

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	Case No. 94-531-CH
	:	
WADE E. SPOONHALTZ	:	Chapter 7
	:	
Debtor.	:	
-----	:	
JACKIE BACKSTROM-GORDON,	:	Adv. No. 94-94054
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WADE E. SPOONHALTZ,	:	
	:	
Defendant.	:	

ORDER--MOTION FOR SUMMARY JUDGMENT

Hearing on the creditor's Motion For Summary Judgment was held on February 16, 1995.

Debtor, Wade E. Spoonhaltz, appeared by his attorney, Donna Ruth Beary. Creditor, Jackie Backstrom-Gordon, appeared by her attorney, Theodore F. Sporer. Upon conclusion of the hearing, the Court took this matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The Court, upon review of the briefs, pleadings, and arguments, now enters its findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On October 20, 1990, police were called to the residence of Defendant in connection with an incident which occurred between Plaintiff and Defendant. Defendant was arrested and charged with assaulting Plaintiff.

2. On October 25, 1990, Defendant plead not guilty to the charge of assault under Iowa Code § 708.2(2). Trial was held on January 3, 1991. Defendant was convicted of the charge. The criminal conviction was not appealed.

3. On December 7, 1992, Plaintiff filed a Second Amended and Substituted Petition at Law in the Iowa District Court for Polk County. Plaintiff sought damages from Defendant in connection with the incident alleging negligence and assault and battery. Plaintiff also sought damages from J.C.S. Enterprises, Inc. d/b/a Jack and Randy Southtown Tap and Perby Corporation d/b/a Park Avenue Pub alleging that the entities were strictly liable for damages.

4. On September 27, 1993, the state court entered an order granting partial summary judgment on the issue of Defendant's liability on account of assault and battery. The state court found that the issue of whether or not Defendant assaulted Plaintiff had been raised and litigated in the prior criminal action, that the issue was material and relevant to the disposition of the criminal action, and that the issue was necessary and essential to the resulting judgment. Accordingly, the court determined that the doctrine of issue preclusion applied and summary judgment should be granted as to the issue of Defendant's liability. Proof that the facts surrounding the occurrence at Defendant's home on the night of October 20, 1990 have actually been litigated in state court has not been furnished to this court.

5. On October 20, 1993, the jury returned a verdict against Defendant finding that Plaintiff was entitled to:

past medical expenses	\$4,905.00
loss of future earning capacity	----
loss of full mind and body - past	2,500.00
loss of full mind and body - future	2,500.00
physical and mental pain and suffering - past	10,000.00
physical and mental pain and suffering - future	7,500.0

The total verdict awarded to Plaintiff against Defendant was \$27,405.00. This total was reduced by \$3,000.00 for settlement of Plaintiff's claims against other defendants as a pro tanto reduction of damages awarded by the jury and less \$159.27 to settle Defendant's counterclaim. The court entered judgment in favor of Plaintiff and against Defendant for the amount of \$24,245.73.

6. On February 16, 1994, Defendant filed a Notice of Appeal from the judgment and the January 18, 1994 ruling that denied Defendant's Motion for a New Trial.

7. On March 4, 1994, Defendant filed for bankruptcy relief under Chapter 7 of the U.S. Bankruptcy Code. Defendant listed on his schedules the unsecured nonpriority claim of Jackie Backstrom-Gordon for a tort claim judgment plus interest in the amount of \$33,253.20.

8. On June 6, 1994, Plaintiff filed this Complaint to Determine Dischargeability of Debt pursuant to 11 U.S.C. § 523(a)(6). Mail service of the summons and copy of the complaint addressed to Debtor and his attorney was made on June 24, 1994.

9. On June 22, 1994, Defendant voluntarily dismissed his pending state court appeal believing that Plaintiff had not filed a complaint in Bankruptcy Court objecting to Defendant's discharge or the discharge of this debt.

10. On January 18, 1995, Plaintiff filed a Motion for Summary Judgment on the grounds that the issue of whether Defendant's conduct was willful and malicious pursuant to 11 U.S.C. § 523(a)(6) had been previously litigated by the state court criminal and civil proceedings.. Defendant resists the Motion for Summary Judgment.

DISCUSSION

A motion for summary judgment is governed by Fed.R.Civ.P. 56, made applicable to bankruptcy proceedings pursuant to Fed.R.Bankr.P. 7056, which provides in pertinent part:

The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is any genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed.R.Civ.P. 56.

In ruling on a motion for summary judgment, the Court's function is to determine whether a genuine issue as to any material fact exists, not to resolve any factual issues. Celotex Corp. v. Catrett, 477 U.S. 317, 330, 106 S.Ct. 2548, 2556 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-52, 106 S.Ct. 2505, 2509-11 (1986). The Court must deny summary judgment where there is a genuine issue as to any material fact and grant summary judgment where there is no such issue and the

movant is entitled to judgment as a matter of substantive law. Anderson, 477 U.S. at 247-52, 106 S.Ct. at 2506-11.

The party seeking summary judgment bears the initial burden of asserting that the pleadings, depositions, answers to interrogatories, admissions, and affidavits establish the absence of a genuine issue of material fact. Celotex Corp., 477 U.S. at 323, 106 S.Ct. at 2552. The ultimate burden of demonstrating the existence of a genuine issue of material fact, however, lies with the nonmoving party. 477 U.S. at 324, 106 S.Ct. at 2553. Any inferences to be drawn from the underlying facts contained in these materials must be considered in the light most favorable to the debtor. United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 994 (1962).

The U.S. Supreme Court has held that the principle of collateral estoppel bars the relitigation in bankruptcy court of factual or legal issues determined in a prior state court action. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). The party asserting collateral estoppel must prove that the following four elements exist to bar litigation under the doctrine:

- 1) the issue sought to be precluded must be the same as that involved in the prior action;
- 2) the issue must have been litigated in the prior action;
- 3) the issue must have been determined by a valid and final judgment; and
- 4) the determination must have been essential to the prior judgment.

In re Miera, 926 F.2d 741, 743 (8th Cir.1991) (citations omitted). To determine whether an issue is actually litigated and was necessary to the prior action, the court should examine the entire record of the earlier proceeding. Spilman v. Harley, 656 F.2d 224, 229 (6th Cir.1981). Collateral estoppel is

proper only if the party had a “full and fair” opportunity to litigate the issue in the prior action. Lovell v. Mixon, 719 F.2d 1373, 1376 (8th Cir.1983).

In this case, Plaintiff asserts that she is entitled to summary judgment on the issue of whether Defendant’s conduct is “willful and malicious” on the grounds that there is no genuine issue of fact. She contends that this issue was previously litigated by the state court in the criminal and civil proceedings and that Defendant is collaterally estopped from relitigation of this issue. This Court must, therefore, decide whether the state court rulings are entitled to collateral estoppel effect.

Defendant was convicted under Iowa Code § 708.2(2) which provides:

A person who commits an assault, as defined in § 708.1, without the intent to inflict a serious injury upon another, and who causes bodily injury or disabling mental illness, is guilty of a serious misdemeanor.

Iowa Code § 708.1(1) provides:

A person commits an assault when without justification, the person does any of the following:

- (1) Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

Under Iowa law, an assault with intent to inflict a serious injury pursuant to Iowa Code § 708.2(1) is a specific intent crime, while an assault causing bodily injury pursuant to Iowa Code § 708.2(2) is a general intent crime. See State v. Brown, 376 N.W.2d 910, 913-14 (Iowa App. 1985); see also State v. Ogan, 497 N.W.2d 902, 903 (Iowa 1993). In Brown, the Iowa Court of Appeals found that as there was no additional intent element set forth in Iowa Code § 708.2(2), the analysis turns on whether

assault as defined under Iowa Code § 708.1(1) contains a specific intent element. Brown, 376 N.W.2d at 912. After a detailed analysis, the state court then goes on to conclude that assault as defined under Iowa Code § 708.1(1) is a general intent crime. Id. at 915. Accordingly, a conviction of assault under Iowa Code § 708.2(2) does not require proof of specific intent. General intent has been defined as an intent “merely to do a violent act” or as an intent to “complete the act of an unlawful touching of the victim”. Id. at 913-14 (citations omitted).

11 U.S.C. § 523(a)(6) excepts from discharge any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity.” The statute does not define what constitutes “a willful and malicious injury”. However, the 8th Circuit has held that the elements of “willfulness” and “malice” differ under 11 U.S.C. § 523(a)(6). In re Long, 774 F.2d 875, 880-81 (8th Cir. 1985). In Long, the 8th Circuit stated that malice must apply to a heightened level of culpability which goes beyond recklessness if it is to have a meaning independent of willful. Id. at 881. The Eighth Circuit goes on to define “willful” as “headstrong and knowing” conduct and “malicious” as conduct “targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause . . . harm” Id.

In this case, Defendant was convicted pursuant to Iowa Code § 708.2(2) of assault. Subsequently, Defendant was sued for damages in a civil case resulting from the assault. The state court entered partial summary judgment on the issue of liability finding that the issue was barred from relitigation by the doctrine of collateral estoppel on account of the criminal conviction and granted summary judgment on the issue of liability. The jury verdict assessing damages awarded compensation to Plaintiff for medical expenses, future earning capacity, loss of full mind and body and pain and

suffering. Nowhere in the jury verdict is there a finding of malice nor are punitive damages awarded. The Court finds that the conviction under Iowa Code § 708.2(2) is not enough, in and of itself, to meet the definition of malice under 11 U.S.C. § 523(a)(6). A conviction of assault pursuant to Iowa Code § 708.2(2) only requires a proof of general intent. General intent is not identical to the issue of malice under 11 U.S.C. § 523(a)(6). In the civil proceeding, summary judgment as to liability was awarded on the basis of the criminal conviction and the summary judgment order provides no finding on the issue of malice. Likewise, the jury verdict provides no additional proof that the issue of malice was fully litigated. Therefore, the Court finds that the elements of collateral estoppel have not been met as the issue of malice was not fully litigated nor necessary to the rulings in the state court proceedings. Consequently, summary judgment is denied as a genuine issue of material fact exists on the issue of whether Defendant's conduct rises to the level of "willful and malicious" under 11 U.S.C. § 523(a)(6).

ORDER

IT IS THEREFORE ORDERED that Creditor's Motion For Summary Judgment is overruled and denied.

Dated this _____ day of April, 1995.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT