

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

In re:

PAULA SUZANNE COX,

Case No.: 10-32055

Debtor.

SHERRY F. CHANCELLOR, Trustee,

Plaintiff,

v.

Adv. Proc. No.: 11-03007-MAM

PAULA SUZANNE COX,

Defendant.

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO DISCHARGE**

Sherry F. Chancellor, Chapter 7 Trustee, Pensacola, Florida  
Amy Logan Sliva, Attorney for the Debtor, Pensacola, Florida

This case is before the Court pursuant to the Trustee's objection to discharge. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. The Court has the authority to enter a final order pursuant to 28 U.S.C. § 157(b)(2)(J). For the reasons indicated below, the Trustee's objection is due to be SUSTAINED.

**FACTS**

Paula Suzanne Cox ("Debtor") was divorced in May of 2009. The Debtor was granted various assets in the divorce, including a \$351,550.14 settlement check that she received on September 9, 2009. Thirteen months later, on October 5, 2010, the Debtor filed for chapter 7

bankruptcy relief. In her bankruptcy schedules, the Debtor stated that she owned \$6,500 worth of personal property including a bank account, a rental deposit, clothing, and a vehicle.

On October 20, 2010, the Debtor amended her Schedule A to include a remainder interest in real property in Jackson, Mississippi, valued at \$58,000, in which the Debtor's mother currently holds a life estate. On December 2, 2010, the § 341 meeting of creditors was held and concluded. Sometime prior to the § 341 meeting, the Debtor filed an appeal of her divorce decree. The Trustee filed a Motion for Extension of Time to Object to Discharge on December 9, 2010 in order to request additional information regarding the marital settlement. On February 7, 2011, the Trustee filed this adversary proceeding. The Debtor filed an amended Statement of Financial Affairs on February 14, 2011 to include the pending appellate case. A Rule 7030 exam was held on June 6, 2011.

The Debtor testified at trial regarding the disbursement of the assets she received in her divorce settlement. In general, the Debtor stated that she used the funds to repay debts to friends, to pay living expenses, and for bills to various lawyers and other professionals utilized in her divorce proceedings. Most notably, in September of 2009, the Debtor stated that she transferred \$163,200 to Wells Richards, her boyfriend at the time. She testified that the transfer to Mr. Richards was meant to repay him for living expenses he advanced to her before she received her divorce settlement. To support that claim, the Debtor gave the Trustee a handwritten list of monthly living expenses that supposedly were paid by the funds Mr. Richards loaned to her from 2007 to 2009. The Debtor did not include the transfer to Mr. Richards on her Statement of Financial Affairs.

Further, the Debtor gave to friends as gifts several pieces of antique furniture, valued at approximately \$20,000 in her divorce settlement. She testified that she gave the furniture to her

friends because she did not have a safe place to store the pieces at the time and to repay the friends for help they provided to her. The help provided by the friends was not documented. The Debtor received no consideration for the furniture and the transfers were not disclosed on her Statement of Financial Affairs. She also testified that she sold roughly \$7,000 worth of jewelry to pay living expenses. She testified that she could not remember when the jewelry sales occurred, thus, she did not include them in her bankruptcy filings.

The Debtor sent the Trustee a letter on January 6, 2011 detailing amounts that she claims were paid to various professionals for services related to her divorce proceedings and its subsequent appeal. In the letter, the Debtor explained that she required five different attorneys and two accountants from 2005 to 2009 in conjunction with her divorce. According to the Debtor, the total amount paid to those professionals sums \$195,000. The Debtor produced no corroborating documentation for her payments to the enumerated professionals.

At trial, the Debtor testified that she liquidated several bank and retirement accounts prior to her divorce to invest in a business venture with friends. Those accounts totaled approximately \$200,000. According to her testimony, the business venture failed and she lost the entire investment before her divorce was finalized. The Trustee inquired about those accounts in a deposition taken prior to the trial and the Debtor testified that she could not remember where she spent the money from those accounts. The Debtor explained that she was under such stress at the time of the examination that she did not remember clearly. The Debtor did not produce any documentation regarding the failed business investments. Further, prior to trial, the Debtor did not disclose her business losses to the bankruptcy court or to the Trustee.

The Debtor testified that she was forced to rely on credit cards in order to pay living expenses after her divorce. When asked why she used credit cards for those expenses rather than

the assets she received in her divorce settlement, the Debtor answered that she used those funds to pay lawyers and to repay debts to friends, leaving nothing to satisfy her necessary living expenses.

The Trustee seeks an order denying discharge pursuant to 11 U.S.C. § 727(a)(2)(A), (a)(4)(A), and (a)(5). The Trustee argues that the Debtor failed to explain a loss of certain assets including: furniture valued at \$20,000, jewelry for \$7,000, and \$351,550.41 received September 9, 2009. The Trustee alleges that (1) the Debtor's financial accounts totaled \$290,754.88 as of December 30, 2005, but that she did not provide an adequate explanation of how those funds were expended, and (2) the Debtor received roughly \$700,000 in assets in her divorce, including a divorce settlement check in the amount of \$351,550.41, and did not sufficiently explain how those funds were expended. The Trustee also argues that the Debtor intended to conceal property of the estate, that the Debtor's interest in the Jackson real property and funds from her divorce were not discovered until the § 341 hearing, and that the Debtor knowingly and fraudulently made a false oath or account in signing her schedules and testifying at her meeting of creditors.

The Debtor maintains that she never acted with fraudulent intent in this case. She explained at trial that she initially omitted the real property in Jackson from her schedules because she believed it to be solely in her mother's name and corrected the schedules as soon as she found otherwise. She testified that the transfer of \$163,200 to Wells Richards was a repayment of money that she borrowed from him to cover living expenses she incurred after her divorce. The Debtor also stated that she did not initially realize that she was required to amend her Statement of Financial Affairs to account for her divorce case appeal, but that she did do an amendment on February 14, 2011. Further, she explained that the omission was immaterial because the appeal was unsuccessful.

The Trustee filed a motion for summary judgment on July 12, 2011, arguing that the Debtor's discharge should be denied under § 727(a)(4) because she knowingly and fraudulently made false statements under oath regarding material issues related to her bankruptcy and under § 727(a)(5) because she failed to meet her burden of providing an adequate explanation. This Court denied the Trustee's motion finding that genuine issues of material fact existed as to (1) whether the Debtor possessed fraudulent intent and (2) whether she failed to provide an adequate explanation of when and how certain asserts were disposed of.

The Court conducted a trial on September 22, 2011 and took this matter under advisement.

#### **LAW**

One of the primary aims of bankruptcy law is to provide an "honest but unfortunate debtor" a financial fresh start. *In re Shahid*, 334 B.R. 698, 705 (Bankr. N.D. Fla. 2005). For that reason, provisions denying discharge are construed liberally in favor of the debtor. *In re Jennings*, 533 F.3d 1333, 1338-39 (11th Cir. 2008). A debtor's discharge will only be denied when the facts of the case meet the requirements of specific provisions of the Bankruptcy Code. *Id.* The Trustee asks this Court to deny the Debtor's discharge pursuant to three subparts of 11 U.S.C. § 727. The Court will address each ground separately.

#### **(1) 11 U.S.C. § 727(a)(5)**

If a debtor fails to satisfactorily explain any loss of assets, the Court can deny his/her discharge. 11 U.S.C. § 727(a)(5). The objecting party carries the initial burden of proving the objection by introducing "more than merely an allegation that the debtor has failed to explain losses." 16 *Collier on Bankruptcy* ¶ 727.08 (16th Ed. 2010); Bankruptcy Rule 4005. If the objecting party satisfies that burden, the onus then shifts to the debtor to provide an explanation

that convinces the judge. *In re Hawley*, 51 F.3d 246, 249 (11th Cir. 1996). “Vague and indefinite explanations of losses that are based upon estimates uncorroborated by documentation are unsatisfactory.” *Id.* (quoting *In re Chalik*, 748 F.2d 616, 619 (11th Cir. 1984)).

Here, the Trustee, as the objecting party, shouldered her initial burden to prove the objection by highlighting the disappearance of substantial sums of money received by the Debtor in her 2009 divorce settlement. *See In re Wynn*, 261 B.R. 286, 305 (Bankr. M.D. Ala. 2001) (deeming the objecting party’s burden satisfied by a showing that the debtor failed to account for money loaned to him by various banks). As a result, the burden fell upon the Debtor to satisfactorily explain the disappearance by producing “some kind of direct, specific evidence.” *Id.* at 304.

Considering the totality of the evidence, the Court finds that the Debtor failed to provide a convincing explanation of the losses identified by the Trustee. The Debtor’s generalized assertions that she repaid debts to family, friends, and various professionals, without corroborating documentation, are insufficient to explain the losses. *See In re Shahid*, 334 B.R. 698, 711 (Bankr. N.D. Fla. 2005) (holding that vague answers, unsupported by documentation such as receipts or invoices, failed to satisfactorily explain the debtor’s loss of money). The Court observed the Debtor. Her explanations were not credible. Even if the Court takes as fact that the Debtor was highly stressed during the period of her divorce and bankruptcy, inability to explain much more fully than she did the ways she spent over \$350,000 is not believable.

The Debtor received ample resources in her 2009 divorce settlement, including a check for more than \$350,000. Thirteen months later, the Debtor filed for bankruptcy asserting that, for all intents and purposes, those assets had been completely exhausted. When asked to explain where the assets were expended, the Debtor provided vague and undocumented testimony. For

instance, the Debtor stated that \$163,000 went to Wells Richards, her boyfriend at the time, to repay him for living expenses she incurred. However, she produced no credible documentation evidencing any monies owed to Mr. Richards. She had no bank records, no tax returns, and no receipts. There was not even an acknowledgment of the debt and/or repayment from Mr. Richards. Likewise, the Debtor's handwritten assertion that she paid nearly \$200,000 to attorneys and accountants, without documentary support, does not credibly explain the ultimate disbursement of the divorce settlement funds. *See Matter of Dupree*, 197 B.R. 928, 938-939 (Bankr. N.D. Ala. 1996) (holding that a list authored by a debtor purporting to account for \$19,000 in assets was insufficient to overcome a § 727(a)(5) objection when the debtor "provided no documentation to support the amounts contained in the list"). Again, there were no bills, no checks, and no receipts.

The Debtor did not offer a credible explanation for the disappearance of the money that she received in her divorce settlement. Thus, this Court finds that the Debtor's discharge should be denied pursuant to § 727(a)(5) for failure to explain satisfactorily the loss of substantial assets.

**(2) 11 U.S.C. § 727(a)(2)(A)**

Pursuant to § 727(a)(2)(A) a debtor's discharge can be denied if, within a year of filing his/her bankruptcy petition, the debtor conceals or transfers property with the intent to hinder, delay, or defraud his/her creditors or the trustee. *In re Tipler*, 360 B.R. 333, 340 (Bankr. N.D. Fla. 2005). The party objecting to discharge pursuant to § 727(a)(2)(A) carries the burden of proof by a preponderance of the evidence. *In re Jennings*, 533 F.3d 1333, 1339 (11th Cir. 2008). Notably, "[a] creditor [or Trustee] alleging intent to defraud under § 727(a)(2)(A) bears the

considerable burden of demonstrating *actual fraudulent intent*; constructive fraud is insufficient.” *In re Miller*, 39 F.3d 301, 306 (11th Cir. 1994) (emphasis in original).

In this case, the Trustee’s § 727(a)(2)(A) objection fails to meet the statutory requirements. At least one of the transfers the Trustee cites as objectionable occurred over a year before the Debtor filed her bankruptcy petition. The Debtor’s transfer of \$163,000 to Wells Richards, her boyfriend at the time, occurred thirteen months prior to the Debtor’s October, 2010 filing date. Further, the Trustee failed to prove that the Debtor’s sale of jewelry and gift of antique furniture occurred within one year of the Debtor’s petition. As such, those transfers are not sufficient to deny discharge pursuant to § 727(a)(2)(A).

Moreover, the Trustee failed to carry her burden to demonstrate actual intent to hinder, delay, or defraud. The Trustee points to the Debtor’s failure to disclose several assets in her bankruptcy filings as evidence of her intent to conceal those assets from the estate and her various creditors. Specifically, the Trustee claims that the Debtor intentionally secreted the following assets (and potential assets) from the estate: (1) her interest in the Jackson real property, (2) the appeal of her divorce settlement, (3) the sale of a few pieces of jewelry, and (4) gifts of antique furniture to her friends.

Beyond raising the Court’s suspicion regarding these assets, the Trustee failed to elicit sufficient evidence to demonstrate the Debtor’s actual intent to hinder, delay, or defraud. The Debtor testified that she did not know that she possessed a remainder interest in the Jackson real property at the time of filing, but that she amended her schedules as soon as she discovered it. Likewise, the Debtor testified that she did not realize that the divorce appeal needed to be included in her schedules, but later amended to include it. She explained that she sold the jewelry because she needed cash to purchase necessary living expenses. Further, she admitted to



giving the antique furniture to her friends, however, no evidence was presented that the Debtor was even contemplating bankruptcy at the time of those gifts. Instead, the Debtor testified that she gave the furniture to her friends because she did not have a place to store it and did not want it to be damaged.

The evidence indicates that the Debtor's actions were either the result of a lack of knowledge, which does not support an inference of intent, or, her actions amount simply to the preference of one creditor over another. "A mere preferential transfer...is not tantamount to a fraudulent transfer for the purposes of denying discharge." *Miller*, 39 F.3d at 307. Thus, the Court finds that the Trustee did not satisfy her burden of proof regarding her § 727(a)(2)(A) allegations.

**(3) 11 U.S.C. § 727(a)(4)(A)**

Discharge can be denied under § 727(a)(4)(A) where the debtor knowingly and fraudulently makes a false oath or account in connection with the bankruptcy proceeding. *In re Chalik*, 748 F.2d 616, 618 (11th Cir. 1984). A false oath may involve a false statement or deliberate omission in the debtor's petition or schedules. *In re Shahid*, 334 B.R. 698, 709 (Bankr. N.D. Fla. 2005). For a false oath to be considered materially related to the bankruptcy it must bear a relationship to the debtor's business transactions or estate, and the false oath must be made with a specific, knowing intent to defraud creditors. *In re Reis*, 372 B.R. 521, 525 (Bankr. S.D. Fla. 2007). Actual intent may be inferred from circumstantial evidence. *Id.* Further, a pattern of conduct showing numerous and important omissions shows a clear disregard of veracity; a combination of numerous omissions in a statement of financial affairs and schedules taken together warrant the conclusion of a reckless disregard for the truth by the debtor. *In re*

*Trafford*, 377 B.R. 387, 394 (Bankr. M.D. Fla. 2007). The objecting party must prove its § 727(a)(4)(A) objections by a preponderance of the evidence. *Shahid*, 334 B.R. at 709.

The Trustee alleges that the Debtor should be denied her discharge because she made false oaths in her petition, statements, and schedules by omitting certain assets and information. For the most part, the Trustee relies upon the same factual allegations asserted to support her § 727(a)(2)(A) claim: the Debtor failed to include the Jackson real property on her petition, failed to include her divorce appeal on her Statement of Financial Affairs, omitted the \$163,000 transfer to Wells Richards, and omitted the transfers of jewelry and antique furniture. The Trustee also alleges that the Debtor made a false oath in connection with the liquidation of her business and retirement accounts by initially claiming that she did not remember what happened to the money and then explaining at trial that it was used for a failed business venture.

The assets detailed by the Trustee are material to the Debtor's estate, and thus, false oaths regarding them support a colorable claim under § 727(a)(4)(A). However, like § 727(a)(2)(A), a specific, knowing intent to defraud creditors must accompany the alleged false oaths in order to result in a denial of the Debtor's discharge pursuant to § 727(a)(4)(A). As discussed above, the Trustee did not present sufficient evidence demonstrating the Debtor's knowing intent to defraud. The Debtor testified that she did not realize that she had an interest in the Jackson real property and that she did not know that appellate cases needed to be included in her Statement of Financial Affairs. The Court finds that testimony credible. The Debtor sold jewelry in order to pay living expenses, not to defraud her creditors. Similarly, the Debtor gave the antique furniture to her friends because she no longer had the means to keep it safe. Lastly, the Debtor explained that the testimony she provided at her deposition was the product of stress and trauma from her divorce rather than an attempt to hide anything from the Trustee and her creditors.

The evidence shows that the Debtor's omissions resulted more from ignorance or mistake than a specific intent to defraud creditors. "[A] false statement resulting from ignorance or carelessness is not one that is knowing and fraudulent." 16 *Collier on Bankruptcy* ¶ 727.04[1][b] (16th Ed. 2010). The Court finds that the Trustee failed to prove by a preponderance of the evidence that the Debtor made false oaths with the requisite knowing intent to defraud as contemplated in § 727(a)(4)(A).

Therefore, it is ORDERED that:

1. The Trustee's objection to the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(5) shall be SUSTAINED and the discharge of debts of the Debtor is DENIED in its entirety.
2. The Trustee's objections to discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and § 727(a)(4)(A) shall be OVERRULED.

Dated: October 6, 2011

  
MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE