IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
July 19, 2017
Lyle W. Cayce
Clerk

No. 16-20641

In the Matter of: GREGORY D. HAWK; MARCIE H. HAWK,

Debtors.

GREGORY D. HAWK,

Appellant,

v.

EVA S. ENGELHART, Chapter 7 Trustee,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas

Before STEWART, Chief Judge, and WIENER and PRADO, Circuit Judges.

EDWARD C. PRADO, Circuit Judge:

After filing for Chapter 7 bankruptcy, Gregory and Marcie Hawk claimed an exemption for funds held in an individual retirement account ("IRA"). The Hawks sought to exempt the funds from the bankruptcy estate because tax-exempt or tax-deferred assets held in a qualifying retirement account are generally exempt from creditors' claims under Texas law. However, the Hawks subsequently withdrew the funds from the IRA and did not roll them over into

another IRA. Because Texas law provides that funds withdrawn from a retirement account remain exempt only if rolled over into another retirement account within sixty days, the bankruptcy court held that the funds had lost their exempt status and ordered that the Hawks turn over the funds to the Trustee, Eva Engelhart. The district court upheld the bankruptcy court's decision on appeal. We AFFIRM.

I. BACKGROUND

On December 15, 2013, the Hawks filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code. Approximately one month later, the Hawks filed their schedules of assets, which claimed an exemption for funds held in an IRA managed by NFP Securities, Inc. The Hawks claimed that the IRA funds were exempt from creditors' claims under Texas Property Code § 42.0021 and were therefore excluded from the property of the bankruptcy estate under 11 U.S.C. § 522(b). The meeting of creditors was held on March 28, 2014, giving the parties in interest until April 28, 2014, to object to the Hawks' claimed exemptions. *See* Fed. R. Bankr. P. 4003(b)(1). No party in interest objected to the IRA exemption during that time. On April 3, 2014, the Trustee filed a report declaring that the estate had no assets available for distribution to the Hawks' creditors and proposing to abandon all nonexempt assets. In May 2014, however, one of the Hawks' creditors, Res-TX One, timely filed an adversary proceeding objecting to the Hawks' discharge.

Meanwhile, between December 11, 2013, and July 14, 2014, the Hawks withdrew all of the funds from the IRA and used most of those funds to pay for living and other expenses. The funds were never rolled over into another retirement account. When Res-TX One deposed Mr. Hawk in November 2014, Mr. Hawk stated that approximately $30,000 of the liquidated IRA funds remained in his possession and that the funds were being held "in a shoebox." The Trustee first learned about the liquidated IRA funds from Mr. Hawk's

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