

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted April 28, 2025\*

Decided April 29, 2025

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

No. 24-2996

DONALD WAYNE BUSH and KIMBERLY ANN  
BUSH,

*Plaintiffs-Appellants,*

*v.*

UNITED STATES OF AMERICA,  
*Defendant-Appellee.*

Appeal from the United States  
District Court for the Southern  
District of Indiana, Indianapolis  
Division.

No. 1:15-cv-01318-RLY-CSW

Richard L. Young,  
*Judge.*

ORDER

Our amended decision, 100 F.4th 807 (7th Cir. 2024), remanded to the district court with instructions to determine whether, on the date the bankruptcy judge was first asked to determine whether the Bushes owe a tax penalty (and, if so, how much), a decision on that question could have affected the allocation of assets among their other creditors.

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\*This successive appeal has been submitted to the panel that decided the initial appeal. See Operating Procedure 6(b). Circuit Judge Flaum died after the first decision and has not been replaced on the panel; this appeal is being decided by a quorum. 28 U.S.C. §46(d). We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. Fed. R. App. P. 34(a)(2)(C).

The district court found that there was no potential effect. The court started with the Bushes' total assets, according to their own bankruptcy schedules (\$308,748), then deducted the value of secured claims (\$229,257) and assets claimed as exempt (\$35,705), yielding a total of \$43,786 available for distribution to priority and general creditors. The United States alone had a priority tax claim of roughly \$100,000, so the judge ruled that the contested (but non-priority) claims to tax penalties could not affect the distribution.

The Bushes do not dispute this math. Instead they contend that their assets had a range of possible values and that the judge should have considered the assets' maximum value, which would have sufficed to cover all claims that had been filed already. The problem with this sort of argument is that it contradicts the schedules to which the Bushes themselves attested. If the assets had a range of possible values, the maximum (and most likely) values should have been revealed on the schedules. The schedules called for actual values, not the lowest value the assets could have had. Maybe the Bushes were trying to minimize the scheduled values to curtail their payouts in bankruptcy, but no matter the reason for choosing the values that they did, they are stuck with their choices. The district court did not err in concluding that the dispute about tax penalties belongs in the Tax Court under the analysis of our opinion.

AFFIRMED