (citations omitted including citation to *In re Kenney*).

The debtor’s “actual” intent in transferring the property to his ex-wife is a material fact that is in dispute. The debtor has presented affidavit testimony that he thought he had no interest in the property and thus was not trying to hinder, delay, or defraud his creditors. He stated that he signed the deed so that he could prove to his children that did not expect his bankruptcy to affect their family home. He also stated the reasons why he believed he had no interest in the property: he contributed very little, if anything, to the down payment and mortgage on the

property, and he had not lived in the property since 1989. These facts, when viewed in the light most favorable to the debtor, are sufficient to preclude summary judgment for the trustee.

On the other hand, when viewed in a light most favorable to the trustee, there are also sufficient facts to support a finding that the debtor did have the intent to “hinder, delay, or defraud” his creditors. Debtor’s statement at the 341 appears to indicate that he made the transfer in contemplation of the bankruptcy and intending to protect the property from inclusion in the bankruptcy. In addition, the debtor’s schedules, while not attempting to hide the transfer, value the transfer at \$40,000 and list the property on Schedule A as jointly owned. Thus, the Court cannot grant summary judgment for the debtor, as was requested by the trustee in the footnote to his summary judgment motion.

Instead, the Court will treat the trustee’s statement – that he does not intend to proceed to trial if his summary judgment motion is denied – as a request for dismissal of this adversary proceeding. Pursuant to Rule 7041 of the Federal Rules of Bankruptcy Procedure, this adversary proceeding will be dismissed unless a party in interest, including the U.S. Trustee, files a brief in opposition to the proposed dismissal by June 13, 2006.

## CONCLUSION

For the reasons stated above, plaintiff-trustee's motion for summary judgment (Docket #8) is denied. In addition, pursuant to the trustee's request, this adversary proceeding will be dismissed unless a party in interest, including the U.S. Trustee, files a brief in opposition to the proposed dismissal by June 13, 2006.

IT IS SO ORDERED.

/s/ Arthur I. Harris                      6/1/2006  
Arthur I. Harris  
United States Bankruptcy Judge