

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 05 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: WILLIAM WALTER PLISE,

Debtor,

TENNILLE I. PLISE,

Appellant,

v.

SHELLEY D. KROHN, Chapter 7
Trustee; WILLIAM WALTER PLISE,

Appellees.

No. 15-60032

BAP No. 14-1474

MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Kurtz, Dunn, and Jury, Bankruptcy Judges, Presiding

Submitted December 6, 2017**
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WARDLAW and GOULD, Circuit Judges, and COLLINS,^{***} Chief District Judge.

Tennille Plise, the former spouse of Debtor William Plise, appeals the Bankruptcy Appellate Panel for the Ninth Circuit's (BAP) affirmance of the bankruptcy court's order sustaining the objection of Shelley Krohn, the Chapter 7 trustee for William Plise's bankruptcy estate.

The BAP did not abuse its discretion by affirming the bankruptcy court's order sustaining Krohn's claim objection on the basis of judicial estoppel. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782–83 (9th Cir. 2001). Plise held clearly inconsistent positions during the bankruptcy proceeding. The bankruptcy court accepted her prior position in the settlement agreement that \$425,000 of the proceeds from the sale of the Austin property would go to unsecured creditors and release Plise from all remaining claims. Plise subsequently made a priority claim and argued that the \$425,000 should go to her because she was an unsecured creditor. This change in position would provide her with an unfair advantage. *See id.* at 782. The BAP thus appropriately determined

^{***} The Honorable Raner C. Collins, Chief United States District Judge for the District of Arizona, sitting by designation.

that Plise was judicially estopped from taking the current, inconsistent position that the \$425,000 should go to her.

AFFIRMED.