

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
: Case No. 90-2827-D-H
GEORGE W. BAUSWELL and :
LISA A. BAUSWELL, : Chapter 7
: :
Debtors. : Adv. No. 91-91010
- - - - - :
PEGGY M. TUCKER, :
: :
Plaintiff, :
: :
v. :
: :
GEORGE W. BAUSWELL and :
LISA A. BAUSWELL, :
: :
Defendants. :

ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGEMENT

1. The Defendants, George W. Bauswell and Lisa Ann Bauswell, filed a voluntary Chapter 7 petition on October 31, 1990.
2. On January 17, 1991, the Plaintiff, Peggy M. Tucker, George Bauswell's ex-wife, filed an adversary complaint to determine the nondischargeability of a debt under 11 U.S.C. § 523(a)(6).
3. The Defendants filed their answer on February 1, 1991.
4. The Plaintiff filed a motion for summary judgment on April 2, 1991. On July 18, 1991, the Plaintiff filed an exhibit list attached to which was a copy of a state court judgment and a small claims court ruling entered against

George W. Bauswell and in favor of Peggy M. Tucker.¹

5. The state court ruling indicates the Plaintiff had brought a small claims action against the Defendants because of allegations they had made accusing her of fraudulently renting videotapes by using Defendant Lisa Bauswell's name. The court found Mr. Bauswell was in a position to know the handwriting on the rental document was substantially dissimilar from the Plaintiff's handwriting and that store personnel had provided him with a description of the party who had rented the videotapes and he had reason to know the description did not match that of the Plaintiff.

6. The allegations resulted in a police investigation and police contact with the Plaintiff at her place of employment. The Plaintiff was interrogated by the police but was later cleared of the allegations made against her.

7. The Plaintiff alleged the Defendant's allegations constituted the intentional infliction of severe emotional distress under Iowa law.

8. The small claims court held a hearing on August 2, 1990, and it concluded Mr. Bauswell's conduct in conjunction

¹Upon review of the copy of the small claims court ruling, it was discovered page four of the ruling was missing. The court attempted to contact both the Debtor, George W. Bauswell, and the Plaintiff's counsel, Charles Frazier, regarding this omission. In response Plaintiff's counsel has mailed a complete copy of the small claims ruling to the judge's chambers. In order to ensure that the record is complete, the court will direct the clerk's office to docket this item and place it in the file.

with and through Mrs. Bauswell constituted "outrageous conduct" because he was aware of facts that indicated the person he caused to be accused was not a legitimate suspect and he did not disclose these facts to the police when the report and accusation were made.

9. The court found the report made to the police was made with reckless disregard for the probability that the aftermath of making the report would cause emotional distress.

10. The court found the emotional distress sustained by the Plaintiff appeared to have been a "desired by-product" of Defendant George Bauswell's conduct.

11. The court awarded the Plaintiff \$177.00 for uninsured medical expenses incurred as a result of the Defendant's conduct. The court also assessed \$500.00 in exemplary damages against Mr. Bauswell for subjecting his ex-spouse to a criminal investigation "knowing that there [was] no basis in fact for such action."

12. The court found the evidence did not sustain entry of a judgment against Lisa Bauswell. On September 27, 1990, a judgment was entered against George Bauswell for \$677.00 in damages (with interest at 10%) and \$109.00 in court costs.

A hearing on the Plaintiff's motion for summary judgment was held July 18, 1991. Charles O. Frazier appeared for the Plaintiff and Defendant George W. Bauswell appeared pro-se.²

²A final pre-trial conference was held July 18, 1991, in conjunction with the motion for summary judgment. At that

The matter was taken under advisement and the court now considers it fully submitted. The court has jurisdiction of this matter and it is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

COLLATERAL ESTOPPEL

Central to disposition of this motion for summary judgment is what, if any, collateral effect may be given to the state court judgment. The principle of collateral estoppel applies in § 523(a) discharge exception proceedings to bar the re-litigation of factual and legal issues which were determined in prior state court proceedings. See Grogan v. Garner, ___ U.S. ___ 111 S. Ct. 654, 658 n. 11, 112 L. Ed. 2d 755 (1991). It is well settled under the collateral estoppel doctrine that four elements must exist to bar re-litigation of a factual issue in a subsequent proceeding:

- 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). The party

time, the Plaintiff agreed to dismiss the complaint as to Defendant Lisa Ann Bauswell and the court sustained the dismissal.

asserting collateral estoppel has the burden of proving all four elements apply. Id. Collateral estoppel may only be applied if the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in the prior adjudication. Id.

The Plaintiff contends the \$779.00 judgment is nondischargeable pursuant to 11 U.S.C. § 523 (a)(6). That statute provides:

A discharge under section 727...does not discharge an individual debtor from a debt...for willful and malicious injury by the debtor to another entity or to the property of another entity.

Courts are required to separately analyze the elements of malice and willfulness. In re Long, 774 F.2d. 875, 880 (8th Cir. 1985). "Willful" means intentional or deliberate. Id. "Malice" must apply to a heightened level of culpability which goes beyond recklessness if it is to have a meaning independent of willful. Miera, 926 F.2d. at 743. The Eighth Circuit has defined "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. at 743-44. An implicit state court finding of malice may suffice to estop re-litigation of a matter in a § 523(a)(6) nondischargeability action. See id. at 744.

The findings of the small claims court clearly reflect

the willful and deliberate nature of Defendant George Bauswell's conduct. While the tort of intentional infliction of emotional distress may be established by either intentional or reckless conduct in disregard of the probability of causing emotional distress, see Meyer v. Nottger, 241, N.W.2d. 911, 918. (Iowa 1976), the small claims court found Defendant George Bauswell knowingly caused his ex-spouse to be subjected to a criminal investigation when he knew there was no basis in fact for such action.

The small claims court specifically found Defendant George Bauswell had acted with malice by making the accusation against the Plaintiff when having reason to believe it was untrue. The small claims court stated the emotional distress suffered by the Plaintiff appeared to have been a "desired by-product of the situation from Mr. Bauswell's standpoint" and it appears Defendant George Bauswell's conduct was targeted at the Plaintiff and was certain or almost certain to cause harm.

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to summary judgment as a matter of law. Miera, 926 F.2d. at 745.

The state court ruling and judgment reveal the issues of willfulness and malice were addressed by the small claims court. The preclusive effect of those findings renders the Plaintiff entitled to summary judgment. Furthermore, the Eighth Circuit has held the punitive damages portion of a

state court judgment resulting from a willful and malicious injury is nondischargeable. Id. at 745.

IT IS THEREFORE ORDERED the \$779.00 state court judgment entered against Defendant George Bauswell and in favor of the Plaintiff is a nondischargeable debt pursuant to 11 U.S.C. § 523 (a)(6).

Dated this 21 day of November, 1991

JUDGE

RUSSELL J. HILL
UNITED STATES BANKRUPTCY