In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1733

MARK A. WARSCO,
trustee in the bankruptcy of Isiah T. Harris,

Plaintiff-Appellant,

v.

CREDITMAX COLLECTION AGENCY, INC.,

Defendant-Appellee.

Appeal from the United States Bankruptcy Court for the
Northern District of Indiana, Fort Wayne Division.
No. 22-01004-reg — **Robert E. Grant**, *Chief Bankruptcy Judge*.

SUBMITTED JANUARY 6, 2023* — DECIDED JANUARY 9, 2023

Before EASTERBROOK, ST. EVE, and KIRSCH, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Trustees in bankruptcy can recover some transfers made to outside parties during the 90 days before the debtor files a petition. 11 U.S.C. §547(b)(4)(A). Mark Warsco, trustee in the bankruptcy of Isiah Harris,

* The court granted the parties' joint motion to waive oral argument.

discovered that a little more than $3,700 had been paid to Creditmax during those 90 days on account of Harris's antecedent debt—in other words, that Creditmax had not provided "new value" within the meaning of §547(a)(2). Creditmax holds a judgment against Harris and used it to secure a garnishment order, which required Harris's employer to pay some of his wages directly to Creditmax. The garnishment order was issued by a state court in Indiana more than 90 days before Harris filed his bankruptcy petition. Warsco began an adversary proceeding to recover the $3,700 for distribution among all of Harris's creditors, without a preference for Creditmax.

Creditmax resisted the Trustee's application, relying on *In re Coppie*, 728 F.2d 951 (7th Cir. 1984). *Coppie* holds two things: first, that the definition of a "transfer" for the purpose of §547 depends on state law; second, that as a matter of Indiana law a "transfer" occurs when a garnishment order is entered, not when money is paid. Creditmax observed that this controversy arises from a garnishment order issued in Indiana more than 90 days before the bankruptcy commenced. The federal bankruptcy court found *Coppie* controlling (Indiana law has not changed since 1984) and denied the Trustee's application. 2022 Bankr. LEXIS 1661 (N.D. Ind. Mar. 22, 2022). The judge added that *Coppie* appears to be wrongly decided but wrote that only this court can overrule its decisions. The Trustee asks us to do just that. We accepted the Trustee's appeal, bypassing the district court. See 28 U.S.C. §158(c)(2).

Coppie is indeed wrongly decided. The reason is simple: *Barnhill v. Johnson*, 503 U.S. 393 (1992), holds that federal rather than state law defines the meaning of "transfer" in §547.

A decision by the Seventh Circuit in 1984 must give way to a decision by the Supreme Court in 1992.

The result in *Coppie* still might be right, even though its choice of law has been disapproved. Perhaps federal law, like Indiana law, identifies as the "transfer" the date of an order to pay money, or the date someone learns of that order, as opposed to the date on which money changes hands. But it doesn't. That issue, too, was resolved by *Barnhill*.

Barnhill arose from a check (a form of order to pay money) that was signed and delivered outside the 90-day preference window but paid inside that window. The Justices held that the date of the check is irrelevant and that only payment of the check marks a "transfer." The rule that the "transfer" occurs when money changes hands is as applicable to garnishment as it is to checks. The check is an instruction to a bank, while the garnishment order is an instruction to an employer. In either situation things may happen after the date of the order—the drawer may stop payment; the drawee may refuse payment; the wage-earner may quit or be fired—that affect whether any money is transferred. The Supreme Court identified as the date of transfer the time at which the money passes to the creditor's control.

This is not the first time that we have recognized the effect of *Barnhill* on the definition of a transfer. *Freedom Group, Inc. v. Lapham-Hickey Steel Corp.*, 50 F.3d 408, 412 (7th Cir. 1995), collects several decisions that do not comport with *Barnhill*. We overruled or disapproved each of them after a circulation to the full court under Circuit Rule 40. Unfortunately, *Freedom Group* did not include *Coppie* in its list of defunct rulings. That may be because *Coppie* was rarely cited until Creditmax found

it; today's opinion marks *Coppie*'s first citation by the Seventh Circuit since its release 39 years ago.

Creditmax tries to distinguish *Barnhill* and *Freedom Group* on the ground that they dealt with dates on which people learned of transfer orders (for example, the date on which a check arrived in the mail) rather than the dates the orders were made or took effect. Yet the rationale of *Barnhill* does not depend on a payment order's entry versus the date any given person learned of it. Under *Barnhill* both dates are irrelevant to the "transfer." Deferred knowledge of a transfer order may affect priority among creditors, if something happened (say) between entry of an order and notice to a person trying to make a secured loan, but only the date of payment matters when defining a transfer under §547.

Freedom Group did not purport to provide a comprehensive list of all decisions undermined by *Barnhill*. It is enough to hold today that *Coppie* must be treated just as *Freedom Group* treated similar decisions. We know from *Barnhill* that federal law defines "transfer" and that only actual payment counts as a "transfer." *Coppie*, which held otherwise in both respects, accordingly is overruled, and the case is remanded with instructions to resolve the Trustee's claim on the merits.