UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PATRICK S. LAYNG
United States Trustee,
Plaintiff-Appellee,

v. **Case No. 22-cv-0096**

EDWARD M. AYDT,
Defendant-Appellant.

DECISION AND ORDER

Appellant Edward Aydt appeals the bankruptcy court's order denying him discharge under 11 U.S.C. § 727(a)(4)(A). Aydt argues that the bankruptcy court erred in finding that he gave false oaths or accounts.

I. BACKGROUND

In 2020, Aydt and his spouse filed for bankruptcy in the Eastern District of Wisconsin. The Aydts' bankruptcy schedules and statement of financial affairs ("SOFA"), which were signed under penalty of perjury, contained numerous falsehoods and omissions. First, although Aydt was the sole proprietor of River Birch Capital, LLC, he stated that he had no interest in any business, LLC or partnership. Second, Aydt reported his gross income for 2017 as $14,771 even though he had received at least $47,000 in business income that year. Third, Aydt failed to disclose that he received $51,625.77 in 2018 from the sale of a vehicle a year earlier. Fourth, Aydt failed to disclose that he had sold two additional vehicles in 2018. Finally, Aydt failed to disclose two recently closed

bank accounts and underreported the balances of other bank accounts by at least several hundred dollars.[1]

Aydt later amended his schedules and SOFA. The amended filings included the previously omitted sale of two vehicles in 2018, but Aydt again falsely stated that he had no interest in an LLC, had no bank accounts which had been recently closed, and that he had received only $14,771 in income in 2017. He also again failed to disclose the $51,625.77 he received in 2018 from the sale of a vehicle a year earlier.

In May 2020, the United States Trustee ("UST")[2] filed a motion to examine the Aydts under Bankruptcy Rule 2004, which allows a trustee to investigate a debtor. The court granted the motion and ordered the Aydts to produce certain documents and appear for deposition. After reviewing the documents, the UST filed a complaint against the Aydts seeking a denial of discharge on the basis that they had given false oaths or accounts under 11 U.S.C. § 727(a)(4), failed to keep and preserve adequate books and records under 11 U.S.C. § 727(a)(3), and failed to satisfactorily explain the loss or disposition of assets under § 727(a)(5). After deposing the Aydts, the UST filed a motion to dismiss the complaint as to Aydt's spouse, which the court granted. The bankruptcy court then held a bench trial on the complaint.

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[1] Although these were the most significant misrepresentations, there were others. Aydt also omitted his contingent commission on a real estate contract, his ownership of a firearm and his lease of a vehicle.

[2] A United States Trustee is a Justice Department official who has been appointed by the Attorney General to supervise the administration of bankruptcy cases. 28 U.S.C. §§ 581-589. The UST may raise and appear and be heard on any issue in a bankruptcy case. 11 U.S.C. § 307; *In re South Beach Secs.*, *Inc.*, 606 F.3d 366, 371 (7th Cir. 2010). A UST is expressly authorized to "object to the granting" of a discharge of debt. 11 U.S.C. § 727(c)(1).

The court found that the evidence was insufficient to show that Aydt violated § 727(a)(3) or § 727(a)(5). However, the court concluded that Aydt had given false oaths or accounts and, accordingly, denied his discharge of debts under § 727(a)(4). Aydt then filed this appeal, challenging the bankruptcy court's decision.

II. DISCUSSION

Discharge under Chapter 7 "is reserved for the 'honest but unfortunate debtor.'" *In re Kempff*, 847 F.3d 444, 447 (7th Cir. 2017) (quoting *Stamat v. Neary*, 635 F.3d 974, 978 (7th Cir. 2011)). Section 727 provides grounds for denying a discharge to dishonest debtors. *See* 11 U.S.C. § 727(a). The statute provides twelve grounds for denial of discharge, but only one is relevant here. A debtor is ineligible for discharge when "the debtor knowingly and fraudulently" makes "a false oath or account" in connection with his bankruptcy case. 11 U.S.C. § 727(a)(4)(A). To prevail on a false oath claim, a party opposing a discharge must show, by a 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 was material to the bankruptcy proceeding. *Kempff*, 847 F.3d at 449.

Here, the bankruptcy court found that the falsehoods on Aydt's schedules and SOFA were false statements made under oath that he knew to be false, that the statements were material to the bankruptcy case, and that he made them with fraudulent intent. On appeal, Aydt challenges only the finding that he made the statements with fraudulent intent. In the context of § 767(a)(4)(A), fraudulent intent can be established in one of two ways: either by showing a debtor knowingly intended to defraud his creditors or by showing the debtor acted with reckless disregard for the truth. *Kempff*, 847 F.3d at

449; *In re Yonikus*, 974 F.2d 901, 904 (7th Cir. 1992). In other words, "fraudulent intent" does not require a finding of intent to defraud; rather, the Seventh Circuit has repeatedly held that evidence of reckless disregard for the truth is sufficient to find fraudulent intent in the context of § 767(a)(4)(a). *Kempff*, 847 F.3d at 449; *Stamat,* 635 F.3d at 982; *Yonikus*, 974 F.2d at 905; *Chlad*, 922 F.3d at 862. A fact finder may infer a debtor's reckless disregard for the truth "through an evaluation of the circumstances as a whole and the pattern of omissions engaged in by the debtor." *Chlad*, 922 F.3d at 862. A finding of fraudulent intent is proper where "the totality of the [debtor's] omissions and errors rises above mere negligence to the level of reckless disregard for the truth." *Stamat*, 635 F.3d at 982.

Here, the bankruptcy court found that, although the evidence was not sufficient to conclude that Aydt actually intended to defraud his creditors, the totality of Aydt's omissions and errors rose above mere negligence and constituted reckless disregard for the truth. Aydt argues that the bankruptcy court erred because it "affirmatively found that Aydt did not possess an actual intent to defraud" and he argues that "deceptive conduct" is necessary for a finding of fraudulent intent. ECF no. 8 p. 12, 14 of 23. To begin, the bankruptcy court did not affirmatively find that Aydt *did not* intend to defraud his creditors. Rather, the court concluded that the evidence was insufficient to show that Aydt had intended to defraud his creditors. ECF no. 2-2 p. 507 of 530. But regardless, a finding of actual intent is not necessary to find fraudulent intent in this context. The bankruptcy court concluded that Aydt had acted with reckless disregard for the truth, which is sufficient to prove fraudulent intent.

Aydt next argues that the evidence was insufficient to support a finding of reckless disregard for the truth. Whether a debtor acted with reckless disregard for the truth is a question of fact which is reviewed for clear error. *Chlad*, 922 F.3d at 861. "Clear error is an extremely deferential standard of review, and will only be found to exist where the 'reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Pinkston v. Madry*, 440 F.3d 879, 888 (7th Cir. 2006) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985)). Accordingly, I may not reverse the finding of the bankruptcy court simply because I would have decided the case differently. *Id.* This deferential standard makes sense because "an intent determination often will depend upon a bankruptcy court's assessment of the debtor's credibility, making deference to the court's finding particularly appropriate." *In re Krehl*, 86 F.3d 737, 743 (7th Cir. 1996). Thus, "where the evidence on the intent question is such that two permissible conclusions may be rationally drawn, the bankruptcy court's choice between them will not be viewed as clearly erroneous." *Id.* at 744.

The bankruptcy court concluded that Aydt's pattern of omissions and errors rose above negligence and crossed the line into reckless disregard for the truth. The court considered four sets of falsehoods, each made under penalty of perjury, to indicate reckless disregard for the truth. First, Aydt twice affirmed that he had no interest in any LLC despite being aware he was the sole proprietor of River Birch Capital, LLC. Second, Aydt twice falsely claimed he had no bank accounts which had been recently closed. Third, Aydt represented that his 2017 income was only $14,000 while his actual income that year was more than three times that amount. Finally, Aydt failed to disclose that he received over $50,000 in 2018 from the sale of a vehicle.

The court also considered Aydt's explanations for the errors but found that they were not credible. At trial, Aydt argued that he was not responsible for the omission of his interest in River Birch Capital or of his closed bank accounts because he had disclosed that information to his bankruptcy attorney. The bankruptcy court, however, found that Aydt had actual knowledge of the accounts and the LLC when he reviewed and signed the filings, supporting a finding of reckless indifference. *See Cohen v. Olbur*, 314 B.R. 732, 746 (Bankr. N.D. Ill. 2004) ("When a debtor has declared under penalty of perjury that he has read his petition and schedules and that they are true and correct, the debtor—not his lawyer—is accountable for any errors and ommissions."). Aydt also argued that he believed the more than $50,000 he received for the sale of a vehicle to be a loan, rather than income, because he had initially purchased the vehicle with money borrowed from his brother. The bankruptcy court found this argument to be "illusory" based on Aydt's testimony at trial that the sale was not for the benefit of his brother and the fact that Aydt promptly used the money to pay for personal expenses. Finally, Aydt argued that he relied on his 2017 tax returns, prepared by a CPA, to report that his 2017 income was only $14,771. The bankruptcy court found his reliance on his tax returns was not credible because Aydt actually made more than three times that amount and would have realized that he had made more than $15,000 in 2017. Because of the quantity of errors and because Aydt's explanations for the errors were not credible, the bankruptcy court concluded that Aydt had acted with reckless disregard for the truth.

I cannot say the bankruptcy court's finding was clear error. Aydt does not dispute that he made the misrepresentations and in many cases does not dispute that he knew that they were false. Instead, Aydt argues that the court should have found that each of

his omissions was the result of a simple mistake or negligence. The explanation of a mistake is more likely to be true where the facts show that the debtor did not know of an asset or did not fully understand his own financial affairs, *Chlad*, 922 F.3d at 863, but that was not the case here, as Aydt did not dispute that he had actual knowledge of his interest in River Birch Captial and his recently closed bank accounts but nonetheless affirmed under penalty of perjury—twice—that neither existed. In addition to Aydt's actual knowledge that his statements were false, the fact that he made many of the misrepresentations more than once and the sheer quantity of falsehoods weigh in favor of a finding that he acted with reckless disregard for the truth. The Seventh Circuit has upheld a finding of reckless disregard for the truth when the debtor engaged in a similar pattern of falsehoods. *Stamat*, 635 F.3d at 983 (holding failure "to disclose past business interests, property transfers, and income" was sufficient to support a finding of reckless disregard for the truth). And importantly, the bankruptcy court considered the explanations that Aydt now offers for the omissions and falsehoods and found that they were not credible. The bankruptcy court's credibility findings were rationally based on evidence presented at trial and, given the deference I must give such findings, I cannot say the findings were clear error. Because the bankruptcy could did not commit clear error in finding Aydt acted with disregard for the truth, I will affirm the bankruptcy court's decision.

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that that the decision of the bankruptcy court is **AFFIRMED**. The Clerk of Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 5th day of December, 2022.

/s/Lynn Adelman
LYNN ADELMAN
United States District Judge