

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
JOHN M. WALSH and :
SUE E. WALSH, : Case No. 88-2837-C H
 :
 Debtors. : Chapter 7
 :
 PAUL J. FITZSIMMONS, :
 Trustee in Bankruptcy, :
 : Adv. No. 89-0036
 Plaintiff, :
 v. :
 JOHN M. WALSH and :
 SUE E. WALSH, :
 :
 Defendants. :
 :
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ORDER--PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT

A hearing was held on September 6, 1990, on Plaintiff's second motion for summary judgment. Victor V. Sprengelmeyer appeared on behalf of Plaintiff, and John J. Scieszinski appeared on behalf of Defendants. At the conclusion of the hearing, the Court took the matter under advisement and now considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I). The Court, upon review of the filings submitted since it initially denied summary judgment in this matter, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

1. Between December 1980 and December 1983, Linda E. Sinnard and Defendant, John M. Walsh, were husband and wife, and citizens and residents of Dubuque, Dubuque County, State of Iowa.

2. In December 1983, Linda E. Sinnard obtained a judgment of dissolution of marriage, which included specific findings of fact and conclusions of law, including a judgment against Defendant John M. Walsh in the amount of \$70,000.00 for John M. Walsh's fraud against Linda E. Sinnard.

3. In May of 1985, Linda E. Sinnard obtained a judgment against Defendant John M. Walsh for fraud in the amount of \$208,000.00 for compensatory damages and \$500,000.00 for exemplary damages.

4. On October 21, 1987, the Iowa Supreme Court affirmed Linda E. Sinnard's civil damage judgment in the amount of \$708,000.00 against Defendant John M. Walsh.

5. On April 18, 1988, Linda E. Sinnard filed a voluntary Chapter 7 petition in the Northern District of Iowa, in which proceeding Plaintiff was duly appointed and is the qualified and acting trustee.

6. On December 30, 1988, Defendants filed a voluntary Chapter 7 petition in the Southern District of Iowa.

7. On March 15, 1989, Plaintiff filed a complaint to determine the dischargeability of the judgments Sinnard held against John Walsh.

8. On January 4, 1990, Plaintiff filed a motion for summary judgment regarding the dischargeability of the debts pursuant to 11 U.S.C. §§ 523(a)(2) and (a)(6). A hearing on Plaintiff's motion was held on February 15, 1990.

9. On March 23, 1990, this Court denied Plaintiff's motion for summary judgment. The Court held Plaintiff had failed to show the state court judgments resulted from application of the same standard of proof required in bankruptcy dischargeability determinations. Therefore, collateral estoppel principles could not be invoked and Plaintiff was not entitled to judgment as a matter of law under Fed.R.Bankr.P. 7056.

10. On July 18, 1990, Plaintiff filed a second motion for summary judgment. In support of its motion Plaintiff filed affidavits from the Iowa District Court judges who presided over the state court actions from which Sinnard obtained her judgments against Walsh.

11. In resisting Plaintiff's second motion for summary judgment, Defendants filed what they allege to be the jury instructions utilized by the trial court regarding the burden of proof in cases involving allegations of fraudulent misrepresentation.

DISCUSSION

Summary judgment is appropriate when no genuine issue of material fact is present in the case and judgment should be awarded to the movant as a matter of law. Buford v. Tremayne, 747 F.2d 445, 447 (8th Cir. 1984); Fed.R.Civ.P. 56(c). The drastic nature of the summary judgment remedy mandates that it not be granted unless a moving party has established the right to a judgment with such clarity that there is no room for controversy. Buford, 747 F.2d at 447.

A party seeking to except a debt from discharge as one for money obtained by fraud has the burden of proving each element of its claim by clear and convincing evidence. Matter of Van Horne, 823 F.2d 1285, 1287 (8th Cir. 1987). Similarly, a creditor asserting the nondischargeability of a debt pursuant to 11 U.S.C. 523(a)(6) must prove its claim by clear and convincing evidence. American Honda Finance Corp. v. Loder, 77 B.R. 213, 215 (N.D. Iowa 1987); In re Holtz, 62 B.R. 782, 785 (Bankr. N.D. Iowa 1986). A review of the record in this case and the relevant case law reveals summary judgment is not appropriate in this matter.

A) Dissolution Decree

In rendering its dissolution decree in the Walsh case, the Iowa district court concluded the loss of \$70,000.00 in

Sinnard's deposits with East Dubuque Savings Bank resulted from Walsh's fraud upon her. The court awarded Sinnard a judgment against Walsh for the sum of \$70,000.00. At no point in the dissolution decree did the court indicate what standard of proof it applied in concluding Walsh had committed fraud upon Sinnard. It is not surprising that the court did not elaborate upon its finding of fraud in light of the fact that fault is to be rejected as a consideration when addressing economic issues of property division and support. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975); In re Marriage of Richards, 439 N.W.2d 876, 880 (Iowa App. 1989).

Judge Degnan's affidavit (prepared six and one-half years after he rendered the decree) reflects his opinion that his finding of fraud in the 1983 dissolution decree "was supported by clear and convincing evidence in accord with the elements and standards of proof required by the law of the State of Iowa." With all due respect and deference to Judge Degnan, this court cannot ignore the fact that not only did the actual decree not indicate the high standard of "clear and convincing" evidence was used by the trial court in reaching its finding of fraud, but, in fact, such a finding was not necessary for the court to frame the economic provisions of the dissolution decree.

Even if the trial court properly proceeded in rendering its finding of fraud, this Court is cognizant of the fact that

a party in Iowa does not have the heavy burden of proving fraud by "clear and convincing evidence" but instead must only prove it by a "preponderance of the clear, convincing, and satisfactory evidence." See Omaha Bank for Coops. v. Siouxland Cattle Coop., 305 N.W.2d 458, 464 (Iowa 1981). Elaboration upon the important distinctions between these two standards is set forth later in this order.

The absence of language in the dissolution decree indicating the application of the higher "clear and convincing" standard, the fact that prevailing Iowa law did not require such a high standard in fraud determinations, and the absence of fault as a factor to be considered in structuring dissolution decree economic provisions creates a genuine issue as to whether the trial court's finding of fraud was premised upon "clear and convincing" evidence or a lower standard of evidentiary proof. The dissolution decree does not collaterally estop relitigation of this issue and Plaintiff is not entitled to summary judgment as a matter of law.

B) Jury Verdict

On May 10, 1985, a jury returned its verdict in Sinnard's civil action against Walsh. The jury found Walsh liable to Sinnard for fraudulent misrepresentation. It assessed \$208,000.00 in compensatory damages and \$500,000.00 in

punitive damages against Walsh.

Plaintiff claims the trial court correctly instructed the jury that Sinnard's allegation of fraud had to be proven by clear and convincing evidence. Plaintiff submits the affidavit of Judge Klotzbach who presided at the trial. This affidavit, prepared five years after the trial, is offered as evidence that not only did the judge instruct the jury on the "clear and convincing" standard of proof, but that in the judge's opinion the evidence presented at trial was clear and convincing and fully supported the judgments rendered by the jury.

Once again, while according proper deference to the recollections of Judge Klotzbach, this court cannot overlook the prevailing case law which governed the burden of proof in Iowa in actions for fraudulent misrepresentation. It has been established the "preponderance of clear, convincing and satisfactory evidence" standard is the appropriate burden of proof in damage actions predicated on fraud. Omaha Bank for Coops. v. Siouxland Cattle Coop., 305 N.W.2d 458, 464 (Iowa 1981); Lockard v. Carson, 287 N.W.2d 871, 874 (Iowa 1980).

The Iowa Supreme Court has examined this standard and has concluded it is not inherently contradictory for the burden of proof to utilize the terms "preponderance" and "clear and convincing." Lockard, 287 N.W.2d at 874. "Preponderance" is a quantitative measure which refers to the burden of proof a

plaintiff in a fraud action must carry. See id. The reference to "clear, convincing and satisfactory" evidence refers to the character or nature of the evidence. See id.; see also Hall v. Crow, 240 Iowa 81, 92, 34 N.W.2d 195, 201 (1948). "Clear and convincing" does not relate to the quantum of proof required, but rather to the kind of evidence from which the factfinder must find fraud has been proven by a preponderance. See Hall, 240 Iowa at 92, 34 N.W.2d at 201.

The purpose of this unique burden of proof in fraud actions is to give deference to the presumption of fair dealing, Lockard, 287 N.W.2d at 874, and to overcome the general and reasonable presumption in favor of honesty. Hall, 240 Iowa at 92, 34 N.W.2d at 201. A uniform jury instruction has been adopted to assist courts in instructing juries on when evidence is clear, convincing and satisfactory. Iowa Civil Jury Instructions 100.19; Tratchel v. Essex Group, Inc., 452 N.W.2d 171, 180 n. 2 (Iowa 1990).

Despite Judge Klotzbach's affidavit indicating he instructed the jury to apply the higher standard of "clear and convincing" evidence, this court must recognize that the prevailing law required that the jury be instructed on the less onerous standard of "preponderance of the clear, convincing and satisfactory evidence." Defendants have submitted the proposed (not necessarily the actual) jury instructions

presented to the trial court, and proposed instruction 14 suggests the court was requested to apply the appropriate "preponderance of the clear, convincing and satisfactory evidence" standard.

Collateral estoppel is applicable only if the state court's decision on factual issues was based on standards identical to those used by the Bankruptcy Court in determining dischargeability. Brown v. Felsen, 442 U.S. 127, 139 n. 10, 99 S.Ct. 2205, 2213 n. 10, 60 L.Ed. 2d 767, 776 n. 10 (1979).

In light of the prevailing case law and the proposed jury instructions and despite the submission of additional affidavits by the Plaintiff, this Court cannot find with certainty that the state trial court actions utilized the clear and convincing burden of proof necessary to except these debts from discharge pursuant to 11 U.S.C. 523(a)(2) or 523(a)(6). Plaintiff is not entitled to summary judgment as a matter of law.

IT IS ACCORDINGLY ORDERED that Plaintiff's second motion for summary judgment is denied.

Dated this 9th day of October, 1990.

Russell J. Hill
U.S. Bankruptcy Judge