

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

LEE ALLEN PETERSON,

Case No. 86-3224-C

Debtor.

Adv.Pro.No. 87-0013

DOROTHY STRAND, formerly
known as Dorothy Peterson,

Plaintiff,

v .

LEE ALLEN PETERSON,

Defendant.

MEMORANDUM OF DECISION

On May 15, 1987 a trial on complaint objecting to dischargeability of debt in the above-entitled case was submitted on the stipulated facts and briefs filed by the parties. Arvid D. Oliver appeared on behalf of the debtor/defendant. Douglas A. Fulton appeared on behalf of the plaintiff. This is a core proceeding pursuant to 28 U.S.C. section 157(b)(2)(I). The parties have stipulated to the following facts in lieu of an evidentiary hearing.

FINDINGS OF FACT

1. Prior to June 10, 1977 the plaintiff and debtor/defendant were married and subsequently divorced.
2. On or about June 10, 1977 the plaintiff and the defendant were residing in the plaintiff's home when the defendant did assault and batter the plaintiff by striking her

with his hands and fists and by kicking her when she was knocked to the ground.

3. The plaintiff brought a civil action against the defendant in Polk County District Court alleging that the assault and battery upon her was unwarranted, unprovoked, and without just cause. The plaintiff claimed that as a result of the assault and battery by the defendant she sustained numerous and severe injuries and incurred medical expenses, lost wages, pain and suffering.

4. In the above action the defendant-alleged self-defense.

5. On or about May 31, 1981 a trial was held in Polk County District Court, the Honorable Judge Denato presiding. After a trial by jury in which the defendant appeared personally and was duly represented by counsel, judgment was entered against the defendant in favor of the plaintiff in the sum of \$32,874.43 plus interest at the rate of 10% per annum.

6. The sum of \$32,874.43 awarded by the jury represented compensatory damages.

7. Prior to the entry of judgment, the jury was duly instructed on the issues of assault, self-defense, and the standard necessary for punitive damages. The jury awarded no punitive damages.

8. On or about August 8, 1977 the defendant pled guilty to a criminal charge of assault and battery in violation of Chapter 694.1 of the Iowa Code.

9. On December 5, 1986 the defendant, Lee Allen Peterson, filed a petition for relief under Chapter 7.

10. On January 22, 1987 the plaintiff filed a complaint objecting to the dischargeability of the debt comprised of the judgment rendered in Polk County District Court pursuant to 11 U.S.C. section 523(a)(6).

ANALYSIS

The governing statutory provision is 11 U.S.C. section 523(a)(6), which provides:

(a) A discharge under S 727...of this title does not discharge an individual debtor from any debt--

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

In arguing that the debt arising out of the state court lawsuit is dischargeable, the defendant relies on In re Ertz, 6 B.R. 637 (Bankr. D. S.D. 1980) for the proposition that a state court jury's refusal to impose exemplary or punitive damages amounts to a finding that the debtor did not willfully and maliciously injure the creditor and renders the judgment for compensatory damages dischargeable. Apparently, the defendant is not aware that the bankruptcy court decision was reversed in In re Ertz, 28 B.R. 1020(D. S.D. 1983).

The bankruptcy court concluded that malice is an essential predicate for the award of punitive damages under

state law and, since no punitive award was given by the jury, held the debt did not arise from a willful and malicious injury. 2 B.R. at 641. The district court found this logic flawed for the reason that an underlying state statute provided that the jury may give but is not required to assess exemplary damages if it finds malice. Thus, nothing could be inferred as to the presence of malice from the jury's refusal to impose exemplary damages. 28 B.R. at 1022. The underlying state law in the instant case is identical to that in Ertz and the Polk County jury was duly instructed that "the law permits, but does not require a jury to allow punitive damages...". Therefore, as in Ertz, nothing can be inferred from the lack of a punitive damages award.

As was noted in Ertz, even if the jury's award signaled that the defendant's conduct was committed without malice for purposes of state law, that verdict would not suffice to take the judgment outside the exception to discharge found in 11 U.S.C. section 523(a)(6). See In re Ertz, 28 B.R. at 1022. The standard established by section 523(a)(6) has been described as follows:

To be willful and malicious, an act must be wrongful, done intentionally, necessarily produce harm, and without just cause or excuse.

In re Bothwell, 32 B.R. 617, 618 (Bankr. N.D. Iowa 1983); In re Simpson, 29 B.R. 202, 212 (Bankr. N.D. Iowa 1983). Thus,

hatred, spite or ill-will are not necessary for a section 523(a)(6) finding.

CONCLUSION

Applying the above factors to the case at hand warrants the conclusion that for purposes of 11 U.S.C. section 523(a)(6) the defendant willfully and maliciously injured the plaintiff. The jury was properly instructed on the elements of assault, the elements of self-defense and the determination of damages. From those instructions, the ultimate verdict and the parties' stipulated facts, the court finds that the defendant's actions were wrongful, were intentionally done, were without excuse and produced injury.

The compensatory damages awarded to the plaintiff are a liability arising from the willful and malicious conduct of the defendant and therefore are nondischargeable. See In re Adams 761 F.2d 1422, 1428 (9th Cir. 1984) (both compensatory and punitive damages are subject to nondischargeability).

An appropriate order will be entered.

Signed and filed this 28th day of September, 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE

