

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



|                              |   |  |
|------------------------------|---|--|
| In re:                       | ) | Case No. 08-13408                                |
|                              | ) |  |
| GREGORY E. CURRY,            | ) | Chapter 7  |
|                              | ) |  |
| Debtor.                      | ) | Judge Pat E. Morgenstern-Clarren                 |
| _____                        | ) |  |
|                              | ) |  |
| LAUREN A. HELBLING, TRUSTEE, | ) | Adversary Proceeding No. 09-1140                 |
|                              | ) |  |
| Plaintiff,                   | ) |  |
|                              | ) |  |
| v.                           | ) |  |
|                              | ) |  |
| GREGORY E. CURRY,            | ) | <b><u>MEMORANDUM OF OPINION</u></b> <sup>1</sup> |
|                              | ) |  |
| Defendant.                   | ) |  |

Chapter 7 trustee Lauren Helbling filed this adversary proceeding in which she seeks to deny a discharge to the debtor Gregory Curry on the grounds that he (1) transferred real estate before the bankruptcy filing with the intent to hinder the trustee’s efforts to administer the chapter 7 estate, *see* 11 U.S.C. § 727(a)(2)(A); and (2) knowingly and fraudulently made a false oath in his petition when he failed to disclose the transfer, *see* 11 U.S.C. § 727(a)(4)(A). For the reasons that follow, the court finds that the trustee met her burden of proof under § 727(a)(4)(A) and, therefore, denies the debtor’s discharge.<sup>2</sup>

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<sup>1</sup> This opinion is not intended for commercial publication, either print or electronic.

<sup>2</sup> Based on this conclusion, it is unnecessary to determine whether the debtor’s discharge should also be denied under § 727(a)(2)(A).

## JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

## FACTS

### **I.**

At trial, the chapter 7 trustee presented her case through cross-examination of the debtor. The debtor presented his case through his own testimony, that of Evelyn Curry, and a proffer that was accepted by the court. Additionally, the parties stipulated to certain facts<sup>3</sup> and to joint exhibits.

The following findings of fact are based on that evidence and reflect the court's weighing of the evidence presented, including determining the credibility of the witnesses. "In doing so, the Court considered the witness's demeanor, the substance of the testimony, and the context in which the statements were made, recognizing that a transcript does not convey tone, attitude, body language or nuance of expression." *In re The V Companies*, 274 B.R. 721, 726 (Bankr. N.D. Ohio 2002). *See* FED. R. BANKR. P. 7052 (incorporating FED. R. CIV. P. 52). When the court finds that a witness's explanation was satisfactory or unsatisfactory, it is using this definition:

The word satisfactory 'may mean reasonable, or it may mean that the Court, after having heard the excuse, the explanation, has that mental attitude which finds contentment in saying that he believes the explanation—he believes what the [witness] says with reference to the [issue at hand]. He is satisfied. He no longer wonders. He is contented.'

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<sup>3</sup> Docket 15.

*United States v. Trogdon (In re Trogdon)*, 111 B.R. 655, 659 (Bankr. N.D. Ohio 1990) (quoting *First Texas Savings Assoc., Inc. v. Reed (In re Reed)*, 700 F.2d 986, 993 (5th Cir. 1983)).

## II.

The debtor Gregory Curry has been employed for about 10 years as a claims adjuster at Progressive Insurance. At the time of his bankruptcy filing, he owned seven rental properties. He holds a bachelor's degree from Ohio University in Business Management.

The debtor's parents are Evelyn and James Curry, who have lived at 5919 Sweet Birch Drive, Bedford Heights, Ohio (the property) since about 1987. In December 2005, James and Evelyn Curry transferred the property to the debtor. They did so because James Curry was in poor health and they thought he might have to enter a nursing home. They were afraid that such an event would cause them to lose their home. The debtor did not pay anything in consideration of the transfer, and his parents continued to pay all expenses related to the property. The debtor did not have any agreement with his parents to transfer the property back to them. He knew that he could sell the property because it was in his name, but never considered doing so because he viewed it as his parents' home.

In about November 2007, the debtor told his mother that he was having financial difficulties. She responded that she wanted her house back. Evelyn Curry then retained attorney James Harding to transfer the property from the debtor back to his parents. At some point between that conversation with his mother and February 20, 2008, the debtor signed a quit claim deed transferring the property to his parents without consideration. The debtor's wife signed the deed later, and it was recorded on February 26, 2008.

On February 22, 2008, the debtor met for the first time with a bankruptcy attorney, Thomas Pavlik. As a result of that meeting, the debtor decided that he would file a bankruptcy

petition. The debtor met with Mr. Pavlik again on April 14, 2008. His chapter 7 bankruptcy petition shows that he signed it under penalty of perjury on May 7, 2008, and the case was filed that same date. The debtor should have, but did not, disclose the February 2008 property transfer in his bankruptcy petition, specifically in response to Statement of Financial Affairs, question 10 “Other transfers.” That question reads:

List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case.”  
(Emphasis in original).

On June 17, 2008, at the first meeting of creditors,<sup>4</sup> the chapter 7 trustee asked the debtor if he had owned any houses in the last four years other than the ones listed in the schedules. He said no. The trustee then asked if the debtor and his wife owned the property at 5919 Sweet Birch Drive in Bedford. The debtor answered: “No. That’s my mother’s house.” The trustee followed up by showing the debtor a document and asking: “Is that you and your wife transferring that property?” The debtor responded: “That’s my mother’s home. Some kind of way her attorney wanted me to be the executor because I’m the oldest and then he talked to her again and said it’s not necessary and put it back in their name, Evelyn and James Curry.”<sup>5</sup>

At deposition, the debtor testified that when he was considering filing a bankruptcy case, “I knew since the house was in my name, I didn’t know if it would be affected or not. But since it was their house, I didn’t want it to interfere with anything . . . I didn’t want it to be a

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<sup>4</sup> See 11 U.S.C. § 341.

<sup>5</sup> Joint exh. 2 at 9-11.

problem.”<sup>6</sup> He did not tell his bankruptcy attorney about the property transfer, saying “[i]t never came up. I didn’t know it was an issue.”<sup>7</sup>

On July 24, 2008, the trustee filed an adversary proceeding against Evelyn and James Curry contending that the debtor’s transfer of the property to them was a fraudulent transfer.<sup>8</sup> On March 23, 2009, the debtor filed an amended statement of financial affairs disclosing the transfer.<sup>9</sup>

### **THE POSITION OF THE PARTIES**

The trustee contends that the debtor should be denied a discharge because he knowingly made a false oath when he stated in the petition that he had not transferred any property within two years. *See* 11 U.S.C. § 727(a)(4)(A). In response, the debtor takes the position that he did not disclose the transfer in his petition because it was not his property and, therefore, he did not make a false oath. Additionally, pointing out that a bankruptcy court is a court of equity, he argues that he should not suffer for the decision made by his parents to transfer the property to him in the first place or for their request that he transfer it back to them.

### **DISCUSSION**

An individual chapter 7 debtor is entitled to a discharge unless, among other things, he knowingly and fraudulently makes a false oath in connection with his bankruptcy case. 11 U.S.C. § 727(a)(4)(A). To deny the debtor a discharge, the chapter 7 trustee “must prove by a

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<sup>6</sup> Joint exh. 3 at 6-7.

<sup>7</sup> Joint exh. 3 at 12.

<sup>8</sup> Adv. Pro. no. 08-1225. The parties settled that adversary proceeding with a payment by the Currys to the trustee. In the settlement, the trustee reserved the right to file this adversary proceeding to deny the debtor a discharge.

<sup>9</sup> Case no. 08-13408, docket 75.

preponderance of the evidence that: 1) the debtor made a statement under oath; 2) the statement was false; 3) the debtor knew the statement was false; 4) the debtor made the statement with fraudulent intent; and 5) the statement related materially to the bankruptcy case.” *Keeney v. Smith (In re Keeney)*, 227 F.3d 679, 685 (6th Cir. 2000).

Statements made by the debtor in the petition, schedules, and statement of financial affairs are made under oath. *Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 725 (B.A.P. 6th Cir. 1999). Fraudulent intent may be found based on the facts and circumstances of the case. *Id.* at 724. A debtor’s knowledge that a statement is false:

may be shown by demonstrating that the debtor knew the truth, but nonetheless failed to give the information or gave contradictory information. A false statement or omission that is made by mistake or inadvertence is not sufficient grounds upon which to base the denial of a discharge, but a knowingly false statement or omission made by the Debtor with reckless indifference to the truth will suffice as grounds for the denial of a Chapter 7 general discharge.

*Id.* at 725 (internal quotation marks and citations omitted). A false oath is material if it concerns the discovery of assets or the existence and disposition of the debtor’s property. *In re Keeney*, 227 F.3d at 686.

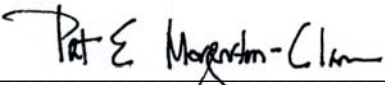
In this case, the debtor failed to disclose that he had transferred the property to his parents shortly before he met with a bankruptcy attorney. This omission from his statement of financial affairs is a false statement made under oath. Because the omission involved the debtor’s disposition of property and a potential asset of the estate, it was material to his bankruptcy case. Based on the debtor’s familiarity with real estate transactions, his understanding that he had in fact been the title owner of the property before he transferred it back to his parents, his recognition that the property would be an issue in his bankruptcy case, the timing of the transfer,

and having observed his testimony, the court finds that the debtor omitted this information from his bankruptcy filing with the fraudulent intent to prevent the trustee from finding out about the transfer. Were it otherwise, the debtor would have disclosed the transfer in his case filing, as required, at which time he could have offered his explanation for his actions.

The debtor argues that the transfers of the property were orchestrated by his mother and that he should not suffer for what his parents did. The sole focus of this proceeding, however, is whether the debtor should be held accountable for his *own* flawed decision not to disclose the transfer in his bankruptcy filing. Based on the evidence presented, the trustee proved that the debtor is not entitled to a discharge under § 727(a)(4)(A).

#### CONCLUSION

For the reasons stated, the debtor Gregory Curry's discharge is denied under 11 U.S.C. § 727(a)(4)(A). The court will enter a separate judgment reflecting this decision.

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

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| Plaintiff,                   | ) |                                  |
|                              | ) |                                  |
| v.                           | ) |                                  |
|                              | ) |                                  |
| GREGORY E. CURRY,            | ) | <b><u>JUDGMENT</u></b>           |
|                              | ) |                                  |
| Defendant.                   | ) |                                  |

For the reasons stated in the memorandum of opinion entered this same date, judgment on the complaint is entered in favor of the plaintiff-trustee and debtor Gregory Curry's discharge is denied under 11 U.S.C. § 727(a)(4)(A).

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Pat E. Morgenstern-Clarren".

Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge