

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

In re:

DARREN LEE SCHOFF,

Debtor.

JERRY BLAHA,

Plaintiff-Appellee,

ORDER

v.

05-C-555-S

DARREN LEE SCHOFF,

Defendant-Appellant.

Defendant-appellant Darren Lee Schoff (hereinafter defendant) appeals from an order of the bankruptcy court granting summary judgment in favor of plaintiff-appellee Jerry Blaha (hereinafter plaintiff). The bankruptcy court held a state court tort judgment rendered against defendant was not dischargeable under 11 U.S.C. § 523(a)(6) which precludes a debtor from discharging a debt caused by debtor's willful and malicious injury to a person or property. In an adversary proceeding the bankruptcy court denied discharge and entered summary judgment in favor of plaintiff. It concluded although defendant's liability was determined pursuant to default judgment the state court's award of punitive damages demonstrated his conduct was willful and malicious. Accordingly, issue preclusion barred defendant from relitigating this issue in the bankruptcy proceeding. Jurisdiction

is based on 28 U.S.C. § 158(a) and Fed. R. Bankr. P. 8001. The following facts are undisputed.

BACKGROUND

On September 29, 2000 plaintiff Jerry Blaha and defendant Darren Lee Schoff were involved in an altercation at Les's Bar in Reedsburg, Wisconsin. Plaintiff was injured in the altercation when defendant stuck him in the face.

Plaintiff brought an action against defendant in Sauk County Circuit Court seeking compensatory and punitive damages. Defendant failed to answer the complaint. Accordingly, the state court entered a default judgment against him.

On June 14, 2001 the state court held a hearing to determine plaintiff's damages. Plaintiff appeared in person and by his attorney. Defendant appeared in person without counsel.

Three witnesses proceeded to testify at the hearing. Plaintiff and defendant both testified as well as plaintiff's wife Kristine Blaha. Defendant was given the opportunity to cross-examine both plaintiff and his wife. Additionally, the court stated defendant could give "as much testimony as [he] want[ed] in mitigation of the damages that [were] being claimed." Defendant testified plaintiff did not miss as much work as he claimed. He also testified he did not hire an attorney to represent him in the civil action because he could not afford one. Additionally, he testified regarding his version of the events of the altercation itself. Further, he admitted in his testimony that he struck

plaintiff. However, he testified it was self-defense and stated the jury in his criminal action believed it was self-defense because it acquitted him of all pending criminal charges relating to the altercation.

The court awarded plaintiff damages for special costs, out-of-pocket expenses, medical expenses and lost wages. The total amount of this award was \$40,218.00. Additionally, the court awarded plaintiff damages for pain and suffering in the amount of \$2,000.00 and punitive damages in the amount of \$500.00.

On August 11, 2004 defendant filed for relief under Chapter 7 of the United States Bankruptcy Code. Plaintiff filed a complaint to determine dischargeability on November 8, 2004. He alleged his judgment against defendant was nondischargeable pursuant to 11 U.S.C. § 523(a)(6) because it resulted from defendant's willful and malicious conduct. On or about April 5, 2005 plaintiff filed a motion for summary judgment arguing the doctrine of issue preclusion barred defendant from relitigating the issue of willful and malicious injury in the bankruptcy proceeding. Defendant filed his brief in opposition to plaintiff's motion on or about June 6, 2005.

On June 13, 2005 the bankruptcy court granted plaintiff's motion for summary judgment. The court concluded the determination of malice and want were implicit in the state court's award of punitive damages. Accordingly, pursuant to the doctrine of issue preclusion the court held defendant was barred from relitigating

the issue of willful and malicious injury in the bankruptcy proceeding because it was previously litigated and determined in state court.

MEMORANDUM

Defendant argues the bankruptcy court's grant of summary judgment must be reversed and remanded for further proceedings because a default judgment cannot satisfy the actually litigated requirement of the issue preclusion doctrine. Accordingly, defendant argues he is not barred from litigating the willful and malicious injury issue in the bankruptcy proceeding. Plaintiff argues the bankruptcy court's grant of summary judgment must be affirmed because defendant litigated the willful and malicious injury issue during the damages phase of the state court proceeding.

The grant of summary judgment in bankruptcy proceedings entails the resolution of a legal conclusion which the court reviews de novo. Bukowski v. Patel, 266 B.R. 838, 841 (E.D. Wis. 2001) (citing Peterson v. Scott (In re Scott), 172 F.3d 959, 966 (7th Cir. 1999)). However, the bankruptcy court's findings of fact will not be disturbed unless they are clearly erroneous. In re Neis, 723 F.2d 584, 588-589 (7th Cir. 1983).

To prevail on a motion for summary judgment the moving party must show there is no genuine issue of material fact and he or she is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). To determine if there is a genuine issue of material

fact all facts are construed in the light most favorable to the non-moving party. Heft v. Moore, 351 F.3d 278, 282 (7th Cir. 2003) (citations omitted). Additionally, all reasonable inferences are drawn in favor of that party. Id. However, the non-movant must set forth “specific facts showing that there is a genuine issue for trial” which requires more than “just speculation or conclusory statements.” Id. at 283 (citations omitted).

The doctrine of issue preclusion prevents relitigation of an issue of fact or law previously decided in a judicial proceeding provided the party against whom the prior decision was asserted enjoyed a full and fair opportunity to litigate that issue in the earlier proceeding. Allen v. McCurry, 449 U.S. 90, 94-95, 101 S.Ct. 411, 414-415, 66 L.Ed.2d 308 (1980). Additionally, issue preclusion applies in dischargeability proceedings in bankruptcy. Klingman v. Levinson, 831 F.2d 1292, 1295 (7th Cir. 1987).

First, as a matter of full faith and credit a federal court must apply the forum state’s law of issue preclusion when it determines the preclusive effect of a state court judgment. 28 U.S.C. § 1738; Stephan v. Rocky Mountain Chocolate Factory, 136 F.3d 1134, 1136 (7th Cir. 1998). Additionally, the forum state’s law of issue preclusion applies in determining the dischargeability of debt. Bukowski, at 842 (citing In re Bulic, 997 F.2d 299, 304 n.6 (7th Cir. 1993)). Accordingly, whether issue preclusion applies must be determined according to Wisconsin law.

Under Wisconsin law issue preclusion is a doctrine

designed to limit relitigation of issues that were contested in a previous action between the same or different parties. Michelle T. by Sumpter v. Crozier, 173 Wis.2d 681, 687, 495 N.W.2d 327, 329 (1993) (citing Lawlor v. Nat'l. Screen Serv. Corp., 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955)). Accordingly, when an issue is actually litigated and determined by a valid final judgment and the determination is essential to the judgment it is conclusive in a subsequent action whether on the same or a different claim. Landess v. Schmidt, 115 Wis.2d 186, 197, 340 N.W.2d 213, 219 (Wis. Ct. App. 1983) (citing Restatement (Second) of Judgments § 27 (1982)). However, where appropriate a fundamental fairness analysis should be conducted when determining whether it is equitable to apply issue preclusion in a given case. Michelle T. by Sumpter, at 698, 495 N.W.2d at 335.

When a judgment was procured by default issue preclusion ordinarily does not apply because none of the issues were actually litigated. Heggy v. Grutzner, 156 Wis.2d 186, 193, 456 N.W.2d 845, 849 (Wis. Ct. App. 1990). However, that exception is flexible and in some situations preclusion is still appropriate. Id. Issue preclusion is appropriate in this case.

The bankruptcy court acknowledged as it must that "historically under Wisconsin law default judgments are not deemed to have been actually litigated." However, it proceeded to conclude the default judgment was not dispositive because defendant participated and assumed an active role in the damages phase.

Additionally, it concluded the issue of willfulness and malice was actually litigated in that phase because the state court awarded punitive damages and "to give punitive or award punitive damages there had to be a determination that there was willfulness and malice." This conclusion is supported by the record.

During the damages phase the state court allowed defendant to "give as much testimony as [he] want[ed] in mitigation of the damages that [were] being claimed." After hearing defendant's testimony the state court found his testimony sincere and genuine and it also determined defendant was provoked which mitigated the punitive damages claim. If the issue of willfulness and malice was not actually litigated in the damages phase of the state court proceeding the court would not have found it necessary to limit punitive damages in such a manner. Accordingly, the record demonstrates the issue of willfulness and malice was actually litigated in the state court proceeding and the bankruptcy court's conclusion to that effect was not made in error.

However, this determination does not conclude the issue preclusion analysis. The Court also needs to determine: (1) whether the state court judgment is valid and final; (2) whether determination of the willfulness and malice issue was essential to the judgment. The parties do not question the validity or finality of the state court judgment. Accordingly, issue preclusion will apply unless determination of the willfulness and malice issue was not essential to the state court judgment.

Under Wisconsin law punitive damages are only available when a defendant "acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff." Wis. Stat. § 895.85(3). Additionally, punitive damages are not awarded in Wisconsin unless a defendant acted maliciously, outrageously or in a manner that demonstrated a wanton disregard of personal rights. Fahrenberg v. Tengel, 96 Wis.2d 211, 222, 291 N.W.2d 516, 521 (1980) (citing Entzminger v. Ford Motor Co., 47 Wis.2d 751, 757-758, 177 N.W.2d 899, 903 (1970)). Further, the formulation used by Wisconsin courts in connection with punitive damages is essentially the same inquiry made in determining whether a debt is nondischargeable under Section 523(a)(6). Bukowski, at 845. Accordingly, the state court could not have awarded punitive damages unless it necessarily determined defendant's conduct was willful and malicious. The determination was essential to the judgment and the bankruptcy court's application of issue preclusion to the willful and malicious injury element of Section 523 was correct.

In certain cases it is fundamentally unfair to apply issue preclusion. However, this is not such a case. In fact, it would be fundamentally unfair not to apply issue preclusion. Section 523(a)(6) does not discharge an individual debtor from any debt for "willful and malicious injury by the debtor to another entity." 11 U.S.C. § 523(a)(6). Accordingly, if issue preclusion did not apply a debtor could avoid the fact of nondischargeability

by failing to appear during the liability phase even when the debtor appeared during the damages phase and the state court awarded punitive damages. This would circumvent the public policy articulated in Section 523 and as defendant concedes a debtor should not be rewarded for failing to appear.

ORDER

IT IS ORDERED that the bankruptcy court's grant of summary judgment in favor of plaintiff-appellee is AFFIRMED.

Entered this 28 day of November, 2005.

BY THE COURT:

s/

JOHN C. SHABAZ
District Judge