

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

STEPHEN W. TAYLOR,

Case No. 17-30336

Debtor.

JOHN E. VENN,

Plaintiff,

v.

Adversary Case No. 19-03013

STEPHEN W. TAYLOR,

Defendant.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This adversary proceeding is before the court on the plaintiff's motion for summary judgment (doc. 25). The plaintiff chapter 7 trustee filed this case against the debtor-defendant Stephen W. Taylor for a revocation of Taylor's discharge under 11 U.S.C. § 727(d)(3) based on Taylor's failure to comply with October 2018 and June 2019 court orders to turn over funds that are property of the bankruptcy estate. For the reasons discussed below, the court grants the trustee's motion and by separate order will revoke Taylor's discharge.

Background

On April 18, 2017, Taylor filed for chapter 7 bankruptcy, case no.17-30336. He received a discharge on August 21, 2017.

In his Schedule C, Taylor claimed an interest in Argosy Real Estate Partners ("the partnership interest") as exempt under "Tenancy by the Entireties Florida Common Law Doctrine." The trustee then filed adversary proceeding no. 17-3013 against Taylor and his wife.

The trustee objected to Taylor's claim of exemption in the partnership interest and contended that the partnership interest was property of the bankruptcy estate. The undersigned held a trial on the merits and entered a judgment in August 2018 in favor of the trustee that the partnership interest was property of the bankruptcy estate. (*See* case 17-3013, docs. 81, 82). Taylor appealed the judgment to the district court, which affirmed the judgment on March 7, 2019. (*See* case 17-3013, doc. 96).

On September 6, 2018, the trustee filed a motion for turnover in Taylor's main bankruptcy case, no. 17-30336, related to a partnership distribution in the sum of \$13,401.90 that Taylor had received from the non-exempt partnership interest.¹ Taylor did not respond to the motion for turnover. On October 2, 2018, Judge Karen K. Specie ordered Taylor to turn over the sum of \$13,401.90 to the bankruptcy estate within 30 days. (*See* case 17-30336, docs. 83, 85). There is no dispute that Taylor did not comply with the October 2018 order and has still not complied with that order to date.

On April 26, 2019, the trustee then filed a motion to compel Taylor to comply with the October 2018 order. Taylor did not respond to the motion to compel. Judge Specie granted the motion on June 14, 2019 after a hearing in which neither Taylor nor his attorney appeared. (*See* case 17-30336, docs. 95, 98, 99). Judge Specie again ordered that Taylor turn over the sum of \$13,401.90 within 30 days and stated that “[f]ailure to comply with this Order will be deemed to be a willful failure and refusal to comply with the Order.” (*See* case 17-30336, doc. 99). There

¹ The trustee claims that the distribution was post-petition and Taylor claims that it “was substantially simultaneous” with his chapter 7 filing. This purported dispute is not material for summary judgment purposes. The issue before the court is not when the distribution was made but whether Taylor failed to comply with court orders.

is no dispute that Taylor has not complied with the June 2019 order to date, resulting in the trustee filing this case on November 6, 2019.

Taylor has not offered any evidence in opposition to the trustee's motion for summary judgment. Instead, Taylor's attorney argues that Taylor was financially unable to pay the sum as twice ordered by Judge Specie but can now pay the full amount within 30 to 60 days.

Analysis

Federal Rule of Civil Procedure 56, applicable here pursuant to Federal Rule of Bankruptcy Procedure 7056, states that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "At the outset, the mov[ant] has the burden of demonstrating that there are no genuine issues of material fact, but once that burden is met the burden shifts to the nonmov[ant] to bring the court's attention to evidence demonstrating a genuine issue for trial." *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1121 (11th Cir. 2014).

Under 11 U.S.C. § 727(d)(3), "the court shall revoke a discharge . . . if . . . the debtor committed an act specified in subsection (a)(6) of this section" Subsection (a)(6)(A) includes the debtor's refusal "to obey any lawful order of the court" "Mere failure to obey a court order is insufficient under § 727(a)(6)(A); the statute requires that the debtor *refuse* to obey a court order." *In re Vaughan*, No. 6:12-BK-02798-KSJ, 2014 WL 2507439, at *2 (Bankr. M.D. Fla. June 4, 2014). "Consequently, a plaintiff must show that the debtor was 1) aware of the order; 2) refused to comply; and 3) the refusal to obey the order was the result of willful, intentional disobedience, and not merely inadvertence or mistake." *Id.* (citation and quotation marks omitted).

The trustee met his summary judgment burden on these elements, and Taylor has not offered any evidence (as opposed to mere argument) demonstrating a genuine issue of fact for trial. *See, e.g., Travaglio v. Am. Express Co.*, 735 F. 3d 1266, 1270 (11th Cir. 2013 (“Statements by counsel in briefs are not evidence”)) (citation and quotation marks omitted). Taylor’s counsel makes an unsupported argument that Taylor did not have the financial ability to turn over the \$13,401.90. However, the record shows that Taylor completely ignored both the October 2018 and June 2019 orders.

Taylor did not respond to the trustee’s motion for turnover or motion to compel and did not appear at the motion to compel hearing to offer any explanation for refusing to comply with the first order. He still did not take any action when Judge Specie expressly stated that failure to comply with the second order would be considered a willful refusal to comply with the order. There is no evidence that Taylor made any effort to comply with the October 2018 or the June 2019 order – such as communicating with the trustee to attempt to reach a payment plan or otherwise – at any point until the trustee was forced to file this case in November 2019 over a year after Judge Specie first ordered Taylor to turn over the funds. Under these circumstances, the court finds that the trustee’s motion should be granted.

Conclusion

The plaintiff-trustee is entitled to judgment as a matter of law on his complaint for revocation of discharge. The court will enter a separate judgment revoking the debtor Stephen W. Taylor’s chapter 7 discharge under 11 U.S.C. § 727(d)(3).

Dated: March 31, 2020


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE