FILED
United States Court of Appeals
Tenth Circuit

September 18, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KAULI SAILI, JR.,

Plaintiff - Appellant,

v.

WASTE MANAGEMENT OF KANSAS, INC.,

Defendant - Appellee.

No. 22-3268
(D.C. No. 2:22-CV-02060-DDC-KGG)
(D. Kan.)

ORDER AND JUDGMENT*

Before **HARTZ**, **TYMKOVICH**, and **MATHESON**, Circuit Judges.

Kauli Saili Jr. sued Waste Management of Kansas, Inc. on various claims of employment discrimination. The district court granted summary judgment to Waste Management. It concluded that judicial estoppel should prevent Mr. Saili from pursuing his claims because he did not disclose them in his bankruptcy proceedings. We affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. Background

The parties accept the district court's recitation of the relevant undisputed facts. Mr. Saili began working for Waste Management in 2016. He filed this lawsuit in 2022. He claims that beginning in 2017 Waste Management subjected him to a hostile work environment and discriminated against him based on his race. He also claims that the company retaliated against him in 2021 for taking family medical leave.

In 2019 Mr. Saili filed for Chapter 13 bankruptcy. In his property schedule he denied having any "claims against third parties, whether or not [he had] filed a lawsuit or made a demand for payment" or any "other contingent and unliquidated claims of every nature." Aplt. App. at 49 (brackets and internal quotation marks omitted). The bankruptcy court confirmed his Chapter 13 plan, which required him to pay the bankruptcy trustee $126 each month, and ordered him to "timely report to the Trustee any events affecting disposable income," including "tax refunds, inheritances, prizes, lawsuits, gifts, etc. that are received or receivable during the pendency of the case." Suppl. App. at 127. He did not disclose his discrimination claims against Waste Management in his bankruptcy petition, and he did not file an amended schedule to disclose any of his claims in this lawsuit.

Waste Management moved for summary judgment in this case on the ground that judicial estoppel should prevent Mr. Saili from pursuing his employment-discrimination claims because he did not disclose them in his bankruptcy proceedings. The doctrine of judicial estoppel seeks "to protect the

integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 749–50 (2001) (citation and internal quotation marks omitted). Three "factors typically inform the decision whether to apply the doctrine in a particular case." *Id.* at 750. First, courts ask if the party's later position is "clearly inconsistent" with its earlier one. *Id.* (internal quotation marks omitted). Second, courts consider whether the party persuaded a court to accept its "earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled." *Id.* (internal quotation marks omitted). And third, courts ask if "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Id.* at 751.

These factors are not "inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's application in specific factual contexts." *Id.* For example, "it may be appropriate to resist application of judicial estoppel when a party's prior position was based on inadvertence or mistake." *Id.* at 753 (internal quotation marks omitted).

After Waste Management moved for summary judgment, Mr. Saili successfully asked the bankruptcy court to appoint his attorney in this lawsuit as an agent of his "bankruptcy estate to prosecute the claims in this lawsuit." Aplt. App. at 51. Even so, the district court concluded that all three primary factors favored

estoppel. And it noted that Mr. Saili had not attempted to show that his failure to disclose this lawsuit had been inadvertent or mistaken. For those reasons, the court applied judicial estoppel to bar Mr. Saili's claims and granted summary judgment to Waste Management. Mr. Saili appeals.

II. Discussion

We review for abuse of discretion the district court's decision to apply judicial estoppel. *See Eastman v. Union Pac. R.R.*, 493 F.3d 1151, 1156 (10th Cir. 2007). A court abuses its discretion if it makes a clear error of judgment or exceeds the bounds of permissible choice, or if "its decision is arbitrary, capricious or whimsical, or results in a manifestly unreasonable judgment." *Id.* (internal quotation marks omitted).

Mr. Saili makes no argument on the first judicial-estoppel factor—whether he took clearly inconsistent positions in his bankruptcy proceedings and in this case. Nor do we see any room for such an argument. His position in bankruptcy court (that he had no claims against third parties) cannot square with his position in this case (that he has claims against Waste Management). Targeting the second and third factors, he argues that he did not persuade the bankruptcy court to accept his earlier position and that he would not gain an unfair advantage in the bankruptcy if he were allowed to pursue his claims in this case. We hold that there was no reversible error.

A. Did the bankruptcy court accept Mr. Saili's prior position?

The district court concluded that Mr. Saili convinced the bankruptcy court to accept his prior position because the bankruptcy court confirmed his Chapter 13 plan

when he had not disclosed his claims against Waste Management. The court relied on *Autos, Inc. v. Gowin*, an unpublished decision in which a panel of this court concluded that the plaintiff had persuaded a bankruptcy court to accept her earlier position that she lacked legal claims when she "convinced the bankruptcy court to confirm her Chapter 13 plan without disclosing her claims, yet she now seeks to litigate those same claims." 244 F. App'x 885, 891 (10th Cir. 2007).

Mr. Saili argues that the court should not have relied on *Autos* because that case differs factually from this one. The plaintiff in *Autos*, unlike Mr. Saili, had litigated her claims and received a judgment before a court applied judicial estoppel against the claims. *See id.* at 888. But that difference does not undermine the analysis by the district court in this case. The court relied on *Autos* when discussing the second estoppel factor only because the plaintiff in that case, just like Mr. Saili, convinced a bankruptcy court to confirm a Chapter 13 plan without disclosing potential claims as assets of the bankruptcy estate. *See id.* at 887–88. Where it matters for the district court's analysis, *Autos* mirrors this case.

Still, Mr. Saili argues "that there is no risk of inconsistent court determinations" between this case and his bankruptcy proceedings. Aplt. Opening Br. at 10. That is so, he says, because the bankruptcy court appointed his attorney in this case as an agent of the bankruptcy estate to prosecute his claims against Waste Management, and so any money he recovers from this case "will be available for distribution to the trustee and to [his] creditors." *Id.* But this argument misses the point. Mr. Saili cannot negate the second factor simply by having the misled court

change its ruling after being properly informed. The fact remains that Mr. Saili persuaded the bankruptcy court to confirm his Chapter 13 plan when he had not fully disclosed his assets. To counter the second factor, he would need to show that the Chapter 13 plan would have been the same even if he had disclosed the possible litigation—that is, that the bankruptcy plan would have ignored his potential lawsuit had it been disclosed. We think that a bit far-fetched. Surely if the bankruptcy court had been advised of Mr. Saili's claim, it would have included a provision in the Chapter 13 plan that any recovery on that claim would be shared, at least in part, by his creditors. An order permitting Mr. Saili to pursue this litigation would clearly imply that the bankruptcy court had previously been misled when it did not mention the possible litigation in the Chapter 13 plan. The district court's ruling on the second factor was eminently reasonable.

B. Would Mr. Saili receive an unfair advantage?

The district court determined that the third factor favored estoppel for several reasons. It noted that Mr. Saili had benefited from an automatic stay when he filed for bankruptcy. It further said that his "tactic of non-disclosure would both derive an unfair benefit and impose an unfair detriment because if it had succeeded, it would have shielded any recovery in this lawsuit from his creditors." Aplt. App. at 62 (brackets and internal quotation marks omitted). The court also found that Mr. Saili "knew about his inconsistent positions" yet "ignored his obligation to disclose his claims" in the bankruptcy proceedings. *Id.* at 63.

Mr. Saili asserts that the district court erred by relying on cases holding that a debtor gained an unfair advantage over creditors through receiving a discharge of debts in bankruptcy without disclosing legal claims. *See, e.g.*, *Eastman*, 493 F.3d at 1159–60. To be sure, he has not received a discharge of his debts. The point, however, is the unfair advantage that Mr. Saili attempted to gain by not disclosing the possible litigation. It is irrelevant that now, with full knowledge, the court could mitigate, or even avoid, his gaining that advantage. *See id.* at 1160 (describing as "inconsequential" the fact that creditors had ultimately been "made whole").

Mr. Saili suggests that *Eastman* nevertheless requires reversal here. We are not persuaded. In that case the district court estopped both the plaintiff debtor and the trustee of his bankruptcy estate from pursuing claims that the plaintiff failed to disclose in bankruptcy proceedings. *See id.* at 1154. Although we affirmed the application of estoppel against the plaintiff, *id.* at 1160, we said that applying the doctrine against the trustee had likely been inappropriate, at least to the extent the plaintiff's claims "were necessary to satisfy his debts," *id.* at 1155 n.3. That was because the trustee in *Eastman*, unlike the plaintiff, "had not engaged in contradictory litigation tactics." *Id.* The complication here is that Mr. Saili not only has duties and authority as the debtor but also in acting on behalf of the estate. As a Chapter 13 debtor, Mr. Saili may bring claims in his "own name on behalf of the bankruptcy estate." *Smith v. Rockett*, 522 F.3d 1080, 1081 (10th Cir. 2008). Consequently, any recovery by Mr. Saili would be available for distribution to his

creditors, and barring his claims could therefore deprive the creditors of some compensation.

We acknowledge that there may be special equitable considerations in applying judicial estoppel against a Chapter 13 debtor because of the potential impact on creditors. We note, however, that in essentially the same circumstances one of our fellow circuits held that the district court did not abuse its discretion in applying judicial estoppel even though any recovery by the plaintiff-Chapter 13 debtor would go first to pay creditors. *See Love v. Tyson Foods, Inc.*, 677 F.3d 258, 263–66 (5th Cir. 2012). And in any event, we need not resolve such special equitable considerations now. In district court the argument in Mr. Saili's memorandum in response to the motion for summary judgment consisted of a perfunctory three-sentence paragraph. The district court noted that he had failed to raise any considerations beyond the three factors in assessing judicial estoppel, and the only special factor the court itself addressed was whether the nondisclosure was inadvertent. It is therefore hardly surprising that the court did not consider any special equities that may arise in Chapter 13 proceedings, and we see no abuse of discretion in failing to do so. We leave those issues for a future case.

III. Conclusion

The district court did not abuse its discretion when it decided to apply judicial estoppel. We affirm the judgment below.

Entered for the Court

Harris L Hartz
Circuit Judge