

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE HENRY DEAN VAUGHAN and
JESSIE ELAINE VAUGHAN, also
known as Elaine Vaughan,

Debtors.

BAP No. WO-04-039

BANK OF CUSHING, a State
Chartered Bank,

Plaintiff – Appellee,

v.

HENRY DEAN VAUGHAN and
JESSIE ELAINE VAUGHAN,

Defendants – Appellants.

Bankr. No. 99-17361-NLJ
Adv. No. 00-1208-NLJ
Chapter 7

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the Western District of Oklahoma

Before McFEELEY, Chief Judge, NUGENT, and THURMAN, Bankruptcy
Judges.

NUGENT, Bankruptcy Judge.

The parties did not request oral argument, and after examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

Appellants Henry Dean Vaughan and Jessie Elaine Vaughan (“the

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

Vaughans” or “the debtors”) appeal from an order of the Bankruptcy Court for the Western District of Oklahoma granting summary judgment in favor of Appellee Bank of Cushing (“Bank”) on its request to except its debt from the Vaughans’ discharge for actual fraud under 11 U.S.C. § 523(a)(2). We DISMISS this appeal as MOOT based on the Court’s decision in the companion appeal, BAP appeal number W0-05-028.

In BAP appeal number W0-05-028, we affirmed the bankruptcy court’s order granting summary judgment in favor of the Trustee and denial of discharge. We concluded that 1) there is no genuine issue of material fact that the debtors made a series of false oaths, and 2) the Trustee’s evidence established a reasonable inference that the debtors knowingly and fraudulently made a false oath and that oath related to a material fact.¹

Because we find denial of discharge appropriate under Section 727(a)(4)(A), this appeal is MOOT. Accordingly, this appeal is dismissed.

¹ In BAP appeal number WO-05-028, this Court struck the Bank’s Supplemental Statement; it is hereby stricken in the instant appeal as well.